

39
PAGE DOCUMENT

**FIRST AMENDED DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
MAHAN MANOR SUBDIVISION AND MAHAN MANOR FILING II**

The Undersigned, being the owner of all of the Lots within Mahan Manor Subdivision and Mahan Manor Filing II, hereby adopts the following as the Declaration of Covenants, Conditions and Restrictions for Mahan Manor Subdivision and Mahan Manor Filing II.

RECITALS

A. The Undersigned is the Owner of all of the Lots situated in Mesa County, Colorado, known as Mahan Manor Subdivision, and Mahan Manor Filing II, including the easements and licenses appurtenant to, or included in the property as shown on the plats for Mahan Manor Subdivision and Mahan Manor Filing II and described in the plat books of the Mesa County Clerk and Recorder.

B. The Undersigned desire to maintain a planned community and to subject and place upon Mahan Manor Subdivision and Mahan Manor Filing II ("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 ("CCIOA") including but not limited to those changes to CCIOA under Senate Bills 05-100 and 06-89, for the purpose of protecting the value and desirability of said Property and for the purpose of furthering a plan for the improvement, maintenance, and ownership of said Property.

C. The original Declaration for Mahan Manor Subdivision was recorded in the records of the Mesa County Clerk and Recorder's office on April 16, 2008, in Book 4646 beginning at Page 197. This Amended Declaration supercedes and replaces the original Declaration and the original Declaration is void and of no further effect, and applies to both Mahan Manor Subdivision and Mahan Manor Filing II.

NOW, THEREFORE, the Undersigned hereby declares that all of the Property 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. Allocated Interests shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in this Declaration.

Section 2. Architectural Control Committee also referred to herein as the "ACC" shall mean and refer to the Architectural Control Committee referred to in Article IV, Section 7 of this Declaration.

Section 3. Articles shall mean and refer to the Articles of Incorporation of Mahan Manor Subdivision Homeowners' Association, Inc.

Section 4. Assessment shall refer to that portion of a common expense or other charges assessed against an Owner.

Section 5. Association shall mean and refer to Mahan Manor Subdivision Homeowners' Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the furtherance of the interests of the Owners of property in Mahan Manor Subdivision and Mahan Manor Filing II and enforcing the restrictions set forth in this Declaration.

Section 6. Board shall mean and refer to the Board of Directors of the Association.

Section 7. Building shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Properties.

Section 8. Bylaws shall mean and refer to the Bylaws of the Association.

Section 9. Common Elements shall mean and refer to all of the Properties, including any Improvements thereto, but excluding the Lots as shown on the maps and plats as described in the plat books of the Mesa County Clerk and Recorder.

Section 10. Common Expense shall mean an expenditure made or liability incurred by on behalf of the Association, together with any allocations to reserves.

Section 11. Declarant shall refer to the developer of the subdivision, Mahan Manor Estates, LLC.

Section 12. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Mahan Manor Subdivision and Mahan Manor Filing II as the same may be amended from time to time.

Section 13. Fiscal Year shall mean the time period for each annual accounting for Association funds. The fiscal year of the Association shall end on December 31 of each calendar year.

Section 14. 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 15. 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 16. Future Development Rights shall mean the right of the Declarant to further subdivide Lot 10, Mahan Manor Subdivision, as platted under the original plat for Mahan Manor Subdivision into three separate Lots which have been or will be platted as Lots 1, 2, and 3, Mahan Manor Filing II. Declarant so reserves such rights.

Section 17. Improvements shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, storm water retention/detention and irrigation water system, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

Section 18. Lot shall mean and refer to that part of the Properties owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the maps and plats as described in the plat books of the Mesa County Clerk and Recorder. Additional Lots may be created by Declarant as provided in Article VI below.

Section 19. Lot 1, Filing II shall mean Lot 1 in Mahan Manor Filing II, but shall not include Lot 2 or Lot 3 in Mahan Manor Filing II.

Section 20. Member shall mean and refer to a person or entity which is a member of the Association.

Section 21. Occupant shall mean any person occupying a residence on a Lot within the Subdivision who is not an Owner.

Section 22. 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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 23. Plat shall mean and refer to that certain plat of the Properties recorded in the Mesa County Clerk and Recorder's official records.

Section 24. Properties shall mean and refer to all of the real estate situate within the area described on the maps and plats as described in the records of the Mesa County Clerk and Recorder.

ARTICLE II GENERAL DECLARATION

Section 1. Intent. By making the Declaration hereunder, the Owners specifically intend to enhance, perfect and preserve the value, desirability and attractiveness of the Properties and, to provide for the maintenance of the Common Elements, Improvements and Buildings thereon in a manner beneficial to all Owners.

Section 2. Estate Subject to Declaration. By this Declaration, the Owners expressly intend and do hereby subject the Properties to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

Section 3. Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities for the members of his family, his tenants, his invitees or guests, occupants or contract purchasers who reside on the Properties.

Section 4. Recording Data. The recorded easements and licenses appurtenant to, or included in, Mahan Manor Subdivision and Mahan Manor Filing II, or to which any portion of Mahan Manor Subdivision and/or Mahan Manor Filing II may become subject by virtue of a reservation herein will be found on the Plat recorded in the Mesa County Clerk and Recorder's Records. These easements include, but are not limited to, an easement for public use of a trail system over a portion of the Common Elements, a temporary construction ingress and egress easement, irrigation water access easements, utility easements and multipurpose easements.

ARTICLE III
RESTRICTIONS ON USE

Section 1. General Restrictions.

- a. Except as contained in subsection (f) relating to Lot 1 in Filing II, no Lot shall be used except for residential purposes. Only detached single-family dwellings, with covered garages for not less than two (2) cars, and other outbuildings directly incidental to residential use shall be erected, altered, placed or permitted to remain on any Lot. At no time shall there be more than one single family residential Building situate upon any Lot. The front exterior of all residences shall be covered in at least 40% stucco, stone, rock or brick or other similar material approved by the ACC. Vinyl siding of any kind is prohibited.
- b. Only new, site-built Buildings shall be permitted within the Properties and no Building for occupancy shall be moved upon the Properties. Further, no temporary Building or structure of any type whatsoever, shall be used at any time for a residence, either temporary or permanent. No manufactured homes, mobile homes, trailer homes or other moveable structures shall be permitted as dwellings within the Properties.
- c. Each dwelling shall have a minimum dwelling space in the first floor area, exclusive of open porches and garages, of not less than one thousand eight hundred (1,800) square feet for ranch style dwellings, and fifteen hundred (1,500) square feet for multi-level dwellings.
- d. No structure of a temporary character, trailer, teepee, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.
- e. Except as provided for in Article I, Section 16 relating to subdividing Lot 10 as shown on the original plat of Mahan Manor Subdivision, the resubdivision of Lots into smaller units is prohibited. The combination of more than one Lot into one building site is not prohibited. For example, two Lots may be used for one building site, so long as no easements as reflected on the Plat are affected by construction on the combined Lots. Similarly, three (3) lots may be divided into a total of two (2) building sites, so long as no easements as reflected on the Plat are affected by construction on the combined Lots.
- f. Notwithstanding the provisions contained in subsection (a), due to its historic nature, the existing house on Lot 1, Filing II may be used as a bed and breakfast as well as a residence. However, any other uses on such Lot shall be subject to approval by the Architectural Control Committee as well as all applicable governmental or agency approvals. The other limitations contained in subsections (a), (b) and (c) shall not apply to the existing residence located on Lot 1, Filing II. However, if such residence is ever removed from said Lot or destroyed such that it is uninhabitable, all of the foregoing restrictions shall apply, but not

including the restriction of residential use only.

Section 2. Maintenance of Lots, Buildings, Improvements and Common Elements.

a. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. In the event the Owners fail to keep, maintain or repair their Lots, Buildings or Improvements in accordance herewith, the Association may conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Lot, Building or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Article V hereof.

b. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements.

c. The Common Elements shall be owned by the Association, which shall include the detention basin, the lift station and the discharge line which discharges the storm water from the subdivision, all as shown on the plat. It shall be the obligation and responsibility of the Association to maintain and repair all of the Common Elements

d. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the General Common Elements in accordance with this Declaration and for the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

e. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish and trash shall be placed and kept in covered containers. All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days.

f. Except for Lot 1, Filing II, all utilities shall be buried underground from their primary source adjacent to the lot line at the owner's sole expense.

g. No modifications or alterations shall be made in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which shall obstruct, divert or otherwise alter such drainage except as approved by ACC.

h. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

i. Notwithstanding anything to the contrary contained herein, 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 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 Board at a hearing after notice to the Owner.

j. No elevated tanks of any kind, including but not limited to oil, gas, and water tanks, shall be permitted.

k. The Association, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements, in a reasonable satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, and any costs incurred shall be charged against the Owner of said lot and collected in the manner set forth in Article V hereof. Unless it is an emergency, the Association shall notify the Owner in writing thirty (30) days before such action is taken, stating the failure of the Owner to maintain his/her Lot. Any damage caused to the Owner's property in performing such maintenance shall be paid by the Association. An Owner must notify the Association in writing within thirty (30) days of notice of such damage, or any claim against the Association shall be barred. Thereafter, the Association, through the ACC, may investigate such claim and determine if the damage was caused by the Association or whether a pre-existing condition existed which caused the damage before any action was taken by the Association. The ACC shall provide written notice to the Owner of its findings. If the ACC determines that the damage was caused by the Association, it shall pay for such damages. If the ACC determines that a preexisting condition caused the damage, the Owner may thereafter file suit against the Association within thirty (30) days after receipt of such notice if the Owner believes that the damage was caused by the Association. the parties shall first mediate the dispute in accordance with its written policy.

l. A gravel driveway on Lot 1, Filing II, shall be installed by the Developer. All other primary residences shall have a driveway, which shall be constructed of asphalt or concrete.

Section 3. Home Occupations and Offensive Activities.

a. Except for the provisions contained Article III(1)(f), no Lot or Building may be used for commercial purposes of any type whatsoever excepting for home occupations.

For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the residential building which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his residence as a personal office so long as his customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited. Home occupations are subject to the zoning and development codes and regulations of the City of Grand Junction and/or Mesa County, as applicable.

b. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.

c. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties. A fire pit shall be allowed on Lot 1, Filing II. No open fires shall be permitted on any other Lot (including the burning of trash or debris) except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well designed fireplace.

d. No sound shall be emitted on any property which is unreasonably loud or annoying, and no odor shall be emitted on any property which is noxious or offensive to others.

e. No Owner shall obstruct any sidewalk at any time (except for loading and unloading). Each Owner shall be responsible for removing debris, stones, mud and snow from the sidewalk in front of said Owner's Lot within a reasonable time period after such item accumulates on the sidewalk.. All basketball backboards, jumping ramps, skateboard ramps and similar items must be removed from the sidewalk immediately after use and not allowed to remain unattended on any sidewalk.. Each Lot Owner shall be responsible for any damage or injury to any other party or person caused by the failure to remove such item.

Section 4. Restrictions on Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except as provided in this paragraph. Dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes and the keeping of such animal(s) does not violate any local ordinance or law. All pets must be controlled and contained so that they do not become a nuisance to the neighborhood and do not run at large or endanger or harass other animals or wildlife. Any pet off an Owner's property must be on a leash and under the control of the Owner or a responsible person. Notwithstanding the foregoing, the keeping of any animal shall not be allowed if such animal reasonably disturbs the use and enjoyment of the subdivision by any of the members thereof, including an animal that makes excessive noise or odor. Owners shall be responsible for keeping their Lot and the subdivision free from any pet waste and shall immediately clean up the same. The Board may adopt rules and regulations regarding the keeping of pets and the procedures for

handling any complaints relating to pets from any Owner or Occupant, whether a violation has occurred and the appropriate remedy or sanction for such violation. Each Owner agrees to abide by such decisions and agrees to hold the Board and the Association harmless from any and all claims, damages and injuries of any kind and nature whatsoever, arising from the Board's conduct in addressing such issues. Any such cost, expense, fine or assessment assessed against an Owner shall be considered as a Special Assessment.

Section 5. Parking.

a. No Lot, driveway, roadway street or easement shall be used as a parking, storage or accommodation area for any type of junk vehicles or inoperable vehicles. Such vehicles must be kept in a garage or behind a six (6) foot privacy fence.

b. All passenger vehicles, boats, campers, trailers, snowmobiles, motorcycles go-cart or other recreational vehicles, shall be permitted to remain on the public streets within the subdivision only in compliance with the City of Grand Junction/and or Mesa County and all other applicable ordinances and regulations. Otherwise, they must be garaged or stored behind a six (6) foot high privacy fence.

(1) All equipment, heavy or commercial trucks or vehicles used for business (i.e. other than normal passenger-type vehicles) and dual axle trucks shall not be parked or remain on the streets and roadways within the subdivision, except in compliance with the City of Grand Junction and all other applicable ordinances and regulations. Such equipment and vehicles may not be stored or garaged on a Lot, but may remain on a Lot so long as such equipment or vehicle is actively engaged in delivery or other working function.

(2) Single axle trucks with dump beds, flat beds or no bed must be parked behind an approved six (6) foot high privacy fence when not in use.

c. The Board may make exceptions to any prohibition relating to the parking and operation of vehicles, campers, motor homes boats go carts or motorcycles or similar item on a case by case basis. The Board may adopt rules and regulations regarding the parking of vehicles within the subdivision, including the making of assessments and fines against any Owner who violates such rules and/or regulations and may have any vehicle, boat, camper, motor home motorcycle go cart or other similar item towed away. Such assessments, fines and/or costs shall be considered as Special Assessments against the Owner for violations of such rules and regulations by the Owner or Occupant or Owner's Occupant's invitees.

d. Notwithstanding the foregoing provisions, the parking of a motor vehicle

by an occupant of a unit on a street or driveway in the subdivision shall be allowed if the vehicle is required to be available at designated periods at the occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

- (1) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (2) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire, law enforcement, ambulance or emergency medical services;
- (3) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (4) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants to use streets, driveways and guest parking areas within the subdivision.
- (5) The vehicle is not otherwise abandoned or inoperable and does not violate any local ordinances.

e. The provisions of this Section 5 shall not apply to Lot 1, Filing II.

Section 6. Landscaping.

a. During the course of construction, all precautions by an Owner shall be taken to provide for a minimum disturbance of the land and shall cause all trash and materials to be contained on site. Further, each Owner shall take steps to prevent dust from the site from impacting the surrounding Lots as much as possible.

b. Each Owner shall submit all plans for landscaping within six (6) months after completion of construction of any residence on a Lot. All grading, landscaping and planting performed or conducted by the Owner shall be first approved by the ACC, which approval shall be subject to the provisions of Article IV, Section 7. Such plan shall include a schedule of completion not to exceed one (1) year from the date of approval by the ACC. Reasonable extensions for completion of such landscaping may be made by the ACC. Once installed in accordance with the approval of the ACC, any landscaping which affects more than 25% of a Lot may not be made without the additional approval by the ACC. Minor changes such as replacing or changing a shrub or bush may be made without prior ACC approval. Each Owner shall be responsible for the maintenance and upkeep of the landscape of such Owner's Lot, including the front, side, and rear yards, and all vegetation shall be properly cultivated (including watering) and neatly trimmed. Each Owner shall grade and landscape his Lot in such a manner as to prevent

drainage of water onto any other Lot or Open Space not intended for such purpose. The Association shall be responsible for the maintenance and repair of the main feed irrigation lines from the holding vault to the main shut off valve on each Owner's Lot. Each Owner shall be responsible for their own irrigation system on their own Lot, including the shut off valve to their Lot. The Association may adopt rules and standards relating to the maintenance and upkeep of landscaping on the Lots. Subject to the provisions of Article IV, Section 7, should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein or in the rules and standards, the Association may, at its sole discretion, cause such landscaping to be completed, maintained or kept up upon such Lot and assess the Owner for all costs incurred.

c. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Common Elements by the Association.

d. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Plat such as to hinder, or interfere with the purposes for which such easement was created.

e. No owner shall permit any thing or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

f. The provisions of this Section 6 shall not apply to Lot 1, Filing II.

Section 7. Signs. Except for political signs, no sign of any kind on all Lots except Lot 1, Filing II, shall be displayed to the public view on any Lot except one professional sign of not more than four (4) square feet, a sign of not more than five (5) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur. Signs on the Common Elements are governed by the Association. Any signs on Lot 1, Filing II shall be governed by the applicable governmental codes relating to signs.

Section 8. Flags. An Owner or Occupant may display of the American flag on his or her property, in a window of the Owner's or Occupant's residence, or on a balcony adjoining the Owner's or Occupant's property if the American flag is displayed in a manner consistent with the Federal Flag Code, Public Law 94-344; 90 Stat. 810; 4 U.S.C. 4 to 10. The Association may adopt reasonable rules regarding the placement, manner of display of the American flag, and the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. An Owner or Occupant may display a service flag bearing a star denoting the service of the Owner or Occupant or a member of the Owner's or Occupant's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's or Occupant's residence. The maximum dimensions allowed shall be nine inches by sixteen inches.

Section 9. Political Signs. An Owner or Occupant may display a political sign on his or her property or in a window of the Owner's or Occupant's residence; except that no political signs shall be displayed earlier than 45 days before an election and 7 days after an election. One political sign per political office or ballot issue that is contested in a pending election shall be allowed, with the maximum dimensions of such signs being 36 inches by 48 inches. However, to the extent that the foregoing restrictions are more restrictive than any applicable ordinance, rule or regulations of the City of Grand Junction or Mesa County, the governmental ordinances, rules and/or regulations shall control. If no such regulations exist, the limitations contained herein shall control. As used herein, "Political Sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate.

