

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
FAIRCLOUD SUBDIVISION

THIS DECLARATION is made by J. P. WHITE CONSTRUCTION CO., a Colorado corporation, of Grand Junction, Colorado, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Grand Junction, County of Mesa, State of Colorado, which is more particularly described on that subdivision plat for Faircloud Subdivision as recorded in the Office of the Mesa County, Colorado, Clerk and Recorder on the 27 day of OCTOBER, 1998, in Plat Book 16 at Page 292, 293, (hereinafter the "Plat"); being:

BEGINNING at the Southwest Corner of the Southwest Quarter of the Northwest Quarter (SW1/4 NW1/4) of Section 4, Township 1 South, Range 1 East of the Ute Meridian, from whence the Northwest Corner of said SW1/4 NW1/4, Section 4 bears North 00°09'29" West, a distance of 1313.05 feet for a basis of bearing, with all bearings contained herein relative thereto; thence North 00°09'29" West, a distance of 1113.05 feet; thence North 89°59'04" East a distance of 435.60 feet; thence North 00°09'29" West, a distance of 200.00 feet; thence North 89°59'04" East, a distance of 224.21 feet; thence South 00°11'02" East a distance of 1312.85 feet; thence South 89°58'00" West, a distance of 660.40 feet to the POINT OF BEGINNING.

Said parcel containing 17.896 acres, as described.
MESA COUNTY, COLORADO

NOW, THEREFORE, Declarant hereby creates a common interest community in accordance with the Colorado Common Interest Ownership Act, as that Act now exists or may hereafter be amended from time to time, which community shall be a Planned Community known as Faircloud Subdivision. Further, Declarant hereby declares that all of the property described on the Plat shall be, and the same is hereby held, sold, conveyed and occupied subject to the following easements appurtenant, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and improvements. The benefits and burdens of this Declaration shall be binding on all parties having any right, title or interest in the Faircloud Subdivision Planned Community or any part thereof, their heirs, successors and assigns and the same shall inure to the benefit of each owner thereof and the Faircloud Homeowners Association.

ARTICLE I.

DEFINITIONS

Section 1. "Colorado Common Interest Ownership Act" shall mean and refer to Colorado Revised Statutes, Title 38, Article 33.3, as the same may exist on the date that these Covenants are recorded, and as the same may be amended from time to time hereafter.

Section 2. "Common Elements" shall mean and refer to any portion of the Planned Community designated by the Colorado Common Interest Ownership Act, or the Plat, or these Covenants, for use in common by all Lots within the Planned Community, except individual Lots which are intended for the exclusive use of the Owners thereof, and except any Limited Common Elements. The Common Elements shall be owned by the Homeowners Association and shall be controlled, operated and maintained by the Homeowners Association for the common use and enjoyment of all Owners within the Planned Community.

Section 3. "Common Expense" shall mean and refer to any expenditures made or liabilities incurred, including any allocation to reserves established for the same, by or on behalf of the Homeowners Association with respect to the control, operation or maintenance of the Common Elements within the Planned Community.

Section 4. "Covenants" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be amended from time to time.

Section 5. "Declarant" shall mean and refer to person or entity identified as Declarant in the introductory provisions of these Covenants, or the successors and assigns of any such person or entity, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and either succeed to all or substantially all of the assets of the Declarant, or receive a written assignment of Declarant's rights under these Covenants.

Section 6. "Homeowners Association" shall mean and refer to the Faircloud Homeowners Association, (by whatever name it shall be incorporated), which shall be a Colorado corporation, not for profit, and its successors and assigns.

Section 7. "Limited Common Elements" shall mean and refer to any portion of the Planned Community designated for the exclusive use of more than one Lot within the Planned Community, but designated for use by fewer than all of the Lots, as shown on the Plat, or as set forth in the Colorado Common Interest Ownership Act or these Covenants. The Limited Common Elements shall be owned in common by the Lot Owners for whose exclusive use such elements are designated, but such Limited Common Elements shall be controlled, operated and maintained by the Homeowners Association for the common use and enjoyment of the

Owners thereof. Any Limited Common Elements may be reallocated, as necessary, in accordance with the procedures set forth in the Colorado Common Interest Ownership Act.

Section 8. "Limited Common Expense" shall mean and refer to any expenditures made or liabilities incurred, including any allocation to reserves established for the same, by or on behalf of the Homeowners Association with respect to the maintenance of any Limited Common Elements within the Planned Community.

Section 9. "Lot" shall mean and refer to an individual parcel of real property whose boundaries are defined in the Plat of the Planned Community, which individual parcel is intended for ownership by and is owned by one or more persons for occupancy as a residence. This definition shall not include any Common Elements or Limited Common Elements intended to be used by more than one Lot owner within the Planned Community. This definition shall include all Lots contained in any other plat now recorded or recorded in the future in Block A and Block B of the Planned Community as shown on the Plat. Thus, both Block A and Block B shall comprise more than one Lot each.

Section 10. "Member" shall mean every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to assessment by the Homeowners Association pursuant to the Colorado Common Interest Ownership Act or these Covenants, including contract sellers.

Section 11. "Owner" 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 Planned Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Planned Community" shall mean and refer to all of the real property described on the Plat of Faircloud Subdivision, and such additions thereto as may hereafter be brought within the Planned Community..

Section 13. "Plat" shall mean and refer to that subdivision plat for Faircloud Subdivision, as above referenced, which has been filed in the Mesa County, Colorado Clerk and Records Records.

Section 14. "Purchaser" shall mean and refer to a person, including an individual, corporation, association, or any other legal entity, other than the Declarant, who by means of a transfer acquires a legal or equitable interest in a Lot.

ARTICLE II.

PLANNED COMMUNITY GOVERNANCE

Section 1. Statement of Formation. Faircloud Subdivision shall be a Planned Community and shall be governed by the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et. seq., as the same now exists or may hereafter be amended from time to time.

Section 2. Governing Law and Documents. The Planned Community known as Faircloud Subdivision, and all owners thereof, their heirs, successors, or assigns, shall be governed by this Declaration of Covenants, Conditions, and Restrictions. In the event that any specific provision of these Covenants shall be inconsistent with the Colorado Common Interest Ownership Act, as the same may be amended from time to time, or any other provision of Colorado Law, that Law shall control. Further, if these Covenants shall be inconsistent, in any regard, with a specific provision of the Plat, the Plat shall control as to that inconsistency. However, if the Articles of Incorporation or Bylaws of the Homeowners Association shall be inconsistent in any manner with a specific provision of these Covenants, these Covenants shall control with respect to that matter.

Section 3. Separate Ownership and Taxation. Each Lot, together with the appurtenant Limited Common Elements and an interest in the Common Elements applicable to such Lot, shall constitute a separate parcel of real estate and shall be separately assessed and taxed in accordance with the Colorado Common Interest Ownership Act.

ARTICLE III.

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to all of the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Homeowners Association to adopt reasonable rules and regulations for the use of the Common Elements, including but not limited to, the right to place limitations on the number of guests and, to charge reasonable admissions and other fees for the use of any recreational facility situated upon the Common Elements;

(b) The right of the Homeowners Association to suspend the voting rights and right to use the Common Elements by an Owner for any period during which an assessment against such Owner'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 Homeowners Association, subject to the provisions of the Articles of Incorporation of the Homeowners Association, to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; however, no such dedication or transfer shall be effective unless completed in compliance with the terms of this Article III, Section 4.

Section 2. Delegation of Use. The right of enjoyment of any Owner in and to the Common Elements shall extend to the Owner's family, the Owner's guests or invitees, the Owner's tenants, or contract purchasers who reside on the property.

Section 3. Owner's Right to Alter or Improve Structures. The Owner of any Lot may make any improvements or alterations to such Owner's Lot or the structures upon such Owner's Lot, so long as the same are in compliance with these Covenants, and so long as the same do not impair the structural integrity, support, electrical systems, or mechanical systems of any adjoining structures or Lots within the Planned Community.

Section 4. Conveyance or Encumbrance of Common Elements. Portions of the common elements may be conveyed, dedicated, or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the Class A votes in the association (and excluding all Class B votes) approve such action; except that all owners of Lots to which any limited common element is allocated must agree in order to convey that limited common element, dedicate it, or subject it to a security interest. Proceeds of the sale are an asset of the association.

An agreement to convey, dedicate, or encumber common elements must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Lot owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratification thereof must be recorded and is effective only upon recordation.

A conveyance or encumbrance of Common Elements or Limited Common Elements pursuant to this section shall not deprive any Lot of ingress to and egress from any adjoining public right-of-way, nor shall such conveyance or encumbrance deprive any Lot of lateral or subjacent support. In the event of such conveyance or encumbrance all Lots are granted an appurtenant, non-exclusive easement for ingress, egress to any adjacent public right-of-way and an easement for lateral and subjacent support. Any conveyance or encumbrance of a Common Element or Limited Common Element that provides ingress or egress to any Lot shall be subject to such easement for the benefit of the affected Lot Owner.

Conveyance or encumbrance of Common Elements and Limited Common Elements shall otherwise be governed by the Colorado Common Interest Ownership Act.

ARTICLE IV.

EASEMENTS WITHIN THE PLANNED COMMUNITY

Section 1. Reciprocal Easements. The Declarant reserves for the Homeowners Association, its successors and assigns, an easement for exterior maintenance and repair of all improvements and planting areas, and the installation and continued operation, maintenance, repair, alteration, inspection and replacement of utility lines, including but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment thereon, over, under and across any Lot, Limited Common Elements, or Common Elements. The Homeowners Association shall, except in cases of emergency, furnish to all affected Owners twenty-four (24) hours' notice before exercising the rights granted by this Article. In addition to those easements dedicated or reserved upon the Plat, perpetual reciprocal easements for the aforementioned purposes shall also exist both for the benefit and burden of all of the Owners of Lots within the Planned Community.

Section 2. Easements for Encroachments. If any portion of an improvement or structure or party wall (including Common Elements and Limited Common Elements) encroaches upon the Common Elements, or upon an adjoining property within the Planned Community, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of the Common Elements or Limited Common Elements encroaches upon an improvement, structure or Lot, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered to be encumbrances either on the Common Elements, Limited Common Elements, or upon the improvement, structure, Lot.

Section 3. Easement for Utilities. The Declarant hereby grants a right of way and easement for utility purposes including, but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and other utility lines and incidental equipment over, under and across the Common Elements and Limited Common Elements. Such utility easements and rights-of-way shall be binding upon the Declarant and the Homeowners Association and their respective successors and assigns.

Section 4. Easements for Access. Declarant reserves for itself and Purchasers of property within the Planned Community an easement across all of the Common Elements and Limited Common Elements, and also an easement as to all private streets and walkways included within the Common Elements for the use of each Lot Owner, his family members, guests, invitees, licensees, lessees and contract Purchasers.

Section 5. Broad Reservation and Grant of Easements. Declarant reserves for itself and the Purchasers of the existing and additional property within the Planned Community the use of the easements set forth in this Article which are intended to and shall be for the benefit of

all Owners, and no reference thereto need be made in any Deed, instrument of conveyance or any other instrument.

ARTICLE V.

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the structures and improvements within the Planned Community and which is located between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of normal repair and maintenance of any party wall shall be shared by the Owners who make use of the wall in proportion to such use and shall be considered a Limited Common Element.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the policy of the respective Lot Owners benefiting therefrom shall cover such damage to the maximum extent of available insurance. Deficiencies in insurance proceeds for damage to party walls shall be paid in proportion to such use by affected Owners, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to any elements, shall bear the whole cost of furnishing the necessary protection against such elements, and if such wall shall be damaged by such elements, such Owner shall pay the entire cost of repair of the same.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VI

MAINTENANCE OF THE PLANNED COMMUNITY

Section 1. Owner Maintenance and Repair. Except as otherwise provided in this Article, all maintenance, repair and upkeep shall be the responsibility of the Owner of the Lot in need thereof, who shall bear the expense thereof. No improvement or structure within the

Planned Community shall be permitted to fall into disrepair, and, except for Common Elements and Limited Common Elements which are to be maintained by the Homeowners Association, each such improvement or structure shall at all times be kept in good condition and repair at the sole cost and expense of the Owner thereof.

In the event that any Owner shall permit any Lot or improvement or structure located upon any Lot to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Homeowners Association, upon thirty (30) days' prior written notice to such Owner, shall have the right, but not the duty, to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Homeowners Association for the cost thereof. Such cost shall be a separate assessment against the Lot involved, and shall create a lien enforceable in the same manner as other assessments by the Homeowners Association.

Section 2. Maintenance of Common Elements. The Homeowners Association shall also be responsible for the landscaping and maintenance of all Common Elements within the Planned Community, (including, for example, the watering and mowing of the park, and the removal of snow and ice from the streets and walks which are included within the Common Elements). All Lot Owners shall pay their respective share of the cost of such landscaping or other maintenance services as a Common Expense. The Homeowners Association shall maintain such Common Elements in a neat and attractive condition.

In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family or guests, lessees, or invitees, the cost of such maintenance or repairs shall be added to and become a part of this assessment to which such Lot is subject.

ARTICLE VII

MEMBERSHIP, VOTING RIGHTS, AND OWNERSHIP

Section 1. Membership. Every Owner, including Declarant, of any Lot within the Planned Community shall be a member of the Homeowners Association and shall be subject to assessment by the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Homeowners Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Lots within the Planned Community, with the exception of the Declarant. Each Lot shall be entitled to one vote

for each such Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for each such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of any Lot fail to agree, the decision of a majority in interest of that Lot shall control. There is majority agreement among multiple Lot owners if one of the multiple owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot. If a majority of multiple Lot owners can not agree, the vote shall not be cast.

Class B. The Class B Member shall be the Declarant and Declarant shall be entitled to three (3) votes for each Lot owned. At such time as the Class B membership is converted to Class A membership in the manner described below, the Class A membership shall obtain and shall permanently retain exclusive control over the activities of the Homeowners Association. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following, whichever first occurs:

(a) within sixty (60) days after conveyance of seventy-five percent (75%) of the Lots within the Planned Community to Purchasers, other than the Declarant, in the ordinary course of business; or

(b) on August 30, in the year 2002 A.D.

Notwithstanding the existence of a Class B Member, the Class A Members, other than Declarant, shall have the exclusive right to elect at least one director to the governing board of the Homeowners Association, (and, in any event, not less than twenty-five percent (25%) of the total number of directors authorized), within sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Purchasers, other than the Declarant, in the ordinary course of business. Further, the Class A Members, other than Declarant, shall have the exclusive right to elect to the governing board of the Homeowners Association, not less than thirty-three percent (33%) of the total number of directors authorized, within sixty (60) days after conveyance of thirty-three percent (33%) of the Lots to Purchasers, other than the Declarant, in the ordinary course of business.

Section 3. Homeowners Association Board. The Homeowners Association shall be governed by a Board of Directors who shall be elected annually by the Members of the Homeowners Association. The Board of Directors shall consist of the number of persons set by the Articles of Incorporation or By-laws under which the Homeowners Association is organized, but in any event, unless the Colorado Common Interest Ownership Act shall be amended to provide otherwise, the number of Directors shall not be less than three and a majority of the Directors shall be persons owning Lots within the Planned Community. The

Lot Owners entitled to vote Class A shares, by vote of sixty-seven percent (67%) of all votes cast at any meeting of the Members at which a quorum is present and entitled to vote, may remove any member of the Board, with or without cause, other than a member of the Board voted into office by the Class B shares. