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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE CANYONS SUBDIVISION**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE CANYONS SUBDIVISION ("Declaration") is made and entered into this 5th day of April, 2004, by **DOUGLAS K. WILCOX** hereinafter referred to as the "Declarant."

RECITALS

A. Declarant is the owner of certain real property situated in Mesa County, Colorado, known as The Canyons Subdivision, according to the plat thereof recorded at Plat Book _____, Page _____, in Mesa County, Colorado, all as more specifically described as:

See Exhibit "A" attached hereto.

B. Declarant desires to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act ("Common Interest Act") for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvements, sale and ownership of said property.

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

**ARTICLE I
PROPERTY RIGHTS**

Section 1. Owners' Right of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall have a nonexclusive right to enjoy and use the open space tracts, irrigation system and easements located upon the Property and such right shall be appurtenant to and shall pass with the title to every Lot. The cost of irrigation water provided by Grand Valley Irrigation Company shall be billed to the Association, and use of such irrigation water is expressly subject to the requirements of Grand Valley Irrigation Company. Upon recording of this Declaration, Declarant shall convey title to all open space tracts, the irrigation water and easements located upon the Property to the Association, with the exception of Tracts A and B which shall be

conveyed to the Grand Valley Irrigation Company and Outlot A which shall remain in the ownership of Declarant.

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

a. The right of the The Canyons Subdivision Homeowners Association, Inc. ("Association") to promulgate and publish rules and regulations with which each Member shall strictly comply; and

b. The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

c. The right of the Association to close or limit the use of the irrigation system and easements while maintaining, repairing or making replacements thereto or in the event a Member has had his voting right suspended.

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

Section 4. Open Space Tracts. The Association shall own and maintain open space tracts conveyed to the Association, the irrigation water delivery system and the Grand Valley Irrigation Company water stock.

Section 5. Future Development. Lots 26 and 27, The Canyons Subdivision are reserved by the Declarant for future development at any time after ten (10) years from the recording of this Declaration. Upon the recording of a subdivision plat or plats creating lots on such future development parcels, such lots shall be subject to and benefitted by the terms and conditions of this Declaration.

Section 6. Mesa County Covenant Disclaimer. These covenants have not been reviewed or approved by Mesa County or any governmental entity. Therefore, all alterations of the property must comply with applicable zoning, code, and conditions of approval by the governing municipality.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine.

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

Section 3. Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Lots to Owners other than Declarant, two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, or two (2) years after the right to add new lots was exercised by Declarant. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon termination of the period of Declarant's control.

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

Section 5. Budget. Pursuant to §38-33.3-303(4), C.R.S., within 90 days after adoption of any proposed budget for the common interest community, the board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all lot owners and shall set a date for a meeting of the lot owners to consider the budget. The meeting shall be held within 30 days of the mailing of the notice. The proposed budget does not require the consent of the lot owners to be effective, but may be vetoed by a majority of the lot owners present in person or by proxy at the meeting if a quorum is present.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for common area maintenance and improvements, to be established and collected as hereinafter provided. The annual assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a

continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and lot thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property and, to the extent not performed by any applicable governmental entity, for the maintenance of the Common Area and of the irrigation water system serving the Property.

Section 3. Maximum Annual Assessment.

a. Until commencement of the second annual assessment period, the maximum annual assessment shall be Fifty Dollars (\$50.00) per Lot.

b. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment against each Lot shall be increased effective each Association fiscal year by the greater of: (i) ten percent (10%); or (ii) in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967 - 100), for the one (1) year period ending on the last day of October of the prior year. The aforesaid annual increase in the maximum annual assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then if the increase in the maximum annual assessment is to be computed by reference to the Consumer Price Index, as provided herein, such calculation shall be made by using a substantially comparable index designated by the Board of Directors of the Association.

c. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment may be increased by a vote of the Members over the amount established by the applications of the provisions of Section 3(b) above for the next succeeding Association fiscal year and at the end of that year, for each succeeding Association fiscal year, provided that any such increase shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of such meeting setting forth the purpose therefor.

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

Section 4. Rate of Assessment. Annual assessments shall be fixed at a uniform rate for all Lots and shall be allocated to each Lot on the basis of a fractional share per Lot, the numerator of which fraction shall be one and the denominator of which shall be the number of Lots contained within the Property, and shall be in an amount sufficient to meet the expected needs of the Association.

Section 5. Date of Commencement of Annual Assessments. The initial annual assessment shall commence on the first day of the month following conveyance of the first Lot, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than monthly, provided that the first annual assessment shall be adjusted according to the number of months in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 6. Reserve Accounts. The Association shall have the right to maintain adequate reserve fund accounts out of the annual assessments for the repair and replacement of those elements of Association property that must be repaired or replaced on a periodic basis.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate established by the Association not exceeding 21% per year. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse or abandonment of his Lot.

Section 8. Lien for Assessments.

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

b. The statutory lien for assessments is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the statutory lien.

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

**ARTICLE IV
EXTERIOR MAINTENANCE**

Section 1. General. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and any fence on the boundary line of a Lot shall be the responsibility of the Owner(s) thereof.

Section 2. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article IV, in the event that the need for maintenance or repair of the Association Property is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article III of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which

assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

ARTICLE V ALLOWED USES

Section 1. General. All of said lots shall be used only for residential purposes. Only detached single family dwellings may be constructed on any lot, and only one per lot. Every dwelling shall have covered parking for no less than two cars. The front exterior of all residences shall be covered in stucco, rock or brick, or other material as approved by the ACCO.

Section 2. Driveways. Each private driveway shall have a driveway surface constructed sufficient to provide year-round access by emergency vehicles.

Section 3. Minimize Size. Each dwelling shall have minimum dwelling space in the first floor area, exclusive of open porches, patios, basements and garages of not less than 1,500 square feet.

Section 4. Temporary Structures. No structure of a temporary nature, such as a tent, garage, trailer house, barn, or other outbuilding or basement shall be used on any lot at any time as a residence, either temporarily or permanently. All structures shall be of new construction built on-site. No mobile, modular or manufactured housing shall be allowed.

Section 5. Re-Subdivision. No lot, other than Lots 26 and 27, shall be re-subdivided except for lot line adjustments where no additional lots are created.

Section 6. Trash. No lot shall be used or maintained as a dumping ground for rubbish or storage area for junk. Trash, garbage or other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed on any property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, or which may constitute a health hazard.

Section 7. Advertising. No signs, advertising devices or billboards shall be displayed within The Canyons Subdivision unless written approval thereof is granted by ACCO. With the exception of one "for sale" sign per lot, which shall not be larger than 18 inches by 24 inches, and except for signs used by the Developer for subdivision advertisement and signs used by builders to advertise during the building and sale period. Political signage shall not be prohibited but is subject to regulation as to size, time limits and location as established by the ACCO. All signage shall be subject to regulation by the County of Mesa.

Section 8. Animals and Pets. Animals, livestock or poultry shall be limited by the restrictions of the Mesa County Land Use Code and these covenants. Dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. All

animals and pets must be controlled and contained so that they do not become a nuisance to the neighborhood and do not run at large or endanger or harass other animals or wildlife. Any uncontained pet must be on a leash under the control of a responsible individual. It is the desire of the Declarant that owners in The Canyons Subdivision and their children be able to participate in animal husbandry projects sponsored by organizations such as 4H, FFA and the Mesa County Fair.

Section 9. Antennas. No towers or antennas shall be erected on any lot which are higher than three (3) feet above the roof line of the highest structure on the lot. Satellite reception dishes shall be allowed that are less than 18 inches in diameter.

Section 10. Tanks. No elevated or underground tanks of any kind shall be permitted, except as required for propane and water storage. Propane and water storage tanks are limited to a maximum of 300 gallons.