Section 10. Fences. To preserve the open nature and to maintain the scenic views for the benefit of all Owners, no fence shall be erected on a Lot without the prior approval of the ACC. A written request for construction and placement of a fence including the location and a description of the materials for the fence shall be provided to the ACC. No fence shall be taller than six (6) feet. Fences shall follow the natural grade of the land. Fence height for the purposes of this section shall be measured from the natural grade of the Lot exclusive of earth berms, retaining walls and similar artificial changes in the natural grade of the Lot. All fences shall be of wood, masonry or other materials as approved by the ACC, except that wire mesh, chain link and open wire rectangular field fencing shall not be permitted. Notwithstanding the foregoing, 200 square feet of chain link material may be used solely for a dog kennel. All fences shall be erected in conformance with the requirements of the City of Grand Junction Development Code. All fences shall have a minimum of a two (2) foot setback from the front of the house to which the fence is attached. Any fence located on a property line between two Lots (a "party wall fence") shall be co-owned by the Owners of said Lots. In the event that such party wall fence falls into disrepair so as to create a dangerous unsafe, unsightly or unattractive condition, as determined by the Board, the Association, after first giving the Co-owners thereof thirty (30) days' written notice, may, but is not required, to correct such condition and to levy a Special Assessment against the Co-owners. There shall be no fencing allowed from the front of a residence on a Lot to the street. All Lot Owners shall be responsible for the maintenance and upkeep of all fences on his/her Lot, and in the case of a party wall fence, such Co-owners shall be equally responsible for the maintenance and repair of such party wall fence unless some other percentage of responsibility is agreed to in writing. The provisions of this Section 10 shall not apply to Lot 1, Filing II, except that any fences erected on such Lot shall be governed by all applicable governmental codes.

Section 11. Irrigation. Due to concerns regarding water conservation, the Association shall have the exclusive right to control the irrigation system within the Subdivision. The Association shall own nine (9) shares of Orchard Mesa Irrigation Company stock. Such shares of stock shall be owned by the Association and shall not be encumbered, dedicated nor conveyed by the Association in all or in part without the express written consent of the City of Grand Junction, Colorado. Use of the irrigation system shall be controlled by the Association under

rules and regulations adopted by the Association. The Association shall pay all fees and assessments to the irrigation company when due as necessary to present the loss of such water shares. This provision of the Declaration may not be amended or deleted without the expressed written consent of the City of Grand Junction.

Section 12. Miscellaneous.

- a. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.
- b. All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Lot and Improvements thereupon are first conveyed to the Owner by the Declarant.
- c. Except as may be allowed or permitted by the Association, no electronic or radio transmitting equipment (except for garage door openers) shall be maintained, used or operated within the subdivision, including but not limited to CB radios or shortwave or "ham" radios, which interferes with the reception of television signals or radio reception. No such antenna shall exceed thirty inches in diameter. Disputes over whether such a violation has occurred shall be heard by the Board. If the board determines that a violation has occurred, it may require the Owner to remove such equipment and such Owner shall pay for such removal. Any cost to alleviate any reception problem claimed by a member shall be paid by the owner of the transmitting equipment.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS; DIRECTORS AND OFFICERS; MEETINGS; INSURANCE; ARCHITECTURAL CONTROL COMMITTEE

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. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without a protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If there is no majority agreement among the owners of a Lot, there shall be no vote for such Lot.

- a. Votes for contested positions on the Board shall be taken by secret ballot. At the discretion of the Board or upon the request of at least twenty percent (20%) of the Owners

who are present in person or represented by proxy if a quorum has been achieved, a vote on any other matter affecting the subdivision on which all Owners are entitled to vote shall be by secret ballot. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be board members, and in the case of a contested election for a Board position, shall not be a candidate. The results of the vote shall be reported without reference to names, addresses, or other identifying information of Owners participating in such vote.

b. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Declaration, Bylaws, or Rules of the Association, appointment of proxies may be made substantially as provided in Colorado Revised Statute (CRS) § 7-127-203.

c. If a Lot is owned by more than one person, any Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise.

d. The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner.

e. The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

f. Any action of the Association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

g. The Board may suspend the voting rights of any Owner during any period for which an Owner is in default and delinquent in paying any amount owed to the Association or is in violation of any of the governing documents of the Association.

Section 2. Directors of the Association. The affairs of this Association shall be managed by a Board of at least three (3) Directors (the "Board"). Directors shall be Members of the Association and also meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 3. Officers of the Association. The Board shall elect the officers at the annual meeting after the Board election, or within a reasonable time after the annual meeting. Such Board members and officers will take office immediately after the Annual meeting. The qualifications of the officers of this Association may be as set forth in the Bylaws of the Association.

Section 4. Meetings.

a. Meetings of the Owners, as the members of the Association, shall be held at least once each year. Special meetings of the Owners may be called by the president, by a majority of the Board, or by Owners having twenty percent (20%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than fourteen (14) nor more than fifty (50) days in advance of any meeting of the Owners, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the Owner. The notice of any meeting of the Owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

b. All regular and special meetings of the Association's Board, or any committee thereof, shall be open to attendance by all members of the Association or their representatives. Agendas for meetings of the Board shall be made reasonably available for examination by all members of the Association or their representatives. The Association may provide all notices and agendas required by this article in electronic form, by posting on a web site or otherwise, in addition to printed form. If such electronic means are available, the Association shall provide notice of all regular and special meetings of Owners by electronic mail to all Owners who so request and who furnish the Association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

c. Notwithstanding any provision in the Declaration, Bylaws or other documents to the contrary, all meetings of the Association and Board of Directors are open to every Owner of the Association, or to any person designated by an Owner in writing as the Owner's representative at an appropriate time determined by the Board, but before the Board votes on any issue under discussion. Owners or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

d. Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

Section 5. Limitations Upon Liability.

a. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. With regard to the Board's duties relating to the Association's investment of reserve funds, the officers and directors shall be subject to standards set forth on C.R.S. Section 7-128-401 of the Colorado Revised Nonprofit Corporation Code, which requires them to act in good faith with the care an ordinarily prudent person would use in like circumstances in a manner reasonably believed to be in the best interest of the Association. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

b. Notwithstanding the duty of the Association to maintain and repair parts of the Properties, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Properties or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

Section 6. Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable:

a. Property insurance on the Common Elements and also on property that must become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

b. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common

Elements. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board Member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

c. Insurance policies carried pursuant to both immediately preceding subsections of this section must provide that:

- (1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;
- (2) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;
- (3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d. Workers' Compensation coverage upon employees.

Section 7. Architectural Control Committee.

a. No Building or exterior Improvement (structure) of any kind shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structure or Improvement, have been approved by the Architectural Control Committee (ACC) as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation all to be in conformity with this Declaration, including, but not limited to, the requirements set forth in Article III.

b. The Architectural Control Committee shall consist of three (3) or more persons to be appointed by the majority of the Board. The method and manner of the Architectural Control Committee's appointment, replacement and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles and Bylaws of the Association.

c. No Improvement, including a modification or change of more than 25 % of

the landscaping on a Lot shall be made, installed, erected or altered within the Properties except upon the prior written consent and approval of the Architectural Control Committee.

d. Duplicate copies of plans and specifications relating to an Improvement shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvements.

e. The Architectural Control Committee's approval or disapproval as required in this Declaration shall be in writing. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval will not be required, and the related covenants shall be deemed to have been fully complied with. Two complete sets of finished plans and specifications for construction shall be submitted at time of application, one copy of which will be retained by the Architectural Control Committee for its records. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the Architectural Control Committee.

f. 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 within the Properties, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to such request. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

g. Neither the members of the Architectural Control Committee, nor such representatives as it may designate, shall be entitled to any compensation for services performed pursuant to this Declaration.

h. In addition to all the other criteria herein set forth, the Architectural Control Committee shall generally determine whether the proposed Improvement will protect the then value and future values of the Properties then located in the Subdivision and to be erected therein. The Architectural Control Committee shall, in the exercise of its judgment and determination, use reason and good faith. Among the other considerations applied, the Architectural Control Committee will determine and base its approval or rejection upon the fact of whether said proposed Improvements are reasonably compatible with other Improvements erected and planned in the Subdivision. The Architectural Control Committee shall evaluate the proposed construction as to location on the Property, harmony of exterior design, materials and colors with existing dwellings and surroundings, finished grade evaluation and other criteria as it deems necessary for the purposes set forth in this paragraph.

i. Neither the Association nor the Architectural Control Committee may adopt a restrictive covenant that prohibits or limits xeriscape landscaping, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass.

j. The Architectural Control Committee may take enforcement action against an Owner who allows his or her existing landscaping to die; except that:

- (1) Such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the Association is located, in which case the Owner shall comply with any watering restrictions imposed by the water provider for the Association;
- (2) Enforcement shall be consistent within the community and not arbitrary or capricious; and
- (3) Once the drought emergency is lifted, the Owner shall be allowed a reasonable and practical opportunity, as defined by the association's Board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

k. An Owner may remove trees, shrubs, or other vegetation to create a defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations.

l. Notwithstanding any provision in the Declaration, Bylaws or rules and regulations of the Association to the contrary, the Association shall not require the use of cedar shakes or other flammable roofing materials.

m. The Architectural Control Committee shall approve or disapprove all requests for architectural control approval in writing within thirty (30) days after the complete submission of copies of all plans, specifications, and other materials which the Architectural Control Committee may require in conjunction therewith. 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, approval shall not be required and this Article shall be deemed to have been fully complied with. The Architectural Control Committee shall notify an Owner as soon as practicable that the materials submitted are not complete. Unless notified in writing by the Architectural Control Committee that the materials submitted are incomplete, the materials submitted by an Owner shall be presumed to be complete.

n. The Architectural Control Committee shall not place a procedural step or burden, financial or otherwise, on an Owner who seeks approval for a landscaping change which includes xeriscaping, including but not limited to the following:

- (1) An architect's stamp;
- (2) Preapproval by an architect or landscape architect retained by the Board;
- (3) An analysis of water usage under the proposed new landscape plan or a history of water usage under the Owner's existing landscape plan; and
- (4) The adoption of a landscaping change fee.

o. The following definitions shall apply.

- (1) "Restrictive covenant" means any covenant, restriction, bylaw, Board policy of practice or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.
- (2) "Turf grass" means continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots.
- (3) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

p. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article. Any decisions by the Architectural Control Committee shall be made in accordance with the standards and procedures

set forth in the Declaration, Articles, Bylaws, Policies, duly adopted rules and regulations or any other governing document of the Association. An Owner may appeal the decision of the Architectural Control Committee to the Board of Directors. However, any Board member who is a member of the Architectural Control Committee shall be disqualified from voting on such matter. The decision of the Board shall be final.

q. 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.

r. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Declaration, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in the Declaration. 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 within the Property and shall not militate against the general intent and purpose hereof.

s. 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 Architectural Control Committee as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

t. The provisions of this Section 7 shall not apply to Lot 1, Filing II. The construction, reconstruction or addition of any Building or exterior Improvement on said Lot shall be governed by the applicable governmental codes relating thereto.

Section 8. Ownership and Maintenance.

a. The ownership, maintenance, repair and restoration of the Common Elements, together with Improvements thereon, including but not limited to the detention basin, the lift station and discharge line for the storm water shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Article V hereof.

b. The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Lot provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Article V hereof.

