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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
INDEPENDENCE VALLEY SUBDIVISION - FILING NO. TWO

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Independence Valley Corporation, a Colorado corporation, ("Declarant") is the owner of all of the real property ("Property") located in Mesa County, Colorado, legally described as follows:

Lots 1 through 14, Block 1; Lots 1 through 9, Block 2; Lots 1 through 4, Block 3; Lots 1 through 10, Block 4; Lots 1 through 8, Block 5; all inclusive and four parcels of property labelled as "Private Open Space," all as shown on the plat entitled "Independence Valley Subdivision Filing No. 2" filed on August 10, 1994 in Plat Book 14 at Page 267, Mesa County records.

THEREFORE, Declarant declares that the Property, and every portion of it, is and shall be held, sold, and conveyed subject to the covenants, conditions, restrictions, and agreements contained in this Declaration, which:

(a) Are for the purpose of protecting the value and desirability of the Property;

(b) Shall run with, and be appurtenant to, all of the Property except as expressly stated otherwise; and,

(c) Shall be binding upon and inure to the benefit of all persons or entities now owning or subsequently acquiring any right, title, or interest in all or any part of the Property, together with each of their heirs, personal representatives, successors in interest, and assigns.

All the provisions of this Declaration are in furtherance of a general plan for the benefit of all the Property and its improvements and for the benefit of each present and subsequent owner of the Property. All of the provisions of this Declaration shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens of all persons and entities subsequently acquiring or owning an interest in the Property and improvements located on it, however that interest may be obtained.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Independence Valley Homeowners Association, a Colorado nonprofit corporation.

Section 2. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at 38-33.3-101, et seq., as it may subsequently be amended from time to time.

Section 3. "Owner" (plural "Owners") shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Multiple persons or entities holding title to a single Lot shall together constitute a single Owner.

Section 4. "Subdivision" means Independence Valley Subdivision - Filing No. 2, in Mesa County, Colorado, according to the recorded plat of that subdivision, as that plat may be amended from time to time.

Section 5. "Common Use Area" shall mean any and all interests in real property owned by the Association for the common use and enjoyment of the Owners (including, for example, the irrigation system and mailbox area).

Section 6. "Association Water" shall mean and refer to the 70 shares of Redlands Water and Power Co. held by Declarant for the use of the Association, and any other water or water rights, ditch or ditch rights or easements acquired by the Association, together with any facilities, improvements, easements, or other real or personal property related to, associated with, or used in connection with any of them (including, for example, irrigation pumps, valves, siphons, filters, and pipeline).

Section 7. "Lot" (plural "Lots") shall mean and refer to each residential lot shown upon the recorded plat of the Subdivision, as the plat may be amended from time to time, excluding areas designated as common area on the plat.

Section 8. "Declarant" shall mean and refer to Independence Valley Corporation, a Colorado corporation.

Section 9. "Natural landscaping" means landscaping that fits the natural green valley surrounding a Lot, and the rocky terrain of the hillside Lots.

Section 10. "Private Open Space" means that property identified as such on the plat of the Property. This area will continue to be owned by Declarant, is not a Common Use Area or Lot, and is subject to special declarant rights as set forth in Article XI hereof.

ARTICLE II

Land Use Restrictions

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, or otherwise altered, placed or permitted to remain on any Lot other than one detached single family dwelling, a private garage for not more than three cars nor less than two cars, swimming pool, one barn, a corral and other small outbuilding directly related residential use. The erection of more than one dwelling per Lot, or the resubdivision of Lots into smaller units, is prohibited.

