

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE VIEW ESTATES**

THIS DECLARATION ("Declaration") is made this 17<sup>th</sup> day of December, 2004, by Chaparral West Inc. ("Declarant"), a Colorado Corporation.

**RECITALS**

A. Declarant is the owner of real property ("Property") in the City of Fruita, County of Mesa, State of Colorado, legally described as follows:

B. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property.

C. Declarant deems it desirable to set aside a portion of the Property as common area for the use of the owners of Lots within the Property, and to establish a Colorado nonprofit corporation, Pine View Estates Homeowners Association, to which such common area from time to time shall be conveyed.

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

**ARTICLE I**  
**DEFINITIONS**

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

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

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

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

- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.
- (c) "Capital Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the purchase, installation, construction, expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

Section 1.04. "Association" shall mean and refer to Pine View Estates Homeowners Association, a nonprofit corporation, incorporated under Colorado law.

Section 1.05. "Association Water" shall mean and refer to all water and water rights appurtenant to, associated with or used in connection with all or any part of the Property, plus any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property and owned or controlled by the Association.

Section 1.06. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.07. "Bylaws" shall mean the Bylaws of the Association as they may be amended from time to time.

Section 1.08. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at C.R.S. §38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.09. "Common Area" No Common Area exists in Pine View Estates. All references to the Common Area do not apply to this subdivision except when it may apply to a Common Improvement and that shall be deemed to mean the Irrigation Facilities.

Section 1.10. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.11. "Conveyance" shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Property.

Section 1.12. "Declarant" shall mean and refer to Chaparral West Inc., a Colorado Corporation, its successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer of Special Declarant Rights contained in this Declaration, CCIOA or other applicable law.

Section 1.13. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include the "stub out" or "lateral" pipelines which extend beyond the exterior of the irrigation and maintenance easement or street, as the case may be, within the Subdivision and into a Lot.

Section 1.14. "Lot" shall mean and refer to each numbered lot of the Property described in the Map as recorded and amended. Boundaries of a Lot shall be as shown and defined on the Map.

Section 1.15. "Map" means the map of the Property attached to this Declaration pursuant to the requirements of CCIOA. THIS MAP MAY BE CHANGED IN THE FUTURE AND DOES NOT MEAN THE SUBDIVISION OF LOTS SHOWN HAS BEEN APPROVED BY ANY GOVERNMENTAL AUTHORITY.

Section 1.16. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.17. "Owner" shall mean and refer to Declarant and to any other person or entity holding a fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers and lessees with enforceable options to purchase, but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.18. "Property" shall mean and refer to that certain real property in Mesa County, Colorado, described in Recital Paragraph A and as further shown and described in the Map, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration (by exercise of Special Declarant Rights or otherwise).

Section 1.19. "Residence" means the single family dwelling improvements (including garage, whether attached or detached, but excluding any outbuildings) located on a Lot.

Section 1.20. "Special Declarant Rights" shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration.

Section 1.21. "Subdivision" shall mean all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

## **ARTICLE II** **THE ASSOCIATION**

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

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association, subject to Section 2.06.

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

Section 2.04. Membership Appurtenant. By accepting a deed to a Lot or other instrument the acceptance of which would render the holder an Owner, Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation.

Section 2.05. Directors of the Association. The affairs of the Association shall be managed initially by a Board of Directors consisting of three (3) directors. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06, the Board shall be comprised of not fewer than three (3) directors, with the number of directors specified in the Bylaws.

Section 2.06. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (i) twenty (20) years after the date of recording of this Declaration (the period of Declarant's control) in the offices of the Mesa County, Colorado Clerk and Recorder; (ii) sixty (60) days after Conveyance of 75% of the Lots to Owners other than Declarant; or, (iii) two (2) years after the most recent Conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors of the Association, subject to the limitations stated in this Section 2.06.
- (b) Not later than sixty (60) days after Conveyance of 25% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after Conveyance of 50% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, not fewer than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.
- (d) Upon the termination of the period of Declarant control specified in subsection 2.06(a), the Owners shall elect a Board of Directors in accordance with Section 2.05 who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of 67% of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant, unless that member was elected by class voting, in which case that Board member may be removed as provided by law.

- (f) Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control; but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or the Board (as described in a recorded instrument executed by Declarant) be approved by Declarant before they become effective.
- (g) Per the Fruita Municipal Code Section 17.15.090(6)(g) prior to the sale of any lot the Declarant will transfer to the Association nine (9) water shares for Pine View Estates and upon completion, inspection and approval by the City Engineer the Declarant will convey by bill of sale to the Association, without limitation, the irrigation system for Pine View Estates, along with those items specified in Section 38-33.3-303(9), C.R.S.

Section 2.07. Quorum. Quorum requirements shall be specified in the Bylaws.

Section 2.08. Officers of the Association. The Officers of the Association shall be specified in the Bylaws.

Section 2.09. Authority. The Association shall have all rights, powers, and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, CCIOA, or any other applicable law; to the extent permitted by law.

Section 2.10. Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance, and may exercise any other right or remedy for enforcement of this Declaration permitted by law. All of such rights and remedies of the Association shall be cumulative and nonexclusive.

Section 2.11. Conveyance or Encumbrance. Per Section 17.15.090(6)(g) of the Fruita Municipal Code the Associations Water and/or Water Rights cannot be conveyed or encumbered without the express written consent of the City of Fruita.

Section 2.12. Management Agreement and Other Contracts.

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

**ARTICLE III**

**PROPERTY RIGHTS IN THE LOTS AND COMMON AREA**

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

Section 3.02. Members' Easements of Enjoyment      Section 3.03. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Association Water to his or her family members, licensees and invitees, or tenants or contract purchasers who are in possession of such Member's Lot.

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

Section 3.05. General Restrictions. Not Applicable

**ARTICLE IV**  
**COVENANT FOR ASSESSMENTS**

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property (including any Lot subsequently added under Section 12.04), covenants (and each Owner of any Lot by acceptance of a deed or other Conveyance for that Lot, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by Section 38-33.3-316(1), C.R.S. or any other provision of CCIOA (as it may be subsequently amended) or by any other applicable law. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, or the rules and regulations of the Association.

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

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

The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or later provided by the laws of the State of Colorado or any exemption now or hereafter provided

by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other such exemption as against such Assessment lien.

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

Section 4.03. Initial Assessment.

- (a) The initial Assessment of any particular type shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors.
- (b) After an Assessment of any type has been made by the Association, Assessments of the same type (other than Special Assessments and Capital Assessments, which may be made at any time and from time to time) shall be made no less frequently than annually, based on a budget adopted by the Association as described in this Declaration.
- (c) Until the Board of Directors makes the initial Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.04. Date of Commencement of Assessments; Due Dates. The initial Assessment of any type other than Special Assessments and Capital Assessments shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of such annual Assessments against each Lot at least thirty (30) days in advance of each annual Assessment period; provided, however, that no such annual Assessment shall be increased more than 6% over the preceding year's annual Assessment, unless a greater increase is approved by the Owners of a majority of the Lots and the Declarant shall be exempt from Assessments on Declarant owned lots until improved and occupied. Written notice of the annual Regular Assessment (including any applicable Landscape Assessment) shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Association Board of Directors and shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Improvement Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law.