Section 9. Association Water.

a. All irrigation water to be furnished to the Properties shall be furnished by the Association. All Owners of Lots with lawns shall be required to install sprinkler systems to maintain their lawns. However, the foregoing requirement shall not apply to Lot 1, Filing II. The Association shall have the right to limit the use of irrigation water as it determines in its sole discretion to the Lots and Common Elements and may institute and enforce rules regarding which days or times irrigation water may be used for any given Lot.

b. The irrigation facilities to be owned by the Association shall consist of a system of pipes, pipelines, pumps, electrical connections and sprinklers so as to provide irrigation water to the Common Elements and all Lots. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association.

c. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities for the distribution of water in the Common Elements and to provide irrigation water to all Lots. However, each Owner shall be responsible for operation, maintenance and repair of the irrigation system installed on his or her Lot.

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

Section 10. Assignment of Storm Water Discharge Permits. To the fullest extent allowed by law, the Declarant agrees to assign to the Association, and the Association agrees to assume, all enforcement rights and obligations pursuant to Storm Water Management Permits, Health Department Permits and Regulations and Building Department Permits and Regulations (collectively, the "Permits and Regulations") relative to the construction of residences on Lots within Mahan Manor Subdivision. Any violation of any of the Permits and Regulations may be enforced through the Association or its Members under the same terms and conditions as violations of this Declaration may otherwise be enforced. Any and all costs, charges, penalties and expenses arising out or resulting from any violations of Permits or Regulations incurred by, or imposed upon, the Association shall be the obligation of the Member of Members responsible (whether that responsibility is direct or through their respective contractors or invitees) and may be recovered by the Association through the imposition of Special Assessments or Default Assessments pursuant to Articles V and VI of the Declaration.

Section 11. Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Subdivision. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished as required by the Declaration, the Bylaws or under Colorado law.

Section 12. Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

- a. Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.
- b. The obtaining and maintaining of all required insurance as provided herein.
- c. Collection of assessments for irrigation water and maintenance and repair of the irrigation system.

ARTICLE V 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; Agreement With Holder of Mortgage. 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. The Association may enter into an escrow agreement with the holder of an Owner's mortgage so that assessments may be combined with the Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or other government agency.

Section 3. Maximum Annual Assessment.

- a. The Board of Directors shall set the annual assessment for the first fiscal year.
- b. Effective with commencement of the second and each subsequent Association fiscal year hereunder, the Board of Directors shall meet at least 15 days before the annual meeting of the members to adopt a proposed budget for the Association for the upcoming fiscal year.
- c. Within ninety (90) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, e-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 the budget within a reasonable time after mailing or other delivery of the summary. The budget proposed by the Board does not require approval by the members, and it shall be deemed approved in the absence of a veto by at least fifty-one percent (51%) of the Members in attendance, either in person or by proxy, to disapprove the budget. If 51% of the members qualified to vote veto the proposed budget, the periodic budget last ratified by the Owners shall be continued until such time as the Owners do not veto a subsequent budget proposed by the Board.
- d. The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payment of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

Section 4. Special Assessments. In addition to the annual assessments authorized in Section 3, 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 extraordinary expense of the Association or for the funding of any operating deficit incurred by the Association.

Section 5. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article, the Association may levy a reconstruction assessment for the purpose of making capital improvements, or the repair or reconstruction of damaged or destroyed improvements owned by the Association. 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 unless the provisions of subsection 8 apply.

Section 6. Authority of Board to Make Assessments The Board may approve and adopt any special assessment or reconstruction assessment up to \$100.00 per lot per year without member approval. Any assessment that exceeds \$100.00 per lot per year must be approved by the membership.

Section 7. Notice and Quorum for Any Assessment Which Exceeds \$100.00 Per Lot Per Year. Written notice of any meeting called for the purpose of making an assessment which exceeds \$100.00 per lot per year which requires a vote of the Members shall be sent by e-mail, hand delivery or U.S. Mail, postage prepaid to all Members not less than 14 days or more than 50 days in advance of the meeting. Notice shall also be posted in a conspicuous place. At such meeting called, unless fifty-one percent (51%) of the Members in attendance, either in person or by proxy, veto any special or reconstruction assessment, which exceeds \$100 per lot per year, the assessment shall be considered approved. Notwithstanding a veto by the Members, the Board may still approve and adopt a special assessment or reconstruction assessment of up to \$100 per year if it has not already done so for that year.

Section 8. Rate of Assessment. Annual assessments shall be allocated among all Lots equally. Special and reconstruction assessments shall be fixed as follows: Lot 1, Filing II shall be allocated nine and seven tenths percent (9.7%) of the total assessments, with the remaining amount ninety and three tenths percent (90.3%) being allocated equally among the remaining Lots. Such assessments shall be in an amount sufficient to meet the expected needs of the Association. In appropriate circumstances, the Association may make an assessment against any Owner or Owners of any Lot for damage to any improvement owned by the Association caused by the negligence or willful conduct of any Owner or Owners, his or her agents, employees, guests invitees or tenants, and shall not require prior approval of the Members.

Section 9. Date of Commencement of Annual Assessments. The initial annual

assessment hereunder shall commence on the day this declaration gets recorded, 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. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Association through the Board, and the Association may also assess a monthly late charge thereon. The Association, through the Board of Directors, 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. The provisions of this section are subject to the other provisions contained in this Declaration..

Section 11. Lien for Assessments.

a. Under the Colorado Common Interest Ownership 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 Colorado Common Interest Ownership 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.

Section 12. Enforcement of Liens for Assessments. The enforcement of any assessment against a member shall also be as provided for in the Bylaws, Policies, rules or regulations of the Association. Any delay or refusal to enforce collecting an assessment by the Association shall not constitute a waiver of its rights to subsequently enforce or collect the same at a later date or in the future.

Section 13. Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

- a. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or
- b. Pay the regular assessment pursuant to this Article V hereof in advance by the 10th day of the first month of the fiscal year; or
- c. Pay either or both of the immediately preceding amounts.

ARTICLE VI **CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS**

Section 1. Loss, Damage or Destruction of Improvements on Common Elements. In the event of loss, damage or destruction of any Improvement situate upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement. Notwithstanding the foregoing, if any improvement owned by the Association is damaged or requires maintenance due to the negligence to or willful act of an Owner, a member of the Owner's family, or a guest invitee or tenant of an Owner, it shall be the responsibility of the Owner to pay for such damage or repair. Such a determination shall be made by the Board after a hearing in accordance with Association policies.

Section 2. Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any residential building, the Owner thereof shall repair, restore or rebuild the same within one year following such damage or destruction. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements involved in the damage, destruction or loss to the

residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

ARTICLE VII
STREET LIGHTING

Mahan Manor Subdivision is subject to the terms and provisions of an unconditional restrictive covenant which provides in substance that present and subsequent owners of property in the area proposed to be served are subject to and bound by present and future Public Service Company of Colorado tariffs applicable to street lighting service filed with the Public Utilities Commission of the State of Colorado.

ARTICLE VIII
GENERAL PROVISIONS AND MISCELLANEOUS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The Association and/or 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 covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations and Policies of the Association, as amended. In any civil action to enforce or defend the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award attorney fees, costs and costs of collection to the prevailing party, 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, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

a. In connection with any claim in which an Owner is alleged to have violated a provision of this article or of the declaration, bylaws, articles, or rules and regulations of the Association and in which the court finds that the Owner prevailed because the Owner did not commit the alleged violation:

- (1) The court shall award the Owner reasonable attorney fees and costs incurred in asserting or defending the claim; and
- (2) The court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or defending the claim.

b. An Owner shall not be deemed to have confessed judgement to attorney fees or collection costs.

c. Any controversy which may be litigated hereunder may be submitted to mediation by either party to the controversy prior to the commencement of any legal proceeding. The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief, and the prevailing party shall be entitled to reasonable attorneys fees.

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

Section 3. Easements. Easements for installation and maintenance of utilities, drainage facilities and irrigation water are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow, obstruct or retard the flow of water in and through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except those improvements for which a public authority or one or more utility company is responsible. 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, unless such provision is contrary to law. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. Any provision of any governing document that is contrary to Colorado law shall be unenforceable and void.

Section 5. Duration, Extension, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the land for a term of ten (10) 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. Notwithstanding the foregoing, this Declaration may be amended at any point in time by any instrument approved in writing by a vote or agreement of at least sixty-seven percent (67%) of the Owners of Lots within the Subdivision. Such amendment shall be effective when duly recorded in Mesa County, Colorado.

b. Notwithstanding the provisions of Section 5(a), the Declaration, Bylaws or

Articles may be amended by the Board of Directors or the District Court for Mesa County, Colorado without member approval as allowed for under Colorado law. [C.R.S. § 38-33.3-217(7)]

Section 6. 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 7. Public Disclosures by Association.

a. Pursuant to CRS § 38-233.3-303(5), the Association shall make the following information available to Owners upon reasonable notice in accordance with Colorado law: the name of the Association; the name of the Association's designated agent or management company, if any; a valid physical address and telephone number for both the Association and the designated agent or management company, if any; the name of the subdivision; the initial date of recording of the Declaration; and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent or management company changes, the Association shall make updated information available within ninety days after the change.

b. Within ninety (90) days after the end of each fiscal year hereafter, the Association shall make the following information available to Owners upon reasonable notice:

- (1) the date on which its fiscal year commences;
- (2) its operating budget for the current fiscal year;
- (3) a list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (4) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (5) the results of its most recent available financial audit or review;
- (6) a list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits policy deductibles,

additional named insureds, and expiration dates of the policies listed.

- (7) all the Association's Bylaws, Articles and Rules and Regulations;
- (8) the Minutes of the Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (9) the Association's responsible governance policies adopted under CRS § 38-33.3-209.5.

It is the intent of this subsection to allow the Association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to Owners at their convenience. Disclosure shall be accomplished by one of the following means: posting on an internet web page with accompanying notice of the web address via first class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

c. Except as otherwise provided herein, all financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents.

- (1) Notwithstanding paragraph (c) of this subsection, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner without prior written consent of the Board.
- (2) Without limiting the generality of paragraph (c) of this subsection, without the prior written consent of the Board, a membership list or any part thereof may not be:
 - (a) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
 - (b) Used for any commercial purpose; or
 - (c) Sold to or purchased by any person.
- (3) The Association may charge a fee for copies provided to an Owner

or Owner's representative which may be collected in advance but which shall not exceed the Association's actual cost per page, for copies of the Association records.

- (4) As used in this section, "reasonably available" means during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:
 - (a) The request is made in good faith and for a proper purpose;
 - (b) The request describes with reasonable particularity the records sought and the purpose of the request; and
 - (c) The records are relevant to the purpose of the request.
- (5) This section shall not be construed to invalidate any other provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly define records of the Association that are subject to inspection and copying by Owners, or that grants Owners freer access to such records; except that the privacy protections contained in subparagraph (c) of this section shall supersede any such provision.

Section 8. Association Policies. To promote responsible governance, the Association shall:

- a. Maintain accurate and complete accounting records; and
- b. Adopt policies, procedures, and Rules and Regulations concerning:
 - (1) collection of unpaid assessments;
 - (2) handling of conflicts of interest involving Board members;
 - (3) conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
 - (4) enforcement of Covenants and Rules, including notice and hearing procedures and the schedule of fines;
 - (5) inspection and copying of Association records by Owners;

- (6) investment of reserve funds; and
- (7) procedures for the adoption and amendment of policies, procedures, and rules; and .
- (8) procedures for addressing disputes arising between the Association and Owners.

Section 9. Lot Owner Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board under Colorado Law. The timing and criteria for compliance with this section shall be determined by the Board.

Section 10. Disclosure by Lot Owner Upon Sale of Lot.

a. Owners may request Association documents relating to a proposed sale of an Owner's Lot. The Association shall use its best efforts to accommodate a request by the seller for documents that are within the Association's control, in accordance with C.R.S. § 38-33.3-317.

b. On and after January 1, 2007, every contract for the purchase and sale of a Lot shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BY LAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST

COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

c. The obligation to provide the disclosure set forth in this section shall be subject to Colorado law, and if such form is modified, amended or abolished, such requirement shall be so modified, amended or abolished. The obligation to provide the correct version of this disclosure shall upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs as provided for under Colorado law. It shall be an affirmative defense to any claim for damages that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

d. Upon request, the seller shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the Association's usual fee pursuant to section 50(a)(3), all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the real estate commission as of the date of the contract.

e. All Lot Owners are hereby notified that except in the case of a foreclosure sale, upon request, the seller of a Lot within the Subdivision shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the usual Association fee, all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the Real Estate Commission as of the date of the contract, or shall mail or deliver to the buyer, on or before the title deadline, copies of all of the following in the most current form available:

- (1) the Bylaws and rules of the Association.
- (2) the Declaration;
- (3) the Covenants;
- (4) Minutes of the most recent annual Owner's meeting and of any Board meetings that occurred within the six months immediately preceding the title deadline;
- (5) the Association's operating budget;
- (6) the Association's annual income and expenditures statement , and;

(7) the Association's annual balance sheet.

f. The Association shall use its best efforts to accommodate a request by a seller for documents that are within the Association's control, in accordance with CRS § 38-33.3-317.

Section 11. Review or Audits. At the discretion of the Association Board, the books and records of the Association shall be subject to an audit using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant, except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting. An audit shall only be required when the Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000) and an audit is requested by the Owners of at least one third (1/3) of the units represented by the Association. A review shall be required only when requested by the Owners of at least one-third (1/3) of units represented by the Association. Copies of an audit or review shall be made available upon request to any Owner beginning no later than thirty days after its completion.

Section 12. Association Board Conflicts of Interest.

a. The provisions of C.R.S. Section 7-128-501 of the Colorado Revised Nonprofit Corporation Code shall apply to conflicts of interest of members of the Board of Directors. Generally speaking, this section provides that a "conflicting interest transaction" involves a contract, transaction or other financial relationship between the Association and a director or between the Association and a party related to a director or between the Association and an entity in which a director of the Association is also a director officer of has a financial interest. If a Board member knows or reasonably should know of a potential conflict, the member shall so advise the Board in an open meeting, prior to any discussion or action on that issue. After making such declaration, the disinterested members of the board may, in good faith, authorize, approve or ratify the conflict of interest transaction or allow the disclosing member to vote on the matter, even if such number of disinterested members is less than a quorum. This section shall not be construed to invalidate any provision of the Declaration, Bylaws or other documents that more strictly defines conflicts of interest or contains further limits on the participation of Board members who may have conflicts of interest.

b. As used in that section:

(1) "Corporation or "Nonprofit Corporation" means the Association.

- (2) "Director" means a member of the Association's executive Board.
- (3) "Officer means any person designated as an officer of the Association and any person to whom the Board delegates responsibility under this article, including without limitation, a managing agent, attorney, or accountant employed the Board..

Section 13. Association Records.

a. The Association shall keep financial records sufficiently detailed to enable it to comply with C.R.S. §38-33.3-316 (8) concerning statements of unpaid assessments.

- (1) The Association shall keep as a permanent record the minutes of all meetings of Owners and the Board, a record of all actions taken by the Owners or Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board in place of the Board on behalf of the association, and a record of all waivers of notices of meetings of Owners and of the Board or any committee of the Board.
- (2) The Association or its agent shall maintain a record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Owner is entitled to vote.
- (3) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. All financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of association records.
- (4) A membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as a unit Owner without the prior written consent of the Board. Without such consent, a membership list or any part thereof may not be:
 - I. used to solicit money or property unless such money or property will be used solely to solicit the votes of unit Owners in an election to be held by the Association;

ii. used for commercial purposes; or

iii. Sold to or purchased by any person.

(5) The Association may charge a fee, which may be collected in advance, but which shall not exceed the Association's actual cost per page, for copies of Association records.

(6) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request, to the extent that the request is made in good faith and for a proper purpose; the request describes with reasonable particularity the records sought and the purpose of the request; and the records are relevant to the purpose of the request.

b. In addition to the records specified herein, the Association shall keep a copy of each of the following records at its principal office:

- (1) Its Articles of Incorporation;
- (2) The Declaration;
- (3) The Covenants;
- (4) Its Bylaws;
- (5) Resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Owners or any class or category of Owners;
- (6) The minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three years;
- (7) All written communications within the past three years to Owners generally as Owners;
- (8) A list of the names and business or home addresses of its current Directors and officers;
- (9) Its most recent annual report, if any; and

- (10) All financial audits or reviews conducted pursuant to C.R.S. § 38-33.3-303 (4) (b) during the immediately preceding three years.

c. This section shall not be construed to affect:

- (1) The right of an Owner to inspect records:
 - (a) Under corporation statutes governing the inspection of lists of shareholders or members prior to an annual meeting; or
 - (b) If the Owner is in litigation with the Association, to the same extent as any other litigant; or
- (2) The power of a court, independently of this Article, to compel the production of Association records for examination on proof by an Owner of proper purpose.

d. This section shall not be construed to invalidate any provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly defines records of the Association that are subject to inspection and copying by Owners, or that grants Owners freer access to such records.

Section 14. 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 regular, 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 Mahan Manor Homeowners' Association, 120 West Park Dr., Suite 200, Grand Junction, CO 81501, until such address is changed by the Association.

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

MAHAN MANOR ESTATES, LLC

Carolyn M. Futch, Manager
Carolyn M. Futch, Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 9th day of October,
2008, by Carolyn M. Futch, as Manager of Mahan Manor Estates, LLC.

WITNESS my hand and official seal.
My commission expires: 3/14/09

Brenda R. Fraser
Notary Public



My Commission Expires 03/14/2009