Section 11. Lighting. All exterior lights and light standards shall be subject to approval by the ACCO for harmonious development and prevention of lighting nuisances. All exterior lights and light standards, shall be installed for the harmonious development, and the prevention of lighting nuisances. The preferred standard shall be opaque or diffused lenses and/or shades at 30 degrees to the horizon to cause lighting to be downcast.

Section 12. Recreational Vehicles. No snowmobiles, ATV's, go-carts, motorcycles, or similar recreational vehicles shall be operated in The Canyons Subdivision except as may be utilized for transportation to public roads.

Section 13. Hazardous Activities. No activities shall be conducted on the Property, except Lots 26 and 27, and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property; and no open fires shall be lighted or permitted on any property (including burning of trash or rubbish) except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed fireplace.

Section 14. Utilities. All utilities shall be buried underground from their primary source adjacent to the lot line at the owner's sole expense.

Section 15. Drainage. No modifications or alterations shall be made in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which shall obstruct, divert or otherwise alter such drainage except as approved by ACCO. There shall be no interference with the established drainage pattern over any Property unless adequate provision is made for proper drainage. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed. Positive drainage away from structures shall be maintained.

Section 16. Landscaping. ACCO shall review for approval all landscaping and site plans. Landscaping plans must be submitted for ACCO approval within six (6) months after home

construction is complete, which plans shall include a schedule of completion for not more than one (1) year after approval.

Section 17. Fencing. No fence of any kind shall be taller than six (6) feet and shall be subject to prior approval of the ACCO. Welded wire and open wire rectangular field fencing shall not be permitted unless specific written permission is given by the ACCO for use in containment of large animals and livestock.

Section 18. Mining. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 19. Plants. No owner shall permit any thing or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases or noxious insects, and all owners through the Association shall participate in the eradication of noxious weeds.

Section 20. Noise. No sound shall be emitted on any property which is unreasonably loud or annoying, and no odor shall be emitted on any property which is noxious or offensive to others.

Section 21. Irrigation. Due to concerns regarding water conservation, the Association shall have the exclusive right to control the irrigation system within the Subdivision. The Association shall own 70 shares of Grand Valley Irrigation Company stock. The 70 shares of Grand Valley Irrigation Company stock shall be transferred from the Declarant to the Association prior to the conveyance of any lot. Use of the irrigation system shall be controlled by the Association under rules and regulations adopted by the Association. The Association shall pay all fees and assessments to the irrigation company when due as necessary to prevent the loss of such water shares.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

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

from time to time in the discretion of the Declarant. The ACCO shall have the right to adopt Architectural Control Guidelines from time to time to assist owners in applying for ACCO approval.

Section 2. Prior Approval. No buildings or exterior improvements of any kind, including (without limitation) driveways leading to the various structures within The Canyons Subdivision shall be constructed, remodeled or altered in any fashion on any lands within The Canyons Subdivision, nor may any vegetation be altered or destroyed, nor any landscaping performed unless two (2) complete sets of plans and specifications for such construction or alteration or landscaping are submitted to and approved by the ACCO prior to the commencement of such work. All applications shall be submitted to the ACCO in writing, if the ACCO fails to take any action within thirty days after complete architectural plans and specifications for such work have been submitted to it, then all of such submitted plans and specifications shall be deemed to be approved. The ACCO may adopt rules and regulations for processing of such applications, including a reasonable processing fee.

Section 3. Plans. Plans and specifications submitted hereunder shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control and all other matters necessary for the ACCO to properly consider and make a determination thereon. Submittals shall include a minimum of:

- a. 1" = 10' scale site plan showing property boundaries, setbacks, building envelope, principal and accessory buildings, driveway location and width, surface drainage and fencing.
- b. Building elevations (four views) and floor plans.
- c. Engineered foundation plans by a Colorado licensed professional engineer.
- d. Samples of roof and external materials along with field, trim and accent colors for principal and accessory buildings.
- e. Landscape plans shall be in a 1" = 10' scale and shall include plant quantity and types, fencing, drainage, irrigation and other site improvements.

The ACCO shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

Section 4. Variance. Where circumstances such as topography, location of trees, brush, rock outcroppings, area aesthetic considerations, or other matters require or allow, the ACCO may, by two-thirds vote, allow reasonable variances as to any of these covenants, including required sizes of structures, setback or side yard requirements, on such terms and conditions as it shall require. Opinions of adjoining property owners shall be considered in any such decisions. Any setback variance shall also require the approval of Mesa County.

Section 5. Best Judgment. The ACCO shall exercise its best judgment to see that all improvements, structures, landscaping and all alterations on the land within The Canyons Subdivision conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control and finished ground elevations.

Section 6. Home Address Numbering. All residences shall position address numbers to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background and be no less than three (3) inches in height.

Section 7. Time. After approval of any plan by the ACCO, the same shall be completed with due diligence in conformity with conditions of approval, if any. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the ACCO may require the property to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACCO.

Section 8. Liability. The ACCO, the Developer, or any owner shall not be liable in damages to any person, corporation or association submitting any plans and specifications or to any owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any owner submitting or causing to be submitted any plans and specifications to the ACCO agrees and covenants that he will not bring any action or suit to recover damages against the ACCO, the Developer or any owner collectively, its members individually or its advisors, employees or agents.

Section 9. Procedures. The Architectural Control Committee shall approve or disapprove all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications, and other materials which the Committee may require in conjunction therewith. In the event that the Architectural Control Committee fails to approve or disapprove any request within thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

Section 10. Vote and Appeal. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article. An Owner may appeal the decision of the Architectural Control Committee to the Board of Directors if the Board is composed of different members than the Architectural Control Committee, and, in such event, the decision of the Board shall be final.

Section 11. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 12. Waivers. The approval or consent of the Architectural Control Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to

withhold or deny approval or consent by the Committee as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

ARTICLE VII GENERAL PROVISIONS

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

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

Section 3. Easements. Easements for the installation and maintenance of utilities, signage, irrigation and drainage facilities and for preservation of wildlife are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels. A 50-foot drainage and wildlife easement is established on Lot 5, as depicted on the Final Plat for The Canyons Subdivision, Filing 1. The maintenance of the wildlife easement falls under the jurisdiction of The Canyons Home Owners Association.

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

Section 5. Duration, Revocation, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except

as provided in subsections (b) and (c) of this Section 6, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than sixty-seven percent (67%) of the Members. Such amendment shall be effective when duly recorded in Mesa County, Colorado.

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

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

d. Pursuant to §38-33.3-217(7), C.R.S., the board has the right to petition the Mesa County District Court for amendments to this Declaration under certain circumstances.

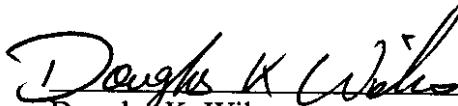
Section 6. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across any Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of the Lots. Any special Declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for the County of Mesa. The rights of Declarant reserved in this Section 7 shall expire five (5) years after the recording of this Declaration. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.

Section 7. Easement for Encroachments. If any portion of a structure encroaches upon any Common Area or upon any adjoining Lot, or if any portion of any Common Area encroaches upon

any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 8. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, c/o J. Richard Livingston, GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP, P.O. Box 398, Grand Junction, Colorado 81502, until such address is changed by the Association.

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

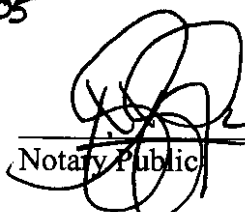


Douglas K. Wilcox

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 5th day of April, 2004, by Douglas K. Wilcox.

WITNESS my hand and official seal.
My commission expires: 10/27/05



Notary Public
620 Darren Way
Grand Junction, CO 81504