Section 4.05. Expense Allocation. Except as otherwise stated in this Article IV, or as otherwise provided by CCIOA or other applicable law, and subject to the 6% cap and the Declarant exclusion described in Section 4.04, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of platted Lots then in the Subdivision. Despite anything to the contrary stated in this Section 4.05, if permitted or required by this Declaration (see for example Section 11.04), CCIOA or other applicable law, any Common Expense or portion of any Common Expense or other cost or expense to the Association benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.06. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in Section 4.01, shall have the priority specified in CCIOA, Section 38-33.3-316(2), C.R.S., or other applicable law.

**ARTICLE V**  
**BUDGET AND RECORDS**

Section 5.01. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given to the custodian of the records by anyone desiring to inspect them, and payment of reproduction costs by the requesting Member.

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

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

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

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

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

Section 5.07. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

**ARTICLE VI**  
**NONPAYMENT OF ASSESSMENTS**

Section 6.01 Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate not to exceed the maximum rate of interest (presently 21% per annum) permitted by CCIOA or other applicable law, as determined by the Board. The Association may, at its option, exercise any right or remedy available to the Association under applicable law, including without limitation bringing an action at law against the Owner personally obligated to pay the same or, upon compliance with the provisions set forth in Section 6.02, foreclosing the lien provided in Section 4.01 against the Lot(s) as to which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment



interest and all costs which may be incurred by the Association in its collection of the Assessment, including reasonable attorney fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02. Nature of Obligation and Lien.

- (a) The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness and the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one member of the Board or by the managing agent of the Association and may be recorded in the real property records of Mesa County, Colorado. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. Each Assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass by Conveyance of a Lot.
- (b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section 6.02 of an action or a no judicial foreclosure either to enforce or to extinguish the lien.
- (c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or assessment is required; however, a notice of lien may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such notice shall be assessed against the Owner's Lot as a default assessment.

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

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

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

## **ARTICLE VII**

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

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

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

Section 7.03. New Construction and Temporary Structures. All construction within the Subdivision shall be new construction. No trailer, basement, tent, shack, garage, barn, outbuilding, or temporary structure shall be used as a Residence on any Lot, except as provided in Section 7.09.

Section 7.04. Prefabricated Structures. All Residences, garages and outbuildings constructed on the Property shall be of high quality design, construction, workmanship, and materials; in particular, no structure will be of a type known as "prebuilt, modular, manufactured, or mobile home," regardless of its quality. This Section 7.04 shall not apply to the temporary sales and construction office used by Declarant during the development, construction, and sale of Lots in the Subdivision.

Section 7.05. Dwelling Size and Quality. No Residence shall be permitted on any Lot if the ground floor area of the main structure, exclusive of open porches, is less than 1100 square feet, by outside measurement; provided, however, that if the Residence has a second story, the ground floor area, exclusive of open porches, shall be not less than 900 square feet, by outside measurement, with a total square footage on the first and second floors of not less than 1400 square feet, by outside measurement.

Section 7.06. Building Plans, Materials and Colors. All plans, specifications, color selections, and samples of exterior siding and/or masonry materials, along with roof material samples, for any Residence, building, addition or improvement must be submitted to the ACC for review and approval. At least 50% of the front exterior finish of all Residences shall be masonry consisting of stucco, brick, rock or natural stone. Exterior color selections shall blend into the surrounding landscape and terrain. Bright or highly visible colors will be discouraged while natural colors will be encouraged. The ACC may grant a variance in accordance with Section 8.06 for any provision of this Section 7.06.

Section 7.07. Landscaping. All front yard landscaping and any other landscaping visible from any street shall compliment the residential character of the Subdivision. The landscaping plan must be

submitted to the ACC for approval within two (2) months after the purchase of a new or non-landscaped Residence, or thirty (30) days before landscaping is to be installed, whichever is first. Landscaping shall be completed and ready for a walkthrough inspection by the ACC within two (2) months after the ACC's approval of the landscaping plan. This Section 7.07 applies only to those areas of landscaping that are in the front and side yards, and to back yards that are visible from any street. In the event that weather will not permit the planting of plants, shrubs, and grass within the time frames stated above, the ACC may grant an extension of thirty (30) days after the planting season begins in the spring following the ACC's approval of the landscaping plan. The ACC shall determine, in its sole discretion, when the planting season has begun each year based on the weather conditions for that year.

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

Section 7.09. Temporary Sales and Construction Office. A temporary sales and construction office maintained by Declarant may be located within the Subdivision during the development, construction and/or sale of Lots and the Property. Temporary parking in front of and adjacent to the office will be allowed as long as the office is maintained in the Subdivision. Notwithstanding anything to the contrary in this Declaration, Declarant may maintain the office until thirty (30) days after the completion of the last Residence on the last Lot within the Subdivision, at which time Declarant will have sixty (60) days to remove the office and leave the site flat and clean so as to appear as a vacant building lot. Temporary sales signs, flags, etc. may be placed in the Subdivision during the development, construction and sale of Lots as long as the office is maintained in the Subdivision or there are development, construction or sales activities taking place. Declarant may, at its option, maintain the office located in any filing of the Subdivision for the entire duration of subsequent filings being developed, constructed and sold, or relocate the office to a location in any future filing(s). During the period of development, construction and sales, Declarant may also designate certain Lots to be used for sales offices, construction offices, storage yards and buildings.

Section 7.10. Vehicle Parking, Storage and Repair. A maximum of two (2) passenger vehicles may be parked on the driveway of any Lot. Except as provided below, No trailer, motorcycle, trucks of any nature in excess of 3/4 ton, recreational vehicles, boats, snowmobiles (collectively "Vehicles" under this Section 7.10), or any accessories to any Vehicles, shall be parked, stored, repaired, or maintained on any Lot or Common Area, except: (i) temporarily while loading or unloading; or (ii) for the purpose of routine maintenance, including, by way of example but not limitation, oil changes, waxing, and minor engine work. All Vehicles which are not kept in a garage must be parked in the side or rear yard of a Residence and must be screened from public view by a natural wood fence, landscaping or other means, at least six (6) feet in height approved by the ACC, and not farther forward than the front building line of a Residence.

Section 7.11. Restrictions on Storage Areas. Clothes lines, equipment, garbage cans, service yards, brick piles, or storage areas shall be adequately screened by planting or construction approved by the ACC to conceal the same from view of neighboring Lots and streets.

Section 7.12. Yards. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. All ornamentation in yards, such as, by way of example but not limitation, figurines, plastic flowers, colored lights, windmills, bird baths or feeders, shall either be screened from public view or approved by the ACC. No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be located on any Lot so they are visible from a street. This Section 7.12 shall not apply to seasonal holiday decorations which are promptly removed after the holiday or to the display of the flag of the United States of America.

Section 7.13. Fences, Planters and Hedges. No wall, fence, planter or hedge in excess of three (3) feet above ground level shall be allowed within any front yard setback. Front yard setbacks shall be

defined according to the City of Fruita requirements for front yard setbacks specified for the Subdivision. Open-type fencing will be required for any front yard fencing within the front yard setback areas. All fences must be white vinyl and must be approved by the ACC prior to construction. No fence on any Lot may be greater than six (6) feet in height without the approval of the ACC. The ACC may, from time to time, adopt written fencing standards, details and colors which differ from the standards described in this Section 7.13. Any Owner may acquire a copy of such standards upon request.

Section 7.14. Restrictions Relating to Drainage. Nothing shall be done or permitted on any Lot that would block, divert or channelize the natural flow of drainage water across any Lot from adjacent Lots, as established by the original Subdivision grading, without specific approval from the ACC.

Section 7.15. Signs. No sign, graphic, or advertising device of any kind shall be displayed on any Lot except: (i) one sign advertising the property for sale or rent; (ii) signs used by the building contractor or lender for advertising during construction and/or sales of Lots in the Subdivision; and (iii) political signs in support of candidates or ballot issues limited to the ninety (90) day period including and immediately preceding the election date on which the candidates or issues will be voted upon. Any permitted sign shall be no more than five (5) square feet. Signs used by Declarant for any purpose are not subject to the restrictions in this Section 7.15 or any other restrictions.

Section 7.16. Animals. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep fish, birds and a total of two (2) dogs or two (2) cats or one of each which are bona fide household pets, as long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a danger or nuisance, by excessive noise or otherwise, to any resident(s) of the Subdivision. An Owner's right to keep household pet(s) shall be coupled with the responsibility to pay any costs to the Association for any damages caused by such Owner's pet(s) to Common Property. All animals shall be maintained on the Owner's property or on a leash. Owners shall be responsible for the cleanup of all waste from their pet(s). Habitually barking and/or vicious dogs are prohibited at the sole discretion of the Association.

Section 7.17. Antennas, Towers, Dishes and Solar Panels. No antenna, satellite or similar device for radio, television or other electronic transmission or reception shall be erected, installed or permitted to remain on any Lot, except that television and radio antennas and satellite dishes not in excess of 24 inches in diameter attached to a Residence may project up to six (6) feet above the ground, so long as the antenna or dish is not visible from any street adjoining that Lot. No solar panels or other apparatus may be erected upon the roof of any structure within the Subdivision without the prior written consent of the ACC.

Section 7.18. Air Conditioning/HVAC Units. No window mounted air conditioning or HVAC (refrigeration, evaporative or other) units are allowed. All HVAC or air conditioning units shall be ground mounted on a concrete pad or roof mounted on a rear roof elevation.

Section 7.19. Site Lines on Corner Lots. No object or thing shall be placed or planted on any corner Lot that obstructs site lines at elevations between two (2) feet and six (6) feet above the top of the street curb within a triangular area formed by the junction of the street and the curb lines and the line connecting them at a point 25 feet from the junction of such streets, curb line, or extension thereof.

Section 7.20. Residential Use. No Lot may be used for commercial purposes, except for home occupations. For purposes of this Section 7.20, "home occupation" means an occupation conducted in accordance with the City of Fruita ordinances for home occupation and which does not entail the employment of third persons on the premises. This does not include the delivery of goods or services to

customers upon a Lot, nor to the leasing of any Lot as described in Section 21. Any other commercial use shall be considered a nuisance within the meaning of Section 7.22. Declarant shall not be subject to the provisions of this Section 7.20.

Section 7.21. Leases. The term "lease" as used in this Declaration, shall include any agreement for the leasing or rental of a Lot or any portion of it. Any Owner shall have the right to lease his or her Lot under the following conditions:

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

The provisions of (b) and (c) above shall be contained in each lease, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 7.22. Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted which becomes an annoyance or nuisance within the Subdivision. No light shall be permitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lot or property. No sound shall be emitted from any Lot which is unreasonably loud or annoying and no odor shall be permitted from any Lot which is noxious or unreasonably offensive to others, as determined by the Board in its sole discretion. No activities shall be conducted on the Property or within the improvements constructed on or within the Property which are or might be unreasonably hazardous to any person or property. No firearms, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Property. In no event shall activities of Declarant that are reasonably necessary for the development and construction of the Property be considered a nuisance or hazard under this Section 7.22.

Section 7.23. Lot Maintenance. Each Lot and the improvements thereon shall be properly maintained by the Owner of such Lot. In the event any Owner fails to maintain their Lot(s) in accordance with this Declaration, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance with this Declaration, and may assess the Owner of such Lot(s) for those costs, as provided in this Declaration.

Section 7.24. Utilities and Easements. Underground electrical, natural gas, telephone, cable television, and irrigation shall be available to all Lots. The utility companies furnishing these services shall have the easements shown on the recorded plats of the Subdivision. No permanent structure shall be erected on any such easement. Neither the Declarant, the utility company, or any entity using these easements shall be held liable for any damage done by any of them or their assigns, agents or employees to shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement. No overhead services shall be allowed to service any Lot within the Subdivision.

Section 7.25. Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except for out-lots or Lots designated for future filings by Declarant, or as may otherwise be provided in this Declaration.

**ARTICLE VIII**

### ARCHITECTURAL CONTROL COMMITTEE

Section 8.01. Architectural Control Approval. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, irrigation systems, fences, trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location and other relevant information of the same have been submitted to and approved in writing by the ACC as being in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article VIII; except, Declarant and any successor Declarant shall not be required to attain ACC approval, so long as Declarant in fact complies with the Construction and Design Guidelines of Article VII.

Section 8.02. Procedures. The ACC shall approve or disapprove all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications and other materials which the ACC may require in conjunction with the application. If the ACC fails to approve or disapprove an application in writing within thirty (30) days after completion of submission of a plan to it, the application will be deemed to have been approved. The ACC shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to structures, other improvements and property, within the Property, conform to and harmonize with the existing surroundings, Residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC may require that the applicant(s) pay the ACC a processing fee for the actual expenses incurred by the ACC in the review and approval process. Such amounts, if any, may be levied as part of the Regular Assessment against the Lot for which the request for ACC approval was made and, as such, shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection thereof, as more fully provided in this Declaration. Notwithstanding the foregoing, only the Association shall have the right to materially alter or modify the original fencing, landscaping or grading installed by Declarant within any Common Area; provided, however, that the foregoing prohibition shall not prevent the repair and maintenance of the same.

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

Section 8.04. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 8.05. Liability. The ACC and its members shall not be liable in damages to any person submitting requests for approval or to any Owner, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction under this Declaration.

Section 8.06. Variance. The ACC may grant reasonable variances or adjustments from any conditions and restrictions imposed by Article VII, in order to overcome practical difficulties, compliment specific design styles or prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in Article VII. Variances or adjustments shall be granted only in case they shall not be materially detrimental or injurious to the other Lots or the Subdivision or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms and provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Association's or Owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations.

Section 8.07. Waiver. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any other application submitted for approval or consent hereunder.

Section 8.08. Time of Construction. After the sale or transfer of any lot from the Declarant to an individual Approved projects must be completed within six (6) months after issuance of a building permit or within six (6) months after approval by the ACC if no building permit is required. If the work is not completed within the prescribed time, the ACC may rescind its approval and resubmission will be required. The ACC may grant an extension for good cause. This Section 8.08 shall not apply to Declarant.

Section 8.09. Composition of the ACC. The ACC shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed all Lots to Owners other than the Declarant, or until twenty (20) years after the date of the recording of this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earlier, Declarant shall appoint the ACC. The power of the Declarant to "appoint," as provided in this Section 8.09, shall include without limitation the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, and for whatever reason to remove any member of the ACC, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the power of removal stated in this Section 8.09, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the ACC shall be deemed approved by the ACC without the issuance of any writing evidencing such approval.

Section 8.10. No Liability. None of Declarant, the Association, or the ACC or its members shall be liable in damages to anyone submitting plans or specifications to them for approval, nor to any owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Any Owner submitting, or causing to be submitted, any plans or specifications agrees and covenants on behalf of himself and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against Declarant, the Association, the ACC, or any of the members of those entities to recover any such damages.

Section 8.11. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained in this Declaration, after the expiration of one (1) year from the date of completion of construction of any improvements within the Property, such improvements shall, relative to purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article VIII, unless actual notice of such noncompliance and noncompletion, executed by the ACC or its designated representatives, shall appear of record in the real property records of Mesa County, Colorado, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 8.12. Rules and Regulations. The ACC may, from time to time in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article VII.

Section 8.13. Appointment and Designation. The ACC may, from time to time, by the vote or written consent of a majority of its members, delegate some or all of its rights or responsibilities under this Declaration to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the ACC in all matters delegated.

Section 8.14. Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee determined by the Board. The address of the ACC shall be the principal place of business of the Association or such other place as the ACC may from time to time designate to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the ACC shall be kept.

Section 8.15. Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring ACC approval, any member or agent of the ACC may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Lot or Residence within the Subdivision to determine whether the Residence or Lot's improvement complies with the provisions of this Declaration.

Section 8.16. General Provisions. The members of the ACC shall not be entitled to any compensation for services performed under this Article VIII. The powers and duties of the ACC shall cease and terminate upon the termination of this Declaration.

## **ARTICLE IX ASSOCIATION WATER**

Section 9.01. Management of Association Water. To the extent allowed by law and subject to the Fruita Municipal Code Section 17.15.090(6)(g) the Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water, and shall own, operate, repair, and maintain the Irrigation Facilities. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand.

Section 9.02. Easements for Ingress and Egress. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on the Map or any recorded plat of any portion of the Subdivision for the purpose of operating, repairing, or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, maintenance or repair of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which interferes with the ownership, operation, and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure.

Section 9.03. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 9.04. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, and any other applicable federal and state environmental laws, into the Property is prohibited.

Section 9.05. Maintenance and Water Assessments. Declarant and its successors and assigns shall maintain the Irrigation Facilities and pay all water assessments on Association Water until transfer to the Association; provided, however, that Declarant shall be reimbursed by the Association for all payments of water assessments paid by Declarant under this Section 9.05. Upon the transfer to the Association, full responsibility for the Irrigation Facilities and Association Water shall be borne by the Association.



Section 9.06. Transfer to Association. Per Section 17.15.090(6)(g) of the Fruita Municipal Code the Associations Water and/or Water Rights cannot be conveyed or encumbered without the express written consent of the City of Fruita and prior to the sale of any lot the Declarant will transfer to the Association nine (9) water shares for Pine View Estates and upon completion, inspection and approval by the City Engineer the Declarant will convey by bill of sale to the Association, without limitation, the irrigation system for Pine View Estates, and if applicable those items specified in Section 38-33.3-303(9), C.R.S. Declarant shall convey fee simple title in the Irrigation Facilities to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and title exceptions of record on the date of recording this Declaration.

## **ARTICLE X** **INSURANCE**

Section 10.01. Insurance. The Association shall obtain and maintain insurance as required by CCIOA, currently codified at C.R.S. § 38-33.3-313., as amended, and this Declaration.

Section 10.02. Type of Insurance. Commencing not later than the time of the first Conveyance of a Lot to an Owner other than Declarant, the Association shall obtain a master insurance policy insuring against damage to the Common Area. The master insurance policy insuring the Common Area shall be for broad form covered causes of loss, shall include the Owners as additional named insureds, and shall include (or the Association shall obtain separately) commercial general liability insurance with single limited coverage of not less than \$1,000,000.00 with \$500,000.00 medical payments coverage. In addition, if reasonably available, the Association shall maintain directors and officers liability insurance. The association, as attorney-in-fact, shall have the authority conferred upon it in Article XI to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 10.03. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent members causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that multiple properties are damaged by a loss, the Association in its reasonable discretion may assess each member a pro rata share of any deductible paid by the Association.

Section 10.04. Waiver of Subrogation. The Association and Lot Owners each waive any and all rights of recovery against the other, their officers, members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate Waiver of Subrogation Provision in the policy.

Section 10.05. Fidelity Bond Insurance. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, a fidelity bond insurance in an aggregate amount equal to not less than two (2) months of current assessments, plus reserve calculated from the then-current budget of the Association.

Section 10.06. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in the same amount required in Section 10.05, unless the Association names such a person as an insured

employee in a contract of fidelity insurance described in Section 10.05. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this Section 10.06.

Section 10.07. Fidelity Bond Premiums. Premiums for bonds required of the Association under this provision are Common Expenses of the Association.

Section 10.08. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure.

## **ARTICLE XI** **DAMAGE OR DESTRUCTION OF COMMON AREA**

Section 11.01. Appointment of Association as Attorney-in-Fact. This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, and to ensure compliance with this Declaration upon the damage, destruction, or obsolescence of the Common Area. Any grantee's acceptance of a Deed or other instrument rendering that person an Owner shall constitute the irrevocable appointment of the Association as the grantee's attorney-in-fact, to act with all the powers as provided in this Section 11.01.

Section 11.02. Rights of Association as Attorney-in-Fact. As attorney-in-fact, the Association, by its President and Secretary, shall have full and complete authority, right and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of the Common Area means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of the Common Area shall be determined by the Association, in its sole and absolute discretion. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration, or replacement.

Section 11.03. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damaged improvement. If the insurance proceeds are insufficient, the Association may levy a Capital Assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (a) The planned community is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) 80% of the Owners vote to not rebuild; or

- (d) Prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Improvement rightfully demands all or a substantial part of the insurance proceeds.

Distributions of insurance proceeds shall be made to the Association unless made jointly payable to the Owners and first mortgagees of their respective Lots, if any. The Capital Assessment described in this Section 11.03 shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

Section 11.04. Owner's Negligence. In the event that the need for maintenance or repair of any Common Area or improvement is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family member, 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 as a Special Assessment or part of a Regular Assessment to which such Owner's Lot is subject, and shall become a lien against such Owner's Lot. Negligence or the willful act or omission of any Owner or any family member, guest or invitee of such Owner, and the amount of the Owner's liability therefore, shall be determined by the Association Board of Directors at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section 11.04 may be appealed by such Owner to a court of law.

## **ARTICLE XII** **GENERAL PROVISIONS**

Section 12.01. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions which shall remain in full force and effect. To the extent feasible, any non-complying provision shall be reformed to best comply with applicable law and to preserve the intent of the Declarant.

Section 12.02. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded Map of the Property and plat(s) of the Subdivision. Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow or drainage channels in the easements. Declarant reserves the right (but assumes no obligation) to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 12.03. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 12.04. Expansion. Not Applicable

Section 12.05. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Lots, binding Declarant and all persons and entities claiming by, through, or under it for a period of twenty (20) years from the date of recording in

the Mesa County, Colorado, real estate records of this Declaration, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided in Section 12.06.

Section 12.06. Amendment and Termination. Subject to the provisions of Section 38-33.3-217(1), (5) and (6), C.R.S., all or any portion of this Declaration may be supplemented, changed or canceled (in which case the common interest community shall terminate) in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots that may be created. Such agreement may be in any number of counterparts. Such amendment or termination shall be effective when duly recorded in the real property records of Mesa County, Colorado.

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

Section 12.07. Merger of Associations. Pine View Estates, may merge with any other common interest community following approval by owners of lots to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. Such merger shall be accomplished in accordance with an agreement prepared, executed, recorded, and certified by the President of the Association and the president of the association to be merged with, which agreement must be recorded in the real property records of Mesa County, Colorado.

Section 12.08. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across any easements shown on the Map, including but not limited to the right to store materials on such areas and to make such other use of such areas as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Map; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his or her family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, retains a right to store construction materials on any Lot owned by Declarant and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations under this Declaration, and the sale of the Lots. Any Special Declarant Rights created or reserved in this Declaration for the benefit of Declarant may be transferred to any person or entity by an instrument describing the rights transferred, and shall be recorded in the office of the Clerk and Recorder of Mesa County, Colorado. The rights of Declarant reserved in this Section 12.08 shall expire fifteen (15) years after the recording of this Declaration, except as to any land added to the Property under Section 12.04, as to which those reserved rights will expire ten (10) years after the date of the recording in the real property records of Mesa County, Colorado of the document adding such land to the Property.

Section 12.09. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void.

Section 12.10. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the

address of the Owner specified in the deed recorded in the real property records of Mesa County, Colorado by which that Owner took title and to the street address of that Lot, if any.

Section 12.11. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

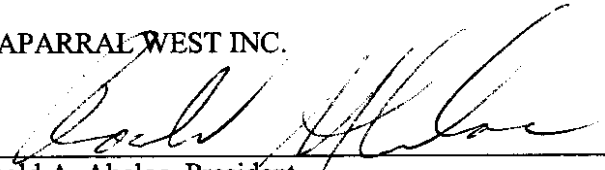
Section 12.12. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 12.13. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

Section 12.14. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law ordinance, rule or regulation of the City of Fruita or of any governmental authority having jurisdiction over the Property which now or in the future may contain different requirements from or in addition to those contained in this Declaration or which may prohibit uses permitted in it or permit uses prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with these covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance with this Declaration would result in such a violation, the ACC shall waive any such covenants, conditions or restrictions to the extent it results in such a violation, and in connection with such waiver, the ACC may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

Section 12.15. Transfer of Declarant Rights and Obligations. Except to the extent expressly prohibited by applicable law, any or all rights or obligations (or both) of Declarant may be transferred by Declarant, including without limitation those rights described in Sections 2.06, 8.01, 8.09 and 12.04.

CHAPARRAL WEST INC.

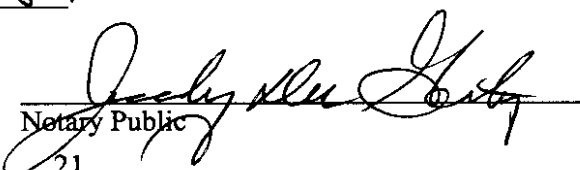
  
\_\_\_\_\_  
Ronald A. Abeloe, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Subscribed and sworn to before me this 17~~th~~ day of December, 2004, by Ronald A. Abeloe, President of Chaparral West Inc..

WITNESS my hand and official seal.  
My commission expires: 11-30-08.

JUDY DEE GENTRY  
NOTARY PUBLIC  
STATE OF COLORADO

  
\_\_\_\_\_  
Notary Public  
21

My Commission Expires 11/30/2008

**BYLAWS  
OF  
PINE VIEW ESTATES HOMEOWNERS ASSOCIATION**

THESE BYLAWS of PINE VIEW ESTATES HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the "Corporation"), are effective this \_\_\_\_ day of October, 2004, and are adopted pursuant to the Colorado Revised Nonprofit Corporation Act (the "Act") and the Colorado Common Interest Ownership Act ("CCIOA"). In the event of a conflict between these Bylaws, the Articles of Incorporation of Pine View Estates Homeowners Association (the "Articles of Incorporation"), or the Declaration of Covenants, Conditions and Restrictions for Pine View Estates Homeowners Association (the "Declaration"), the Articles of Incorporation and the Declaration shall control over the Bylaws, and the Declaration shall control over the Articles of Incorporation.

**ARTICLE I  
Members**

Section 1.1. Membership. Eligibility and requirements for membership are specified in the Declaration.

Section 1.2. Annual Meeting. The annual meeting shall be held on the first Tuesday in April in each year, at the hour of 6:00 p.m., for the purpose of the election of directors and for the transaction of such other business as may lawfully come before the meeting.

Section 1.3. Special Meetings. Special meetings may be called by the president, by a majority of the board of directors, or by members holding at least 20% of the votes of the Corporation upon delivery of a written request for such meeting to the president. Notice of the meeting shall be given in accordance with Section 1.5.

Section 1.4. Location of Meeting. The board of directors shall designate any place, within Mesa County, as the location of any meeting. One or more members may participate in any members meeting by any means of communication by which all persons participating in the meeting can hear one another simultaneously. Such participation shall constitute presence in person at the meeting.

Section 1.5. Notice of Meetings; Waiver of Notice.

1.5.1. Not less than ten (10) nor more than fifty (50) days in advance of any members meeting, the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each member or to any other mailing address designated in writing by the member.

1.5.2. Notice of any meeting must state the date, time and place of the meeting and any matters that require membership approval, including the general nature of any proposed amendment to the Bylaws (if the members, rather than the directors, are voting

to amend) or Declaration, any budget changes, any proposal to remove an officer or director, and any proposal to dissolve.

1.5.3. A member may waive notice of any meeting, or any other notice required by these Bylaws, by a writing signed by the member entitled to notice which is delivered to the secretary (either before or after the date and time stated in the notice) for inclusion in the minutes or for filing with the corporate records. A member's attendance at a meeting:

- (a) Waives objection to lack of notice or defective notice of the meeting, unless the member, at the beginning of the meeting, objects to holding the meeting on the basis of lack of notice or defective notice; and
- (b) Waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the member objects to considering the matter when it is first presented.

Section 1.6. Quorum and Voting. A quorum shall be deemed present throughout any members meeting if persons entitled to cast 20% of the votes which may be cast for election of the board of directors of the Corporation are present in person or by proxy at the beginning of the meeting. Upon failure of a quorum, an adjournment may be taken by the vote of a majority of the members present for a period not to exceed thirty (30) days at any one adjournment. If a quorum exists, action on a matter shall be approved if the votes cast by the members present at the meeting which favor the action exceed the votes cast in opposition to the action, unless a greater number of votes is required by law, the Articles of Incorporation, the Declaration, or these Bylaws; if there are more than two (2) choices or candidates, the choice or candidate receiving a plurality of votes, whether or not a majority of the total votes cast, shall be the prevailing choice or candidate. Each member entitled to vote shall have the number of votes allocated to that member in accordance with the Declaration.

Section 1.7. Proxy. Members are entitled to vote at any members meeting in person or by written proxy, properly signed by the member or his or her duly authorized attorney-in-fact. Proxies shall be filed with the secretary before or at the time of the meeting. A proxy terminates eleven (11) months after its date, unless it provides otherwise. A member may not revoke a proxy except by actual notice of revocation to the person presiding over the meeting at which the proxy will be cast. A proxy is void if it is not dated or if it purports to be revocable without notice.

Section 1.8. Fixing Record Date. For the purpose of determining members entitled to notice or to vote at any members meeting, the board of directors may fix a date in advance as the record date. Such date shall not be fewer than ten (10) nor more than fifty (50) days prior to the date on which the action is to be taken. If the directors do not fix such a record date, the record date shall be the close of business on:

- (a) With respect to any meeting, the day before the first notice is delivered to members; and

- (b) With respect to any informal action taken pursuant to Section 1.9, the date the first member signs a written consent.

Section 1.9. Informal Action by Members. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing. Such consent may be executed in counterparts and received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature on the document. Unless the members establish a different effective date, action is taken at the time the last member signs the consent. Such consent shall have the same effect as action taken at a meeting of the members and may be described as such in any document. A member may revoke his or her consent by a written revocation signed by the member and received by the Corporation before the last member has signed the consent, in which case the action proposed in the consent shall be invalid.

Section 1.10. Action by Written Ballot.

1.10.1. Any action that may be taken at any members meeting may be taken without a meeting if the Corporation delivers a written ballot (in the manner provided in subsection 1.5.1) to every member entitled to vote on the matter. The written ballot shall state each proposed action and provide an opportunity to vote for or against such proposed action. Approval by written ballot shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. If there are more than two (2) choices or candidates, and the quorum requirements are met, the choice or candidate receiving a plurality of votes, whether or not a majority of the total votes cast by ballot, shall be the prevailing choice or candidate.

1.10.2. Solicitations for votes by written ballot may not be revoked, and shall:

- (a) Indicate the number of responses needed to meet the quorum requirements;
- (b) State the percentage of approvals necessary to approve each matter other than election of directors;
- (c) State the time by which the ballot must be received by the Corporation in order to be counted; and
- (d) Be accompanied by written information sufficient to permit each member voting to reach an informed decision on the matter.

Section 1.11. Membership and Members List. After fixing a record date pursuant to Section 1.8, the Corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting



or to take such action by written ballot, and the number of votes each member is entitled to vote at the meeting or by written ballot.

Section 1.12. Transactions Requiring Membership Approval. Notwithstanding anything to the contrary stated elsewhere in these Bylaws, neither the board of directors, nor any committee of such board, nor any officer, agent, or employee of the Corporation shall take any of the following actions without the prior approval of the voting members, unless otherwise provided by law, the Declaration, or the Articles of Incorporation:

- (a) Amendment or restatement of the Declaration or Articles of Incorporation;
- (b) Merger, dissolution, or sale or other disposition of substantially all of the assets of the Corporation;
- (c) Sale, lease, disposition, pledge, gift, or encumbrance of any interest in real or personal property belonging to the Corporation, except in accordance with the established policies for such matters approved from time to time in advance by the voting members;
- (d) Aggregate borrowing of the Corporation for any period for any purpose in excess of \$5000.00, or of a dollar amount to be established by the voting members from time to time; the term "borrowing" for these purposes shall include any commitment for the payment of money pursuant to any contract;
- (e) The formulation of an initial, or any change in any subsequent, formal or informal statement of the purposes and objectives of the Corporation;
- (f) Any expenditure of a nature that was not anticipated or reflected in a budget approved in advance of such expenditure by the voting members, and any expenditure which either singly or when aggregated with all other similar amounts throughout the Corporation's fiscal year exceeds 5% of the amount budgeted for such expenditure or class of expenditures pursuant to a budget approved in advance of such expenditure by the voting members; or
- (g) Any expenditure of the principal of or income from any fund or funds in any manner that is inconsistent with any restrictions imposed on such fund or funds by donors to the Corporation or by the voting membership.

ARTICLE II  
Board of Directors

Section 2.1. Powers and Duties. The business and the property of the Corporation shall be controlled and managed by the board of directors, except as otherwise expressly provided by law, the Articles of Incorporation, the Declaration, or these Bylaws.

2.1.1. By way of example and not limitation, the board of directors shall:

- (a) Employ independent contractors and employees as the board deems necessary
- (b) Cause to be kept a complete record of all its acts and corporate affairs;
- (c) Supervise all officers and any agents and employees of the Corporation, and see that their duties are properly performed;
- (d) As more fully provided in the Declaration and CCIOA to:
  - (1) Fix the amount of the annual budget and annual assessment against each lot;
  - (2) Cause delivery of all required notices relative to budgets and assessments;
  - (3) Collect assessments which are not paid when due provided in the Declaration or otherwise allowed by law; and
  - (4) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid.
- (e) Obtain and maintain insurance as required by the Declaration and CCIOA;
- (f) Cause all officers, employees, or agents having fiscal responsibilities to be bonded, as provided by the Declaration and law; and
- (g) Cause all property owned or used by the Corporation to be properly maintained.

2.1.2. The president or secretary may prepare, execute, certify, and record amendments to the Declaration on behalf of the Corporation.

2.1.3. If the board of directors delegates powers of the board or officers relating to collection, deposit, transfer, or disbursement of corporate funds to other persons or to a managing agent:

- (a) Such other persons or managing agent shall maintain fidelity insurance coverage or a bond in an amount not less than \$50,000.00 or such higher amount as the board may require;

(b) Such other persons or managing agent shall maintain all funds and accounts of the Corporation separate from the funds and accounts of other associations managed by the other persons or managing agent and shall maintain all reserve accounts of each association so managed separate from operational accounts of the Corporation; and

(c) An annual accounting for Corporation funds and a financial statement shall be prepared and presented to the Corporation by the managing agent, a public accountant, or a certified public accountant.

Section 2.2. Number, Term and Nomination.

2.2.1. The affairs of the Corporation shall be managed by a board of three (3) directors.

2.2.2. At the first meeting after the Declarant has relinquished control of the board as provided in the Declaration, two (2) directors shall be elected for a term of two (2) years, and the remaining director for a term of one (1) year; and at each annual meeting thereafter the members shall elect for terms of two (2) years the same number of directors as there are directors whose terms are expiring at the time of each election. Directors shall be elected by ballot and members may not cumulate their votes in favor of or against directors.

2.2.3. Nominations for election to the board of directors may be submitted to the secretary, in writing, by any member or director through and including the day before the election date, but not more than fifty (50) days prior to such date. Nominations from the floor may be made at the meeting in which the election is held immediately prior to the vote.

Section 2.3. Vacancies. Any vacancy in membership of the board of directors shall be filled for the remainder of the unexpired term by the affirmative vote of a majority of the remaining directors, whether or not consisting of a quorum.

Section 2.4. Resignation and Removal.

2.4.1. A director may resign at any time by giving written notice of his or her resignation to the Corporation. Such resignation is effective when the notice is received by the Corporation, unless the notice states a later date. A board member who has failed to attend three (3) consecutive board meetings shall be deemed to have resigned upon a confirming vote of a majority of the board. If a director is deemed to have resigned for failing to attend more than 50% of the Board meetings in any given year, his or her resignation date shall be the date of confirmation of resignation by the board of directors.

2.4.2. At any meeting of the members at which a quorum is present, the members, by a vote of 67% of all persons present and entitled to vote, may remove the entire board of directors or any lesser number, other than a director appointed by the Declarant.

Section 2.5. Annual Meeting of Directors. The annual meeting of the board of directors shall be held as soon as is conveniently possible following the annual members meeting.

Section 2.6. Special Meetings. Special meetings of the board of directors shall be held whenever called by the president or by a majority of the directors.

Section 2.7. Time and Place of Meetings; Executive Session.

2.7.1. All meetings of the board of directors shall be held at a time and place in Mesa County to be designated by the president or, if called by directors, at such time and place in Mesa County designated by those directors; except, the annual meeting shall be held in accordance with Section 2.5. Upon prior approval of the board, one or more directors may participate in any meeting of the board by any means of communication by which all persons participating in the meeting can hear one another simultaneously. Such participation shall constitute presence in person at the meeting.

2.7.2. All meetings of the board of directors or any committees of the board shall be open to attendance by all members or their representatives, and agendas for such meetings shall be made reasonably available for examination by all members or their representatives.

2.7.3. The board of directors or any committee of the board may hold an executive or closed door session and may restrict attendance to directors and such other persons requested by the board during any regular or special meeting. The matters to be discussed at such an executive session shall include only the following:

- (a) Matters pertaining to employees of the Corporation or the managing agent's contract, or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Corporation;
- (b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- (c) Investigative proceedings concerning possible or actual criminal misconduct;
- (d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and
- (e) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

Section 2.8. Notice of Meetings. Meetings of the board of directors shall be held only after delivering, at least two (2) days in advance of such meeting to each director personally or by wire or wireless communication, or mailing at least seven (7) days in advance to each director at the director's last known address, a written notice of such meeting, giving the date, time and

place of the meeting. A director may waive any notice of a meeting with a written waiver signed by the director and filed with the minutes or corporate records.

Section 2.9. Quorum and Manner of Action. A quorum will be deemed present throughout any meeting if directors entitled to cast at least 50% of the votes are present at the beginning of the meeting. The act of the majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors.

Section 2.10. Proxies. A director may be deemed present at a meeting if, prior to the meeting, the director grants and delivers a written proxy to another director who is present in person at the meeting. The proxy must direct a vote to be cast with respect to a particular proposal that is described with reasonable specificity in the proxy. No other proxies by directors shall be allowed.

Section 2.11. Compensation of Directors. No director shall receive compensation for his or her attendance at meetings of the board of directors. However, upon a vote of the directors, a director may be reimbursed for actual expenses incurred in performance of the director's duties. The compensation allowed to directors shall be changed only by action of the members. This Bylaw may only be amended by the members.

Section 2.12. Presumption of Assent and Right of Dissent. A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have waived notice of the meeting and assented to all action taken at the meeting unless:

- (a) The director objects to holding the meeting or transacting business at the meeting at the beginning of the meeting, or promptly upon the director's arrival, and does not thereafter vote for or assent to any action taken at the meeting;
- (b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or
- (c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the Corporation promptly after adjournment of the meeting.

The right of dissent or abstention pursuant to this Section 2.12 is not available to a director who votes in favor of the action taken.

Section 2.13. Informal Action by Directors. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if each and every director in writing either votes for the action, or votes against such action or abstains from voting, and waives the right to demand that action not be taken without a meeting. Such consent may be executed in counterparts and received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature on the document. Unless the directors establish a different effective date, action is taken at the time the last director signs the consent. Such consent shall have the same effect as action taken at a meeting of directors and may be described as such in any document. A director may revoke his or her consent by a written revocation signed by the

director and received by the secretary before the last director has signed the consent. All signed written instruments necessary for any action taken pursuant to this Section 2.13 shall be filed with the minutes of the board of directors.

Section 2.14. Committees.

2.14.1. By resolution adopted by a majority of the directors then in office, the board of directors may designate one or more committees, and appoint one or more directors to serve on them. To the extent provided in the resolution, any such committee may have all the authority of the board, as designated in the resolution establishing the committee, except that no committee shall have the authority to: (i) authorize distributions; (ii) elect, appoint, or remove any director; (iii) amend the Articles of Incorporation; (iv) adopt, amend or repeal these Bylaws; (v) approve a plan of merger; or (vi) approve a sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by the board of directors. The board of directors may establish any requirements for the governance of such committees that comply with these Bylaws and law.

2.14.2. The board of directors may establish one or more committees, advisory boards, auxiliaries, or other bodies of any kind whose members are not directors in order to provide advice, service and assistance to the Corporation; except that such committees may not exercise any power or authority reserved to the board of directors by the Act or these Bylaws.

ARTICLE III  
Officers

Section 3.1. General. The officers of the Corporation shall be a president, a secretary, and a treasurer. All officers shall be natural persons, eighteen (18) years of age or older. The board of directors may elect or appoint such additional officers as it may consider necessary who shall hold their offices for such terms and have such authority and duties as from time to time may be determined by the board of directors. The salaries, if any, of the officers of the Corporation shall be fixed by the board of directors. In all cases where the duties of any officer, agent, or employee are not prescribed by these Bylaws or by the board of directors, such officer, agent, or employee shall follow the orders and instructions of the president.

Section 3.2. Election and Tenure of Officers. Except as otherwise provided in the Declaration, the officers of the Corporation shall be elected by the board of directors annually at the annual meeting of the board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as conveniently possible. Election shall be by ballot and a majority of the votes cast shall be necessary to elect. One person may hold more than one office. A director or directors may hold any office(s). Each officer shall hold office until the first of the following to occur: the officer's successor is duly elected and qualified; the officer's death; the officer's resignation; or the officer's removal.

Section 3.3. Resignation. An officer may resign at any time by giving written notice of resignation to the Corporation. The resignation of an officer is effective when the notice is received by the Corporation, unless the notice states a later effective date. If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

Section 3.4. Removal. The board of directors may remove any officer at any time, with or without cause, by a majority vote of the board. Such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not, in and of itself, create a contractual right.

Section 3.5. Vacancies. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

Section 3.6. President. The president shall, subject to the direction and supervision of the board of directors, be the chief executive officer of the Corporation and shall have general and active control of its affairs and business and general supervision of its officers, agents and employees. The president shall present a report of the general conduct and transactions of the company at the annual members meeting. The president shall have custody of the treasurer's bond, if any.

Section 3.7. Treasurer. The treasurer shall have all of the powers, and shall perform all of the duties and obligations, of the president when the president is unable to act due to a vacancy in the office, absence, or illness. The treasurer shall be the principal financial officer of the Corporation and shall have the care and custody of all the funds, securities, evidences of indebtedness, and other personal property of the Corporation. The treasurer shall be required to keep written records showing all receipts and expenditures of the company, and shall make such reports related thereto as the board may require. The treasurer shall, if required by the board, give the Corporation a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of the treasurer's duties and for the restoration to the Corporation of all books, papers, vouchers, money, and other property of whatever kind in the treasurer's possession or under the treasurer's control belonging to the Corporation. The treasurer shall have such other powers and perform such other duties as from time to time may be prescribed by the board of directors or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

Section 3.8. Secretary. The secretary shall perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the president or by the board of directors. The secretary shall keep the minutes of the proceedings of the members and the board of directors. The secretary shall see that all notices are duly given in accordance with the provisions of the Declaration, these Bylaws or as required by law. The secretary shall be custodian of the corporate records and shall authenticate corporate documents. The secretary shall maintain a record containing the names and addresses of all members. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

ARTICLE IV  
Dissolution

Section 4.1. Authorization. To authorize the dissolution of the Corporation, the board of directors shall adopt and recommend a proposal to dissolve to the members, which shall be approved upon the affirmative vote of at least two-thirds (2/3) of the members entitled to vote. If the board of directors determines that it should make no recommendation, because of conflict of interest or other special circumstances, and communicates the basis for its determination to the members, dissolution may be approved without such recommendation upon the affirmative vote of at least two-thirds (2/3) of the members entitled to vote. The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

Section 4.2. Notice. The Corporation shall give notice to members entitled to vote, pursuant to Section 1.5, of the members meeting at which the proposal to dissolve will be voted on. The notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

Section 4.3. Articles of Dissolution. After dissolution is authorized, the Corporation shall dissolve by delivering to the Secretary of State for filing articles of dissolution stating the Corporation's domestic entity name, the principal office address of the Corporation's principal office, the date dissolution was authorized, and a statement that the number of votes cast for the proposal to dissolve by each voting group entitled to vote separately on the proposal was sufficient for approval by that voting group.

Section 4.4. Revocation. The Corporation may revoke its dissolution within 120 days after the effective date of the dissolution by the same action that authorized its dissolution pursuant to Section 4.1. After the revocation of dissolution is authorized, the Corporation shall revoke the dissolution by delivering to the Secretary of State for filing, within 120 days after the effective date of dissolution, articles of revocation of dissolution, together with its articles of dissolution, that state the domestic entity name of the Corporation, the date of the dissolution, the date the revocation of dissolution was authorized, and a statement that the number of votes cast for revocation of dissolution by each voting group entitled to vote separately on the proposal to dissolve was sufficient for approval by that voting group.

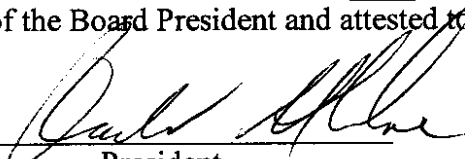
ARTICLE V  
Miscellaneous

Section 5.1. Amendment of Bylaws. The board of directors shall have the power to make, amend, and repeal these Bylaws at the annual meeting of the board or at any special meeting called for that purpose, unless otherwise provided in the Declaration, these Bylaws, or by law.

Section 5.2. Offices. The principal office of the Corporation shall be located at 590 28&1/2 Rd., Grand Junction, Colorado 81501. The Corporation may have such other offices, either within or outside the State of Colorado, as the board of directors may designate or as the business of the Corporation may require from time to time.



These Bylaws are hereby approved by the Board of Directors for the Pine View Estates Home Owners Association on the 17<sup>th</sup> day of December 2004, as evidenced by the signature of the Board President and attested to by the Secretary.

  
\_\_\_\_\_  
President

ATTEST:   
Secretary

**ARTICLES OF INCORPORATION  
OF  
PINE VIEW ESTATES HOMEOWNERS ASSOCIATION**

PURSUANT to Section 7-122-102 and Part 3 of Article 90 of Title 7, Colorado Revised Statutes (C.R.S.), these Articles of Incorporation are delivered to the Colorado Secretary of State for filing.

1. The entity name of the corporation is Pine View Estates Homeowners Association.
2. The street address of the corporation's initial registered office is 590 28.5 Road, Grand Junction, Colorado 81501, and the name of its initial registered agent at that office is Ronald A. Abeloe.
3. The address of the corporation's initial principal office is P.O. Box 1765 Grand Junction, Colorado 81502.
4. The name of the incorporator is Ronald A. Abeloe, whose address is P.O. Box 1765 Grand Junction, Colorado 81502.
5. The corporation will have voting members.
6. Distribution of assets upon dissolution shall be governed by the Colorado Revised Nonprofit Corporation Act.
7. The initial directors of the corporation are Ronald A. Abeloe, Warren Taylor Knight, Stanley E Bell, Christopher J Lundburg, and Kenneth Bauske .
8. The name of the individual who causes this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, is Ronald A. Abeloe, whose mailing address is c/o Michael A. Kuzminski, 744 Horizon Court, Suite 300, Grand Junction, Colorado 81506.