Section 2. Architectural Control. All residential design and construction is subject to the approval of the Architectural Control Committee established in Article III of this Declaration. Careful attention shall be given to the aesthetic and functional consideration of any design submitted in order to enhance and maintain the lifestyle of the Subdivision. Without limitation, the Architectural Control Committee shall consider the following:

- a. Architectural design must be consistent with a country, western or southwestern theme.
- b. The overall nature, character and appearance of the structure, including orientation with regard to view and privacy, and the quality of exterior materials, must be consistent with other structures in the Subdivision. The height of homes built on hillside Lots may not exceed the ridge line.
- c. Minimal grading of building sites to preserve natural terrain and foliage is preferred.
- d. The use of earthen tone colors will be encouraged, and bright colors will be discouraged or prohibited, especially when an Owner seeks to change or alter the existing color of the structure.
- e. Patio structures shall be designed such that they will blend into and complement the appurtenant structure; aluminum or plastic patio roof structures are expressly prohibited.
- f. The Architectural Control Committee will approve only residential construction which meets the following standards:
 - i. A full set of plans and specifications must be submitted.
 - ii. Plans must include an engineered foundation. No monolithic slabs will be approved, unless engineered.

iii. Siding, masonry, stucco, roofing, gutters, and trim must be natural colors approved by the Architectural Control Committee.

iv. Roof design must include a minimum 5/12 pitch roof with multiple gable and/or hip roof systems. Overhangs must be a minimum of 12 inches.

v. Air conditioning must be provided in the form of a ground mounted unit placed on a concrete pad. No roof-mounted swampers will be approved.

vi. The Architectural Control Committee will designate the location for newspaper and other non-mail receptacles.

Section 3. Dwelling Size and Quality. No dwelling shall be permitted on any Lot if the ground floor area of the main structure, exclusive of open porches and garages, is less than 2000 square feet, by outside measurement; provided, however, that the Architectural Control Committee may permit the following exceptions:

a. If the residence has a second story, the ground floor area of the main structure, exclusive of open porches and garages, shall not be less than 1,400 square feet, by outside measurement, with a total living space on the first and second floor of no less than 2,200 square feet, by outside measurement.

b. If the building is a split level residence, the greatest outside measurement, exclusive of open porches and garages, shall be used to determine the square footage, with different floor levels superimposed upon each other being included only once in such measurement. The total greatest outside measurement in split level residences shall not be less than 1400 square feet, with a minimum of 2200 square feet of living space, by outside measurement.

c. The term "living space" shall be deemed to include any floor of a split level residence which is less than four feet below the grade of the structure. Any space the floor of which is more than four feet below the grade of the surface at the exterior of the building shall be considered a basement area, and the square footage thereof shall not be counted in determining the compliance with the foregoing restrictions.

Section 4. New Construction. All construction within the Subdivision shall be new construction, and no previously erected building or other improvement shall be moved onto or set upon any Lot from any other location.

Section 5. Building Location. The Architectural Control Committee must approve the siting of any building upon a Lot

before any excavation begins. No residence or outbuilding shall be located nearer to the front lot line, rear lot line, or an interior lot line, than permitted by the recorded site plan or plat. Eaves, steps and open porches, without roofs, shall not be considered a part of the building; provided however, that this provision shall not be construed to permit any portion of a building on a Lot to encroach onto another Lot.

Section 6. Fences. The Declarant shall construct a split three rail fence around the perimeter of each lot in Filing Two. All other fences must be approved by the Architectural Control Committee as to type and location. The maintenance of the perimeter fencing is the responsibility of each Lot owner.

Section 7. Driveways. Driveways shall be composed of asphalt, concrete, gravel or other dust free surface material. Dirt driveways are expressly prohibited.

Section 8. Parking. All automobiles, trailers, boats, snowmobiles, recreational vehicles and other motorized vehicles which are not kept in a garage must be parked in the side yard or rear yard of the residence. Any such vehicles may only be parked in the street or driveway temporarily while loading or unloading. On street parking is prohibited. No more than five vehicles may be parked outside a residence for a period of more than three days at any time. All recreational vehicles, boats, trailers, and similar vehicles, if parked in the side yard or rear yard of a residence on a regular basis, must be screened by a natural wood fence, landscaping or other method approved by the Architectural Control Committee.

Section 9. Building Plans and Materials. All plans, specifications, color selections and samples of exterior siding and/or masonry material, along with roof material samples, for any building, addition or improvement must be submitted to the Architectural Control Committee for review and approval before installation.

Subject to variances approved in writing by the Architectural Control Committee, roofing materials must consist of one of the following:

- a. Cedar shakes.
- b. Roofing tiles.
- c. A comparable 40-year "Shake type-thick butt" composition roofing system approved by the Architectural Control Committee. Standard composition roofing materials will not be approved.

Subject to variances approved in writing by the Architectural Control Committee, exterior siding must consist of one of the following:

- a. Natural wood with fifty percent of the front elevation sided with brick, stucco or natural stone on the primary residence (windows and doors will not be included when determining square footage).
- b. Brick, stucco or natural stone.
- c. All colors shall be of a natural earth tone.
- d. All other buildings must conform to the exterior design of the primary residence.

Section 10. Landscaping. Landscaping shall be a type which complements the residential character of the Subdivision, and which is acceptable to the Architectural Control Committee. The landscaping plan must be submitted to the Architectural Control Committee for approval within six months after completion of the residence. Actual landscaping must be completed within one year from completion of the residence. The Owner and Architectural Control Committee will conduct a final landscaping inspection at that time. No desert landscaping will be approved. However, due to the rocky terrain of the hillside, Lots 1, 2, 3, 4 and 5 in Block 3 and Lots 4, 6, 7 and 8 in Block 2 may use Natural Landscaping on portions of the Lot where approved by the Committee. Those portions of the foregoing hillside lots which can be planted must be landscaped in compliance with the standard landscaping requirements, subject to the approval of the Architectural Control Committee. Xeriscaping is allowed if approved by the Architectural Control Committee; however, not less than 60% of the Lot area (not including the area covered by the residence, garage and driveway) must be green area. "Xeriscaping" shall mean the use of low maintenance grasses, trees and ground covers. Items such as bark and rock may be used on berms, around trees, and for similar purposes. The Committee will encourage the use of native grasses which will remain green with minimal watering and which will complement the surrounding areas. Each owner shall keep all landscaping on his lot neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly materials.

Section 11. Nuisance. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall any activity be permitted which becomes an annoyance or nuisance to the neighborhood. No Lot may be used for commercial purposes, except for home occupations. "Home Occupation" as used in this Declaration means an occupation by the resident conducted totally within the principal building, and which does not entail the

employment of third persons on the premises, and which does not include the delivery of goods or services to customers upon the Lot. Any other commercial use shall be considered a nuisance within the meaning of this Declaration.

Section 12. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot as a residence.

Section 13. Signs. No sign of any kind shall be displayed to public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent and the signs used by the Declarant, building contractor or lender for advertising during construction and sales of Lots in the Subdivision. Signs used by the Declarant, building contractor or lender are not limited in size.

Section 14. Animals. No animal may be kept in the Subdivision which is a nuisance to other owners in the neighborhood or which run at large and endanger residents of the Subdivision. Ordinary house pets shall be contained on the Owner's property, or on a leash. Residents may maintain horses on the property for their personal use, if allowed by applicable ordinances, provided that the maximum number of horses shall be the lesser of one horse per half acre or two horses per Lot. Except as permitted above, livestock and poultry are not permitted to be maintained within the Subdivision. Corrals, barns and pens for horses must be maintained in a sanitary condition.

Section 15. Garbage and Refuse Disposal. No Lot shall be used as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No junk or trash, including inoperable automobiles, will be allowed to accumulate.

Section 16. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 17. Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one-half and ten feet above the roadway shall be permitted to remain upon any corner lot within the sight distance easement areas required by applicable codes, ordinances, or administrative action. These sight line limitations shall apply on any Lot in the area within ten feet from the intersection of a street property line with the edge of a driveway or alley

pavement. No tree shall be permitted to remain within such distances of such intersections, corners or driveways unless the foliage line is maintained at sufficient height to prevent the obstruction of sight lines along roadways.

Section 18. Entry Lighting. The Declarant shall provide, and the Owner shall thereafter install and maintain two light fixtures at the entrance to the Lot. These lights shall be operated by a photoelectric cell or other device automatically activated during hours of darkness.

Section 19. Antennae and Satellite Dishes. No exterior television or radio antennae of any sort shall be placed upon any portion of the improvements to be located upon a Lot, except as approved in writing by the Architectural Control Committee. Satellite dishes may be installed in a side or rear yard, provided that they do not exceed eight feet in height, and have been screened in a manner approved in writing by the Architectural Control Committee.

ARTICLE III

Architectural Control Committee

Section 1. Membership. The initial Architectural Control Committee shall be composed of three members appointed by the Declarant. After fifteen residences have been completed and occupied, the Architectural Control Committee shall be expanded to seven members. Four of these members shall be appointed by the Declarant and the remaining three members shall be elected by the owners of the Lots upon which residences have been constructed and occupied. After thirty-five residences have been completed and occupied, Declarant shall appoint three members of the Committee, and the remaining four members will be elected by the owners of Lots upon which residences have been constructed and occupied. All members of the Committee will be elected by the owners of Lots after forty-five residences have been completed and occupied. The term of each member of the Architectural Control Committee is one year, with the Declarant-appointed members being subject to annual reappointment, and the remaining members being elected by a vote of the non-Declarant owners of Lots in the Subdivision.

Section 2. Procedure. Any person wishing to construct any building shall submit duplicate copies of plans and specifications to the Architectural Control Committee for review and approval or disapproval before construction is commenced. Decisions of the Architectural Control Committee approving or disapproving construction shall be in writing. Plans and specifications shall contain at a minimum: a plot plan showing Lot layout, set back, flow and manner of surface drainage; finish and natural grade elevations; floor plans showing overall dimensions; roof plans

showing pitch; roof materials; color; colored exterior elevations showing doors, windows and exterior materials and colors; a perspective sketch, if requested; and any other details necessary to explain exterior design features or components or needed to allow the Committee to exercise its function under this Article III and Section 2 of Article II.

a. The Committee shall approve or disapprove the proposal in writing within thirty days of receiving the proposal for construction. In the event the Committee or its designated representative fails to approve or disapprove a proposal for construction in thirty days after complete plans and specifications have been submitted to it, the plans and specifications will be deemed disapproved.

b. In the event construction takes place without approval of the plans and specifications by the Architectural Control Committee, the Committee, the Declarant, and any Owner may bring in action to enjoin the construction and seek all other remedies available at law or in equity.

c. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed construction.

d. The Architectural Control Committee shall maintain written records of all applications submitted to it, and of all actions it has taken.

e. The Committee shall not be liable to any person submitting a request for approval, or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

ARTICLE IV

Property Rights

Section 1. Common Use Area. The undersigned declare that the wetlands park areas, walking path and creek along the west side of Independence Valley Drive, irrigation system and mailbox cluster described on the plat are Common Use Areas and may be used by all Owners, subject to the limited private use of the mail receptacles assigned to each owner. The individual mail receptacles are declared to be limited common elements. These areas shall be maintained by the Association for the benefit of all Owners.

Section 2. Pooling of Rights. Although Association Water remains appurtenant to the individual Lots comprising the Subdivision and cannot be severed from those Lots, the Owners shall pool their rights to Association Water and Common Use Area

for their mutual benefit, which rights shall be appurtenant to and shall pass with the title to every Lot without the necessity for any mention or separate conveyance, subject to the provisions of this Declaration.

Section 3. Rules and Regulation. The Association shall have the right to impose rules and regulations upon the Owners concerning use of the Common Use Area, Association Water, and any other Association property; provided, all rules and regulations shall apply equally and uniformly to all Lots and Owners;

Section 4. Actions Against Owners. The Association and Architectural Control Committee may also take judicial action against any Owner to enforce compliance with any provisions of this Declaration or to obtain damages for noncompliance, all to the extent permitted by law.

Section 5. Delegation of Use. Any Owner may delegate, subject to any Bylaws of the Association, his right of enjoyment to the Common Use Area and use of Association Water to the members of his family residing with him, his tenants, or contract purchasers who reside on the Lot owned by that Owner.

Section 6. Model Homes and Offices. The Declarant may remodel existing buildings and construct and maintain sales offices, management offices, and models on one or more Lots. Model homes shall conform to the requirements of this Declaration, except that such homes may be used for Declarant's commercial purposes until sold to an Owner other than Declarant. Buildings which are not intended to be residences may be used by Declarant as sales and management offices without complying with the provisions of this Declaration, but shall be removed from the Property after all Lots have been sold. Model homes, sales offices and management offices may be located and relocated on any Lot which has not been sold to an Owner other than Declarant.

ARTICLE V

Membership and Voting Rights

Section 1. Membership. Every record owner of one or more Lots in the Subdivision will be entitled and required to be a member of the corporation, subject to the voting rights provisions of this Article V. No person or entity other than an owner of a fee interest in one or more Lots in the Subdivision may be a member of the corporation.

Section 2. Allocation of Votes. Each Lot shall be allocated 1/45 of the votes in the Association, subject to Section 5 below.

Section 3. No Cumulative Voting. In the election of directors, cumulative voting shall not be allowed.

Section 4. Appurtenant to Lot. Membership shall be appurtenant to and inseparable from a Lot. Membership in the corporation may not be transferred except in connection with the transfer of ownership of a Lot.

Section 5. Control.

5.1 Declarant may appoint and remove the officers and members of the Board of Directors of the Association. During the period this power of appointment and removal is in effect, it is subject to the limitations stated in the remainder of this Section 5. This power will terminate upon the earlier of sixty days after conveyance of 75% of the Lots to Owners other than Declarant or two years after the conveyance of a Lot by Declarant in the ordinary course of business.

5.2 Not later than sixty (60) days after conveyance of 25% of the Lots to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.

5.3 Not later than sixty (60) days after conveyance of 50% of the Lots to Owners other than Declarant, not fewer than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.

5.4 Unless the rights of the Association are delegated pursuant to the provisions of Article X, section 4 of this Declaration, not later than the termination of the period of Declarant control specified in subsection 5.1, 5.2 and 5.3 of this section, the Owners shall elect a Board of Directors 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. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.

5.5 Notwithstanding anything to the contrary stated elsewhere in this section, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant.

ARTICLE VI

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot owned within the Subdivision, covenants, and each Owner of any Lot by acceptance of

a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements (such assessments to be established and collected as provided in this Declaration); and (c) fees, charges, late charges, attorneys fees, collection costs, and interest charged pursuant to this Declaration, or as allowed by Section 38-33.3-316(1), C.R.S. or any other provision of CCIOA as it may be subsequently amended. The annual and special assessments, together with interest, costs, and reasonable attorneys fees, shall be a charge on and covenant running with the land and shall be a continuing lien on the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person or entity who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, or welfare of the residents in the Subdivision, or for the benefit of the Common Use Area or Association Water, or for any other purpose permitted by the Articles of Incorporation of the Association.

Section 3. Maximum Annual Assessment. The maximum annual assessment to be made against the Owner of a Lot or Lots subject to this Declaration shall be as follows:

- A. Two hundred dollars per lot.
- B. The maximum annual assessment may be increased each year beginning in 1995 not more than five percent (5%) above the assessments for the previous year without a vote of the membership;
- C. The maximum annual assessments may be increased in excess of five percent (5%) over the previous year's assessment by a vote of a majority of Owners who are voting in person or by proxy, at a meeting called for this purpose;
- D. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum annual assessment for that year as determined pursuant to this section.
- E. Until the Board of Directors makes an annual assessment, all expenses of the Association shall be paid by Declarant.

Section 4. Water Assessment. The maximum annual assessment does not include the annual irrigation water share assessment imposed by Redlands Water and Power Co. The water assessment

shall be assessed by the Association (in addition to the maximum annual assessment) on the basis of 1/45th of the assessment to each Lot.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only in whole or in part, the cost of any construction or reconstruction, provided that the amount and purpose of any such assessment shall have the assent of two-thirds of the votes of Owners who are voting in person or by proxy at a meeting duly called for this purpose or purposes.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However, any common expense benefiting fewer than all Lots shall be assessed exclusively against the Lots benefited, and any common expenses caused by the misconduct of any Owner may be assessed exclusively against that Owner's Lot(s).

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for in this Declaration shall commence on the first day of the month following the day on which this Declaration is recorded. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year of recording. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject to the assessment. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate not to exceed twenty-one percent (21%) per annum set annually by the Association's Board of Directors.

Section 9. Priority of Lien. The lien for assessments (which includes all those items specified in item (a), (b), and (c) in Section 1 of this Article VI) shall have the priority specified in CCIOA which, as of the date of this Declaration, is codified at Section 38-33.3-316(2), C.R.S.

Section 10. Expense Allocation. Each Lot shall be allocated 1/45 of the common expenses of the Association.

ARTICLE VII

Association Water

Section 1. Declaration of Trust. The undersigned declares that the Association Water is and shall be held in trust by the Association and that each Owner, by accepting a deed to one or more parcels of the real property described above (or by receiving title to a Lot in any other manner), shall be deemed to have ratified this Declaration of Trust and proclaimed such Owner's own Declaration of Trust regarding that Owner's Lot or Lots.

Section 2. Administration of Trust. The trust described in Section 1 immediately above shall be administered as follows:

A. Title to Association Water on the records of Redlands Water and Power Co. shall be held in the name of the Association, if permitted by Redlands Water and Power Co.

B. Association Water, if used, shall be used for the benefit of the Lots and Common Use Area of the Association.

C. All management and administrative functions with regard to Association Water shall be performed by Association, including, without limitation, receipt and payment of all notices of assessment.

D. The Association shall have the sole power and right to distribute the Association Water, which is the subject of the trusts created by this Declaration, to the Lots; subject, however, to the rules and regulations of Redlands Water and Power Co.

E. The Association shall have the sole right and power to sell, relinquish, loan, rent, lease, or in any way contract with respect to Association Water which is the subject of the trusts created by this Declaration; subject, however, to rules and regulations of Redlands Water and Power Co. No such transfer shall be effective unless approval in writing by two-thirds of Owners agreeing to such transfer and the recordation with the Mesa County Clerk and Recorder of such transfer.

F. Owners shall execute any deed, stock power, bill of sale, or other instrument required by Association relative to Association's rights set forth in subparagraph E immediately above.

ARTICLE VIII

Easements

Section 1. Subdivision Plat Easements. The Association shall have the right to utilize all utility easements shown on the recorded plat of the Subdivision as it may be amended from time to

time, for maintenance of common use area as defined in Article I, Section 5.

Section 2. Other Easements. Any easement over, under, or across the property outside of the Subdivision granted by Declarant to the Association before or after the date of this Declaration, whether or not so stated in the deed of that easement, shall be subject to all uses to which Declarant or its successors and assigns might put the property on which the easement is granted at any time, including by way of example and not limitation, use of that property for the ownership, construction, maintenance, operation, repair, removal, replacement, resizing, alteration, remodeling, or renovating of facilities for the storage or irrigation water and underground pipelines, pumps, valves, gates, and other structures, facilities or improvements for the storage or delivery of irrigation water to property owned on or after the date of this Declaration by Declarant or its successors or assigns.

ARTICLE IX

Development Rights - Private Open Space

Section 1. Private Open Space. Certain parcels are labeled as "Private Open Space" on the plat of the Property. Subject to the exercise of the development rights described below, the Private Open Space: a) will remain the property of the Declarant; and b) is not included within the definitions of "Lot" and "Common Use Area" as used herein.

Section 2. Use Restrictions. Subject to amendment of the plat, Private Open Space may be developed only for use as wetlands areas, park or similar greenbelt open space. No residence or other improvement not appropriate to the foregoing use of this property shall be constructed on the Private Open Space. Any portions of the Private Open Space currently or subsequently designated as wetlands areas are restricted from inundation, excavation and fill.

Section 3. Development Rights. Declarant reserves to itself and its successors the following development rights with respect to each parcel of Private Open Space:

a. To develop each parcel of Private Open Space as wetlands, park or similar greenbelt open space.

b. To sell, transfer convey, assign or otherwise dispose of the wetlands, park or greenbelt areas, and any rights associated with such areas, and to receive and retain the proceeds from any such disposition.

c. To apply for, own appropriate and use any water and water rights, including rights of storage, associated with such property.

d. To seek to amend the plat to redesignate the Private Open Space as Lots, subdivide the Private Open Space, or otherwise make the Private Open Space available for residential development.

e. To convey some or all of the Private Open Space to the Association as Common Use Area with or without the consent of the Association.

Section 4. Time Limits. Declarant must exercise the development rights reserved in this Article within three years from the date the plat is filed for record in Mesa County, Colorado. After that date, all development rights will lapse, subject to the provisions for reinstatement of those rights under CCIOA.

Section 5. Exercise of Development Rights. Development rights shall be exercised in accordance with Section 210 of CCIOA. Each development right may be exercised as to any portion of Private Open Space, and no assurances are provided as to property concerning which development rights will be exercised, or the order in which parcels of property will be subjected to the exercise of development rights. There is no requirement that once any development right is exercised in any portion of the Private Open Space, that development right must be exercised in all or any other portion of the Private Open Space.

Section 6. Exemption From Assessment. The Private Open Space is not subject to assessment under any provision of this Declaration.

ARTICLE X

Budget and Records

Section 1. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles. All books, records, and papers of the Association shall be available for inspection and copying by any member or his representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given the custodian of the records by anyone desiring to inspect them, and payment of costs of reproducing any documents requested by any member.

Section 2. Annual Budget. The Board of Directors shall cause to be prepared no less than annually an operating budget,

balance sheet, and cash flow statement for the Association.

Section 3. Delivery of Budget. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all members and shall set a date for a meeting of the members to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary.

Section 4. Ratification of Budget. Unless at that meeting a majority of all members reject the budget, the budget is ratified, whether or not a quorum is present.

Section 5. Rejection of Budget. In the event that the proposed budget is rejected, the present budget last ratified by the members must be continued until such time as the members ratify a subsequent budget proposed by the Board of Directors.

Section 6. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of any personal property, fixtures, and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

ARTICLE XI

General Provisions

Section 1. Enforcement.

A. The Association or the Owner (including Declarant) of any Lot may enforce any provision of this Declaration in an action at law or in equity. The relief sought may include damages (including, for example, consequential and incidental damages) for any violation, or injunctive relief, or both. This listing of possible relief is not exclusive. It is the intent of the Declarant that an Owner may obtain any relief available under the then applicable law on the provisions of this Declaration for violation of any provision of this Declaration.

B. If any litigation concerning enforcement or interpretation of this Declaration, the prevailing party shall be entitled to recover reasonable attorneys fees and court costs, in addition to any other relief available to that party.

Section 2. Term. The provisions of this Declaration shall each constitute covenants running with the land applicable to all of the Lots, binding Declarant and all persons and entities claiming by, through, or under him for a period of twenty (20)

years from the date of this Declaration. Thereafter, this Declaration shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity, unless rescinded or terminated by affirmative vote of sixty-seven percent of the Owners.

Section 3. Amendment. Subject to the provisions of Section 38-33.3-217 and any other contrary provisions of the CCIOA, all or any portion of this Declaration may be supplemented, changed, or canceled in whole or in part at any time by the consent of 67% of the Owners of the Lots evidenced by an instrument in writing signed by all of the then Owners of the Lots in a manner provided by law at the time for conveyance of real property, when that instrument is duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado. Upon recordation in that manner, any modification of this Declaration shall be valid and binding upon the then Owners of the Lots and their heirs, personal representatives, successors in interest, and assigns.

Section 4. Delegation of Rights. Any or all of the rights of the Association may be delegated to a nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities, including the Subdivision, or for the benefit of the Owners of one or more common interest communities, including all of the Owners, subject to the regulations and requirements of CCIOA.

Section 5. Merger. The common interest community created by this Declaration may be merged or consolidated with another common interest community within the Independence Valley Subdivision in compliance with the provisions of Section 38-33.3-221 and any other applicable provision of CCIOA.

Section 6. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

Section 7. No Cumulative Voting. Cumulative voting is not allowed for any purpose.

Section 8. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, to the address of the Owner of the Lot(s) to receive notice at the address specified in the deed by which that Owner took title and to the street address of that Lot, if any.

Section 9. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration.

Section 10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not

