*Montclair covenants-OCR.docx*

*OCRed June 16, 2014*

BK 3950 PG 842

SECOND AMENDMENT TO THE

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

OF

MONTCLAIR SUBDIVISION

THIS SECOND AMENDMENT TO THE DECLARATION is made and entered into this 27th day of July, 2005, by MONTCLAIR PROPERTIES, LLC, a Colorado limited liability company, hereinafter referred to as the "Declarant."

RECITALS:

WHEREAS, Declarant has heretofore caused to be recorded on

March 3, 2005, in Book 3847 at Page 385, and re-recorded

April 21, 2005, in Book 3880 at Page 369, of the records of the

Mesa County Clerk and Recorder's Office, a Declaration of

Covenants, Conditions and Restrictions of Montclair Subdivision,

and on July 26, 2005, in Book 3949 at Page 704, of the records of

the Mesa County Clerk and Recorder's Office, a First Amendment to

the Declaration of Covenants, Conditions and Restrictions of

Montclair Subdivision, hereinafter referred to as the

"Declaration";

WHEREAS, pursuant to Article IX, Section 7, “Duration,

Revocation and Amendment," Declarant, in its own right and as

holder of in excess of sixty—seven (67) percent Member ownership,

reserves the powers and privilege to modify and amend the

Declaration by executing and recording an instrument setting

forth the amendment; and

WHEREAS, Declarant desires to amend the Declaration in its

entirety to read as submitted herewith.

NOW, THEREFORE, in consideration of the recitals and

premises contained herein, the Declaration is fully amended to

read as follows:

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

OF

MONTCLAIR SUBDIVISION

THIS DECLARATION is made and entered into this 27th day of

July, 2005, by MONTCLAIR PROPERTIES, LLC, a Colorado limited

liability company.

RECITALS:

WHEREAS, the undersigned is the owner of certain real

property situate in Mesa County, Colorado, known as Montclair

Subdivision, according to the plat thereof recorded on the 13th

day of June, 2005, in the real property records of Mesa County,

Colorado, containing thirty-five (35) Lots as hereinafter

defined, including the easements and licenses appurtenant to, or

included in, the Property as shown on the plat; and

WHEREAS, the undersigned desires to create a planned

community upon the real Property described on Exhibit "A"

attached hereto and by this reference incorporated herein,

including the above-described Property, and to subject and place

upon the Property certain covenants, conditions, restrictions,

easements, reservations, rights of way, obligations, liabilities

and other charges set forth herein pursuant to the provisions of

the Colorado Common Interest Ownership Act, as amended, ("Common

Interest Act") for the purpose of maintaining the real Property,

of protecting the value and desirability of said Property and for

the purpose of furthering a plan for the improvement, sale and

ownership of said Property.

NOW, THEREFORE, the undersigned hereby declares that all of

the Property described above shall be held, maintained, sold and

conveyed subject to the following covenants, conditions,

restrictions, easements, rights of way, obligations, liabilities,

charges and other provisions set forth herein, which are for the

purpose of protecting the value and desirability of, and which

shall run with the above-described Property and be binding on all

parties having any right, title or interest in the above-

described Property or any part thereof, their heirs, personal

representatives, successors and assigns and shall inure to the

benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1. "Architectural Control Committee" shall mean and

refer to the Architectural Control Committee referred to in

Article V of this Declaration.

Section 2. "Association" shall mean and refer to Montclair

Subdivision Home Owners Association, Inc., a Colorado non-profit

corporation, its successors and assigns. The Association shall

act by and through its board of directors and officers. The

fiscal year of the Association shall end on December 31 of each

calendar year.

Section 3. “Common Area" shall mean and refer to all land

of the subdivision shown on the plat of Montclair Subdivision

recorded in the real property records of Mesa County, Colorado,

not defined as Dwelling Unit herein controlled and maintained by

the Association for the common use and enjoyment of its Members.

Section 4. "Declarant" shall mean and refer to MONTCLAIR

PROPERTIES, LLC, its successors and assigns, if such successors

or assigns should acquire more than one (1) unimproved Lot from

the Declarant for the purpose of development and resale, and said

person or entity shall first be designated by MONTCLAIR

PROPERTIES, LLC, as a Declarant for said purposes by a written

instrument duly recorded in the real property records of Mesa

County, Colorado.

Section 5. "Declaration" shall mean and refer to this

Declaration of Covenants, Conditions and Restrictions of

Montclair Subdivision, as the same may be amended from time to

time.

Section 6. "Dwelling Unit" shall mean and refer to any

residential improvement constructed within Montclair Subdivision.

Section 7. "First Mortgagee“ shall mean and refer to any

person named as a mortgagee or beneficiary under any first

mortgage or any successor to the interest of any such person

under such first mortgage having priority of record over all

other recorded liens except those governmental liens superior by

statute, i.e., general ad valorem tax liens and special

assessments.

Section 8. "Lot" shall mean and refer to any separate

numbered lot or plat of land shown upon any recorded subdivision

of the Property or any portion thereof, as the same may be

amended from time to time, together with all appurtenances and

improvements now or hereafter thereon, with the exception of the

Common Area as defined herein.

-2-

Section 9. "Member" shall mean and refer to each Owner of a

Lot that is subject to assessment hereunder and Declarant.

Membership in the Association shall be appurtenant to, and may

not be separated from, ownership of a Lot.

Section 10. "Owner" shall mean and refer to the record

owner, whether one (1) or more persons or entities, of fee simple

title to any Lot, which is a part of the Property, including

contract sellers, but excluding those having such interest merely

as security for the performance of an obligation. Owner, as

defined herein, shall further have an undivided one thirty-fifth

(1/35) interest in the Common Area identified in Section 3 of

this Article.

Section 11. "Property" shall mean and refer to that certain

real property described in Exhibit "A" to this Declaration,

together with such additions thereto, if any, as may hereafter be

brought within the jurisdiction of the Association.

ARTICLE II

Property Rights Subject to Association Rights and Duties

Section 1. Owner's Right of Enjoyment. The right of

enjoyment created hereby shall be subject to the right of the

Association to maintain all landscaping and grounds, not

otherwise defined herein as Dwelling Unit, and Common Area and to

promulgate and publish rules and regulations with which each

Member shall strictly comply, including but not limited to

irrigation water management, pumps and utilization.

Section 2. Extent of Owner's Right. The right of enjoyment

created hereby shall be subject to the following:

a. The right of the Association to promulgate and

publish rules and regulations with which each Member shall

strictly comply, including but not limited to irrigation water

use schedule.

b. The right of the Association, as provided in its

Articles of Incorporation and its Bylaws, to suspend the voting

rights of a Member for any period during which any assessment

against such Member's Lot remains unpaid and, for a period not to

exceed sixty (60) days, for any infraction of its published rules

and regulations.

c. The right of the Association to close or limit the

use of the Common Area while maintaining, repairing and making

replacements in the Common Area.

-3-

d. The right and obligation of the Association to

landscape, irrigate and maintain the Common Area.

Section 3. Delegation of Use. Any Owner may delegate, in

accordance with the Bylaws, an Owner's right of enjoyment to

Common Area to the members of an Owner's family, an Owner's

tenants or an Owner's contract purchasers who reside on an

Owner's Lot.

ARTICLE III

Membership and Voting Rights: The Association

Section 1. Membership. Every Owner of a Lot, which is

subject to assessment hereunder, shall be a Member of the

Association. Membership shall be appurtenant to and may not be

separated from ownership of any Lot. Each Lot shall be entitled

to one (1) 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 one (1) or more

directors (the "Board") initially.

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 seventy-five (75) percent of the Lots to

Owners other than Declarant or two (2) years after the last

conveyance of a Lot by Declarant in the ordinary course of

business. 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.

Not later than sixty (60) days after conveyance of twenty—five

(25) percent of the Lots to Owners other than Declarant, at least

one (1) member and not less than twenty—five (25) percent of the

members of the Board will be elected by Owners other than

Declarant. Not later than sixty (60) days after the conveyance

of fifty (50) percent of the Lots to Owners other than Declarant,

not less than seventy-five (75) percent of the members of the

Board will be elected by Owners other than Declarant. Not later

than the termination of the period of Declarant's control as

provided above, the Owners (including Declarant) shall elect a

Board of at least three (3) members, at least a majority of whom

must be Owners other than Declarant. Within sixty (60) days

after Owners other than Declarant elect a majority of the Board,

Declarant shall deliver to the Association all Property of the

Owners and the Association held or controlled by Declarant,

including without limitation those items specified in Section

-4-

303(9) of the Common Interest Act.

Section 4. Officers of the Association. The officers of

the Association shall be as set forth in the Bylaws of the

Association.

ARTICLE IV

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of

Assessments. Each Owner of any Lot, including Declarant, by

acceptance of a deed therefor, whether or not it shall be so

expressed in such deed, is deemed to covenant and agree to pay to

the Association: (a) annual assessments or charges; (b) special

assessments; (c) reconstruction assessments; such assessments to

be established and collected as hereinafter provided; and (d)

assessments imposed by enforcement of Sections 5 or 6 of Article

VI. The annual, special and reconstruction assessments, together

with interest, late charges, costs and reasonable attorney 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 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 (1) 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, State of 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 recording any notice

of lien shall be added to the assessment for the Lot against

which it is recorded 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 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 of America. The acceptance of a deed to land subject to

-5-

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 make payment to

promote the health, safety and welfare of the residents and to

maintain any and all water delivery systems to the subdivision,

maintenance of all grounds, improvements and landscaping,

exclusive of Dwelling Units only, trash removal, recreational

areas and insurance policies required.

Section 3. Maximum Annual Assessments.

a. Until commencement of the second annual assessment

period, the maximum monthly assessment for each Lot shall be

Twenty-Five Dollars ($25.00). The first monthly assessment shall

be paid thirty (30) days after closing and shall continue

thereafter. Effective upon the second and each subsequent

Association fiscal year, the maximum monthly assessment shall not

increase more than ten (10) percent of the previous year's annual

assessment based on a May—to—May calendar year, prorated at

closing.

b. 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 subsection

(a) 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 the meeting duly called for this purpose, written notice

of which shall be sent to all Members not less than thirty (30)

days or more than sixty (60) days in advance of such meeting

setting forth the purpose thereof.

c. 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.

d. Within thirty (30) days after adoption of any

proposed budget for the Association, the Board of directors shall

mail, by ordinary, first-class mail, or otherwise deliver a

summary of the budget to all the Owners and shall set a date for

a meeting of the Owners to consider ratification of the budget

not less than fourteen (14) or more than sixty (60) days after

mailing or other delivery of the summary. Unless at the meeting

a majority of all Owners rejects the budget, the budget shall be

-6-

ratified, whether or not a quorum of Members is present. In the

event that the proposed budget is rejected, the periodic budget

last ratified by the Owners shall be continued until such time as

the Owners ratify a subsequent budget proposed by the Board.

e. The Association shall maintain an adequate reserve

fund out of the annual assessments for the repair and replacement

of those elements of the Common Area that must be repaired or

replaced on a periodic basis.

Section 4. Reconstruction Assessments. In addition to the

annual and special assessments authorized in this Article IV, the

Association may levy a reconstruction assessment for the purpose

of repair or reconstruction of damaged or destroyed improvements.

All such reconstruction assessments shall be equal to the net

amount of the cost of repair or reconstruction of such

improvements and shall be calculated by subtracting from the

total cost of repair or reconstruction the sum of the insurance

proceeds awarded for the damage or destruction thereof, if any,

and shall be set equally against each Lot. Such reconstruction

assessments shall be due and payable as provided by resolution of

the Board of directors but not sooner than thirty (30) days after

written notice hereof; provided, however, that, in appropriate

circumstances, the Association may proceed directly against any

Owner pursuant to Section 1 of this Article for any such amount.

Section 5. Notice and Quorum for Any Action Authorized

Under Section 3. Written notice of any meeting called for the

purpose of taking any action requiring a vote of the Members

authorized under Section 3 of this Article shall be sent to all

Members not less than thirty (30) days or more than sixty (60)

days in advance of the meeting. At the first such meeting

called, the presence of Members or of proxies entitled to cast

sixty (60) percent of the Members shall constitute a quorum. If

the required quorum is not present, another meeting may be called

subject to the same notice requirement, and the required quorum

at the subsequent meeting shall be one half (1/2) of the required

quorum at the preceding meeting. No such subsequent meeting

shall be held more than sixty (60) days following the preceding

month.

Section 6. Rate of Assessment. Annual and special

assessments shall be fixed at a uniform rate for all Lots and

shall be allocated to each Lot on the basis of a fractional share

per Lot, the numerator of which fraction shall be one (1) 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.

-7-

Section 7. Effect of Non—Payment 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 of twenty—one (21) percent per annum, or at such

lesser rate as may be set from time to time by the Association,

and the Association may also assess a monthly late charge

thereon. The Association may bring an action at law against the

Owner personally obligated to pay the same or foreclose the lien

against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment

and a reasonable attorney 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 non-

use of the irrigation distribution system or abandonment of an,

owner's Lot.

Section 8. Lien for Assessments.

a. Under the Common Interest Act, the Association has

a statutory lien on a Lot for any assessment 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, attorney fees, fines and interest charged pursuant to

this Declaration or the Common Interest Act are enforceable as

assessments. If an assessment is payable in installments, the

full amount of the assessment is a lien from the time the first

installment thereof becomes due.

b. The statutory lien for assessments is prior to all

other liens and encumbrances on a Lot except (i) liens and

encumbrances recorded before the recordation of this Declaration;

(ii) a lien of a first mortgage, which was recorded before the

date on which the assessment sought to be enforced became

delinquent; and (iii) liens for real estate taxes and other

governmental assessments or charges against the Lot.

Notwithstanding the foregoing, the statutory lien for assessments

is also prior to the lien of a first mortgage to the extent of an

amount equal to the assessments based on a periodic budget

adopted by the Association, which would have become due, in the

absence of any acceleration, during the six (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 of an action or a non—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

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 attorney fees incurred in connection with

the preparation and recording of such claim shall be assessed

-8-

against the Owner's Lot as a default assessment.

ARTICLE V

Architectural Control Committee

Section 1. Approval. No building or exterior improvement

of any kind shall be erected, placed or altered on any Lot until

the construction plans and specifications and a plan showing the

location of the structure or improvement have been approved by

the Architectural Control Committee as to quality of workmanship

and materials, harmony of exterior design, materials and color

scheme with existing structures and as to location with respect

to topography and finished grade elevation.

Section 2. Composition of Committee. The Architectural

Control Committee shall consist of three (3) or more persons

appointed by the Board of directors of the Association; provided,

however, that until Declarant has conveyed all Lots to Owners

other than the Declarant or until three (3) years after the date

of recording of this Declaration in the records of the Mesa

County, Colorado, Clerk and Recorder's Office, whichever occurs

earliest, Declarant shall appoint the Architectural Control

Committee. A majority of the Architectural Control Committee

may, from time to time, designate a representative to act for it.

Reasonable effort shall be made to have a licensed architect as

an Architectural Control Committee member. The power of the

Declarant to "appoint," as provided herein, shall include without

limitation the power to: initially constitute the membership of

the Architectural Control Committee, appoint member(s) to the

Architectural Control Committee upon the occurrence of any

vacancy therein, for whatever reason, remove any member of the

Architectural Control Committee, with or without cause, at any

time, and appoint the successor thereof; and each such

appointment may be made for such term(s) of office, subject to

the aforesaid power of removal, as may be set from time to time

in the discretion of the Declarant. All improvements within the

Property constructed by Declarant during the period in which it

appoints the Architectural Control Committee shall be deemed

approved by the Architectural Control Committee without the

issuance of any writing evidencing such approval. The

Architectural Control Committee shall have the right to adopt

architectural control guidelines from time to time to assist

Owners in applying for Architectural Control Committee approval.

Section 3. Landscaping. Maintenance of all Common Area and

landscaping areas shall be the responsibility of the Association

and subject to Association rules and regulations.

Section 4. Submittals. Duplicate copies of plans and

specifications relating to an improvement shall be submitted to

the Architectural Control Committee for review and final

-9-

approval. Plans and specifications shall contain without

limitation the plot plans showing layout, including setbacks,

flow and manner of surface drainage, finish and natural grade

elevations, floor plans showing overall dimensions, roof plans

showing pitch, roof materials, color, exterior elevations showing

doors, windows and exteriors materials and colors and a

perspective sketch, if requested, and other details necessary to

explain any feature or component of the improvements.

Section 5. Plan Approval. The Architectural Control

Committee's approval or disapproval as required in this

Declaration shall be in writing. In the event the Architectural

Control Committee or its designated representative fails to

approve or disapprove within thirty (30) days after sufficient

plans and specifications have been submitted to it, approval will

not be required, and the related covenants shall be deemed to

have been fully complied with. Two (2) complete sets of finished

plans and specifications for construction shall be submitted at

time of application, one (1) copy of which will be retained by

the Architectural Control Committee for its records. Approval or

disapproval as required in this Declaration shall be determined

by a majority vote of the members of the Architectural Control

Committee.

Section 6. Non-Liability. The Architectural Control

Committee and the members thereof shall not be liable for damage

to any person submitting requests for approval or to any Owner

within the Property by reason of any action, failure to act,

approval, disapproval or failure to approve or disapprove with

regard to such request. The actions of the Architectural Control

Committee shall be deemed conclusively binding upon the Owners.

Section 7. Non—Compensation. Neither the members of the

Architectural Control Committee nor such representatives as it

may designate shall be entitled to any compensation for services

performed pursuant to this Declaration.

Section 8. Standards. In addition to all the other

criteria herein set forth, the Architectural Control Committee

shall generally determine whether the proposed improvement will

protect the then value and future values of the Property located

in the subdivision and to be erected therein. The Architectural

Control Committee shall, in the exercise of its judgment and

determination, use reason and good faith. Among the other

considerations applied, the Architectural Control Committee will

determine and base its approval or rejection upon the fact of

whether said proposed improvements are reasonably compatible with

other improvements erected and planned in the subdivision. The

Architectural Control Committee shall evaluate the proposed

construction as to location on the Property, harmony of exterior

design, materials and colors with existing Dwelling Units and

-10-

surroundings, finished grade evaluation and other criteria as it

deems necessary for the purposes set forth in this section.

Section 9. Exterior Surfaces. All exterior building

materials used must be approved by the Architectural Control

Committee. Exterior design, materials and color scheme must be

in harmony with the exterior design, materials and color scheme

of existing structures on the Property. Samples of material and

colored chips are to be included at the time of planned submittal

for the Architectural Control Committee review.

Section 10. Alterations. An Owner shall not change,

modify, paint, decorate, alter or in any way make any change to

any exterior wall, surface, roof, deck, patio, entry, paving or

other improvements without the approval of the Architectural

Control Committee.

Section 11. 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 12. 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 13. 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

Architectural Control Committee as to any application or other

matters whatsoever subsequently or additionally submitted for

approval or consent hereunder.

ARTICLE VI

Exterior Lot and Common Area Maintenance

Section 1. General. Except as otherwise provided herein,

the maintenance and repair of the exterior of the Dwelling Units

and improvements constructed thereon shall be the responsibility

of the Association.

Section 2. Lot Maintenance. The Owners shall keep,

maintain and repair their Lots, buildings and improvements in a

neat, clean, cultivated, attractive and well—maintained

condition, free from the accumulation of trash or debris or

-11-

visual deterioration. The Association shall maintain all

landscaping and vegetation of the Property, including Common

Area, maintenance of same and improvements and amenities thereon.

Section 3. Maintenance of Landscaping. The Owners shall

not cause or permit any damage, deterioration or the accumulation

of trash and debris upon the grassed or landscaped areas.

Landscaping maintenance shall be the responsibility of the

Association and shall be funded by assessments and/or monthly

charges to Owners for trash removal, electrical service for

irrigation, maintaining recreational areas and insurance policies

required.

Section 4. Ownership. Each Owner shall be entitled to

exclusive ownership of his or her Lot subject only to Association

and Architectural Control Committee duties and obligations

thereto. Each Owner may use the general Common Area in

accordance with the purpose for which it is intended without

hindering or encroaching upon the lawful rights of the other

Owners.

Section 5. Maintenance of Common Area and Irrigation

System. To the extent not performed by the applicable

governmental entity or Owner, the Association shall be

responsible for the landscaping and maintenance of the Common

Area, including but not limited to repair of signs, fences, stone

columns, irrigation equipment, lighting and electrical fixtures

and equipment and plants. No Owner shall, in whole or part,

change the landscaping, grade or fences or in any way change the

retaining wall on any portion of the Common Area. The

Association shall be responsible for on— and off—site maintenance

of irrigation, landscaping, drainage and storm—water systems. If

for any reason the Association does not maintain the irrigation

system, water retention areas, water storage facilities, storm-

water systems, parks or other elements comprising the Common Area

subject to the Association's rights and obligations of

maintenance and control, the Town of Palisade shall have the

right of entry to the Common Area to maintain, repair or correct

the situation and bill the Association for this service. Any

unpaid amounts due the Town of Palisade shall become a lien on

the individual Lots as outlined in Article IV of this

Declaration.

Section 6. Owner's Negligence. Notwithstanding anything to

the contrary contained in this Article VI, in the event that the

need for maintenance or repair of the Common Area is caused by

the willful or negligent act or omission of any Owner or by the

willful or negligent act or omission of any member of an Owner's

family or by a guest or invitee of an 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

-12-

Association for such maintenance, repair or reconstruction shall

be added to and become part of the assessment to which such

Owner's Lot is subject and shall become a lien against such

Owner's Lot as provided in Article IV of this Declaration. A

determination of the negligence or willful act or omission of any

Owner or any member of an Owner's family or a guest or invitee of

any Owner and the amount of the Owner's liability therefor shall

be determined by the Association at a hearing after notice to the

Owner, provided that any such determination that assigns

liability to any Owner pursuant to the terms of this Section may

be appealed by said Owner to a court of law.

ARTICLE VII

Restrictions

Section 1. General Plan. It is the intention of the

Declarant to establish and impose a general plan for the

improvement, development, use and occupancy of the Property in

order to enhance the value, desirability and attractiveness of

the Property and to promote the sale thereof.

Section 2. Restrictions Imposed. The Declarant hereby

declares that all of the Property shall be held and shall

henceforth be sold, conveyed, used, improved, occupied, owned,

resided upon and hypothecated, subject to the following

provisions, conditions, limitations, restrictions, agreements and

covenants, as well as those contained elsewhere in this

Declaration.

Section 3. Use of Common Area.

a. No use shall be made of the Common Area that will

in any manner violate the statutes, rules or regulations of any

governmental authority having jurisdiction over the Common Area.

b. No Owner shall engage in any activity that will

temporarily or permanently deny free access to any part of the

Common Area to all Members or shall any Owner place any structure

or fence, except those installed by Declarant, whatsoever upon

the Common Area.

c. The use of the Common Area shall be subject to such

rules and regulations as may be adopted from time to time by the

Board of directors of the Association.

d. Selected Dwelling Units contain overhang or balcony

areas, which are designated as "restrictive common areas" and

access to which is limited by the sole prerogative of the Owner.

e. During initial construction only of a Dwelling

-13-

Unit, Lot Owners may extend non—covered patios up to six (6) feet

into the Common Area.

Section 4. Residential Use. Lots shall be used for

residential purposes, including all ancillary uses permitted by

applicable zoning ordinances.

Section 5. Lots to be Maintained. Except during any period

of construction or reconstruction, each Lot at all times shall be

kept in a clean, sightly and wholesome condition. No trash,

litter, junk, boxes, containers, bottles, cans implements,

machinery, lumber or other building materials shall be permitted

to remain exposed upon any Lot so that the same are visible from

any neighboring Lot, the Common Area or any street.

Section 6. Temporary Structures. Except as hereinafter

provided, no structure of a temporary character, including but

not limited to a house trailer, tent, shack or outbuilding, shall

be placed or erected upon any Lot, and no Dwelling Unit shall be

occupied in any manner at any time prior to its being fully

completed or shall any Dwelling Unit, when completed, be in any

manner occupied until made to comply with all requirements,

conditions an restrictions herein set forth; provided, however,

that during the actual construction, alteration, repair or

remodeling of a Dwelling Unit, necessary temporary structures for

storage of materials may be erected and maintained by the person

doing such work. The work of constructing, altering or

remodeling any Dwelling Unit shall be prosecuted diligently from

the commencement thereof until the completion thereof.

Section 7. Miscellaneous Structures.

a. No advertising or signs, with the exception of

political signs, of any character shall be erected, placed,

permitted or maintained on any Lot other than a name of the

occupant and a street number, and except for a "For Sale" or "For

Rent" sign not to exceed five (5) square feet; notwithstanding

the foregoing, signs, advertising or billboards used by the

Declarant or its designees in connection with the sale of Lots or

otherwise in connection with any development of the Property

shall be permissible, provided that such use by the Declarant or

its designees shall not unreasonably interfere with any Owner's

use and enjoyment of an Owner's Lot, the Common Area or with an

Owner's ingress or egress from a public way to the Common Area or

an Owner's Lot.

b. Except as may otherwise be permitted by the

Architectural Control Committee, all antennae, including

satellite receivers, shall be installed inside any Dwelling Unit.

-14-

Section 8. Nuisances. No nuisance shall be permitted on or

within the Property or any use, activity or practice that is the

source of annoyance or embarrassment to or that offends or

disturbs any residents of the Property or that interferes with

the peaceful enjoyment or possession and proper use of the

Property or any portion thereof by its residents. As used

herein, the term "nuisance" shall not include any activities of

Declarant or its designees that are reasonably necessary to the

development of and construction on the Property; provided,

however, that such activities of the Declarant or its designees

shall not unreasonably interfere with any Owner's use and

enjoyment of an Owner's Lot or the Common Area or with any

Owner's ingress and egress to or from an Owner's Lot and a public

way.

Section 9. Underground Utility Lines. All electric, television, radio and telephone line installments shall be placed

underground, except that during the construction of any Dwelling

Unit, the contractor or builder may install a temporary overhead

utility line, which shall be promptly removed upon completion of

construction.

Section 10. Rules and Regulations. Rules and regulations

concerning and governing the Property or any portion thereof may

be adopted, amended or repealed, from time to time by the Board

of directors of the Association and the Board of directors may

establish and enforce penalties for the infraction thereof,

including without limitation the levying and collecting of fines

for the violation of any of such rules and regulations.

Section 11. No Mining or Drilling. No mining, drilling,

quarrying, digging or excavating for the purpose of testing for

the existence of, or extracting oil, gas, coal or minerals of any

kind shall be performed upon or within the Property.

Section 12. Drainage. Release of contaminants or hazardous

materials into the subdivision drainage is prohibited, and the

Association shall indemnify and hold harmless Palisades

Irrigation District from any such contamination.

Section 13. Vehicle Parking. No Lot roadway or easement

shall be used as a parking, storage or accommodation area for any

type of junk vehicles or vehicles under repair. No vehicles,

boats, campers, trailers, snowmobiles, motorcycles or other

recreational vehicles, devices or equipment or vehicles used for

business (other than normal passenger-type vehicles) shall be

stored or permitted to remain on the Property unless garaged.

Recreational vehicles, boats and trailers shall not be parked on

the streets adjacent to each Lot. However, oversized parking for

recreational vehicles, boats and trailers may be incorporated

into each Lot upon application to and approval by the

-15-

Architectural Control Committee pursuant to Article V hereof.

Section 13. No Annoying Light, Sounds or Odors. No light

shall be emitted from any Lot that is unreasonably bright or

causes unreasonable glare when viewed from the street, adjacent

property or Common Area. No sound shall be emitted from any Lot

that is noxious or offensive to others.

Section 14. Garbage and Refuse Disposal. No garbage,

refuse, rubbish or cuttings shall be deposited on any street, the

Common Area or any Lot unless placed in a suitable container

suitably located solely for the purpose of garbage pick up. All

containers shall be removed from the street the same day and

returned to its screened area. All equipment for the storage or

disposal of such material shall be kept in a clean and sanitary

condition. No garbage or trash cans or receptacles shall be

maintained in any exposed or unsightly manner. All trash

receptacles shall be screened as provided in the Architectural

Control Committee guidelines.

Section 15. Leases. The term "lease," as used herein,

shall include any agreement for the leasing or renting of a Lot

or any portion thereof and shall specifically include without

limitation a month-to-month rental. Any Owner shall have the

right to lease an Owner's Lot under the following conditions:

a. All leases shall be in writing.

b. All leases shall provide that the terms of the

lease and lessee‘s occupancy of the Lot shall be subject in all

respects to the provisions of this Declaration and the Articles

of Incorporation, Bylaws and rules and regulations of the

Association and that any failure by the lessee to comply with any

of the aforesaid documents in any respect shall be default under

the lease.

c. No lease shall be for less than thirty (30) days.

Section 16. Management Agreement and Other Contracts.

a. The Association may utilize professional management

in performing its duties hereunder. Any agreement for

professional management of the Association's business or any

contract providing for the services of Declarant shall have a

maximum term of three (3) years and shall provide for termination

by either party thereto, with or without cause and without

payment of a termination fee, upon thirty (30) days‘ prior

written notice.

b. Subject to subsection l6(a) of this Article, any

contracts, licenses or leases entered into by the Association

-16-

while the Declarant controls the Association shall provide for

termination by either party thereto, with or without cause and

without payment of a termination fee, at any time after

termination of the Declarant's control or the Association, upon

thirty (30) days‘ prior written notice.

c. Notwithstanding anything to the contrary contained

in this Section 16, the Association may enter into contracts,

licenses and leases in violation of subsection 16(b) of this

Article upon a waiver of any requirements contained-herein by the

Federal National Mortgage Association.

Section 17. Trash Removal. Each Dwelling Unit shall have

access to and utilization of all trash bins and receptacles

located on the Property.

ARTICLE VIII

First Mortgages

Section 1. Member and First Mortgages Approval. The

Association shall not, unless it has obtained the prior written

consent of at least sixty-seven (67) percent of the Members and

sixty-seven (67) percent of the First Mortgagees [based upon one

(1) vote for each first mortgage owned]:

a. By act or omission, change, waive or abandon any

scheme of restrictions or enforcement thereof, as set forth in

this Declaration regarding the design or maintenance of the Lots

or improvements thereon.

b. Change the method of determining the obligations,

assessments, dues or other charges, which may be levied against

an Owner.

c. Add or amend any material provisions of this

Declaration, the Articles of Incorporation or Bylaws of the

Association, which establish, provide for, govern or regulate any

of the following, provided that any First Mortgagee who receives

a written request to approve any additions or amendments to any

such documents and who does not deliver or post to the requesting

party a negative response within thirty (30) days after receipt

of such a request shall be deemed to have approved such request

and provided that such additions or amendment shall not be

considered material if they are for the purpose of correcting

technical errors or for clarification only, the Articles of

Incorporation or Bylaws of the Association made as a result of

destruction, damage or condemnation of the Property or the

-17-

improvements thereon:

i. Voting;

ii. Assessments, assessment liens or subordination of such liens;

iii. Insurance, including but not limited to fidelity bonds;

iv. Rights to use of the irrigation distribution system;

v. Responsibility for maintenance and repair of any portion of the irrigation distribution system;

vi. Expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the

Property;

vii. Convertibility of Lots or Dwelling Units constructed thereon;

viii. Leasing of Lots or Dwelling Units constructed thereon;

ix. Any provisions which are for the express benefit of First Mortgagees or insurers or guarantors of first mortgages.

Section 2. Notice of Action. Upon written request to the

Association, identifying the name and address of the First

Mortgagee or insurer or guarantor of the first mortgage and the

residence address of Property, which is subject to such first

mortgage, each such First Mortgagee or insurer or guarantor of

such a first mortgage shall be entitled to timely written notice

of:

a. Any condemnation loss or casualty loss, which

affects a material portion of the Property or any Lot subject to

a first mortgage held, insured or guaranteed by such First

Mortgagee, insurer or guarantor of a first mortgage.

b. Any delinquency in the payment of assessments or

charges owed to the Association by the Owner of the Lot subject

to a first mortgage held, insured or guaranteed by such First

Mortgagee, insurer or guarantor of any default by such Owner in

any obligation under the Declaration, Articles of Incorporation

or Bylaws of the Association and the Board of directors of the

Association has actual knowledge of such default, when such

delinquency and/or default remains uncured for a period of sixty

(60) days.

c. Any lapse, cancellation or material modification of

any insurance policy or fidelity bond maintained by the

-18-

Association.

d. Any proposed action, which would require the

consent of a specified percentage of First Mortgagees as provided

in this Article VII.

ARTICLE IX

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 of the violation

of any provision of the aforesaid documents in any action

instituted or maintained under this Section, and the prevailing

party shall be entitled to receive its costs and reasonable

attorney fees incurred pursuant thereto, as well as any and all

other sums awarded by the court. Failure by the Association or

any Owner to enforce any covenant or restriction herein contained

shall in no event be deemed a waiver of the right to do so

thereafter.

Section 2. Severability. Invalidation of any of the

covenants, restrictions or other provisions contained in this

Declaration by judgment or court order shall in no way affect or

limit any other provisions, which shall remain in full force and

effect.

Section 3. Easements. Easements for the installation and

maintenance of utilities, irrigation and drainage facilities are

reserved as shown on the recorded plat of the Property, or any

portion thereof, or other duly recorded instrument(s). Within

these easements, no structure, planting or other material shall

be placed or permitted to remain, which may damage or interfere

with the installation and maintenance of utilities or which may

change the direction of flow of drainage channels in the

easements. Declarant hereby reserves the right to enter upon the

Property to correct any flow of water and to establish and re-

establish drainage channels.

Section 4. Common—Wall Easement. Each Dwelling Unit Owner

shall have, in common with all other Dwelling Unit Owners whose

Dwelling Units are abutted by a party wall, an easement to use

-19-

all pipes, flues, ducts, cables, wires, conduits, public utility

lines or other common elements located within the party wall and

serving a Dwelling Unit and an easement for the continuance of

any encroachment by an Owner's Dwelling Unit on an adjoining

Dwelling Unit or on any common element, existing as a result of

construction of the Dwelling Units or which may come into

existence thereafter as a result of the Dwelling Units settling

or shifting or as a result of restoration of the Dwelling Units

or a Dwelling Unit after damage by fire or other casualty.

Section 5. 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 6. Expansion.

a. Supplemental Declarations and Supplemental Plats.

Such expansion may be accomplished by the recording by Declarant

in the Mesa County, Colorado, Clerk and Recorder's Office one (1)

or more supplemental declarations setting forth the lots and

other real property, if any, to be included in the expansion,

together with any covenants, conditions, restrictions and

easements particular to such property. The expansion may be

accomplished in stages by successive supplements or in one (1)

supplemental expansion.

b. Expansion of Definitions. In the event of such

expansion, the definitions used in this Declaration shall be

expanded automatically to encompass and refer to the Property

subject to this Declaration as so expanded. For example, "Lot"

shall mean the Lot described in Section 8 of Article I plus any

additional lots added by a supplemental declaration or

declarations, and reference to this Declaration shall mean this

Declaration as supplemented. All conveyances of Lots shall be

effective to transfer rights in the Property as expanded. The

recordation in the real property records of Mesa County,

Colorado, of a supplemental parcel map or maps incident to any

expansion shall operate automatically to grant, transfer and

convey to the Association any new Common Area added to the

Property as the result of such expansion. The allocation for

assessments shall be amended pro rata to reflect the increase in

the number of lots added to the Declaration.

c. Declaration Operative to New Lots. The new lots

shall be subject to all of the terms and conditions of this

Declaration and of any supplemental declaration upon placing the

supplemental parcel map(s) depicting the expansion property and

supplemental declaration(s) of public record in the real property

-20-

records of Mesa County, Colorado.

d. No Objection to Expansion. No Member of the

Association shall have any right to the exercise of the

developmental right set forth above including but not limited to

the inclusion of a maximum of thirty—five (35) Dwelling Units.

Section 7. Duration, Revocation and Amendment.

a. Each and every provision of this Declaration shall

run with and bind the land for a term of twenty (20) years from

the date of recording of this Declaration, after which time, this

Declaration shall be automatically extended for successive

periods of ten (10) years each. Except as provided in Article

VII hereof and in subsections (b) and (c) of this Section 7, 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 (67)

percent of the Members or by petition to the Mesa County District

Court as defined in CRS 38—33.3—2l7(7), as amended. Such

amendment shall be effective when duly recorded in the real

property records of 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 of the

Association.

C. Declarant hereby reserves and is granted the right

and power to record technical amendments to this Declaration, the

Articles of Incorporation or 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 8. Rights of Declarant Incident to Construction.

An easement is hereby retained by and granted to Declarant, its

successors and assigns for access, ingress and egress over, in,

upon, under and across the Common Area, including but not limited

to the right to store materials thereon and to make such other

use thereof as may be reasonably necessary or incidental to

Declarant's or its designees' construction on the Property;

-21-

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, an Owner's 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

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 records of the Mesa

County, Colorado, Clerk and Recorder's Office. The rights of

Declarant reserved in this Section 8 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 that

is ten (10) years from the recording date of this Declaration,

unless otherwise provided herein.

Section 9. Easement for Encroachments. If any portion of a

structure encroaches upon the Common Area or upon any adjoining

Lot or if any portion of the Common Area encroaches upon any Lot,

including any future encroachments, arising or resulting from the

repair or reconstruction of a structure subsequent to its damage,

destruction or condemnation, a valid easement on the surface and

for subsurface support below such surface and for the maintenance

of same, so long as it stands, shall and does exist.

Section 10. Registration by Owner of Mailing Address. Each

Owner shall register an Owner's 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 postage prepaid by certified mail, return receipt

requested, addressed to the name of the Owner at such registered

mailing address.

-22-

IN WITNESS WHEREOF, the undersigned Declarant has hereunto

set its hand and seal the day and year first above written.

MONTCLAIR PROPERTIES, LLC

By:

B&B CONSTRUCTION SERVICES, INC.,

Manager

ATTEST: By

Robert D. Bower, President

Robert P. Cucchetti, Secretary

STATE OF COLORADO )

) ss.

COUNTY OF MESA )

The foregoing instrument was acknowledged before me this

27th day of July, 2005, by ROBERT D. BOWER as President

of B&B CONSTRUCTION SERVICES, INC., a Colorado corporation, Manager of MONTCLAIR PROPERTIES, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: March 3, 2006.

[original signed by Caren M. Brumbaugh]

Notary Public

EXHIBIT "A"

Lots 1 through 8, inclusive, in Block 1,

Lots 1A through 9A, inclusive, in Block 1,

Lots 1 through 12, inclusive, in Block 2,

Lots 1B through 6B, inclusive, in Block 2, and

Tract A, Tract B and Tract C of

of MONTCLAIR SUBDIVISION,

County of Mesa,

State of Colorado.

-23-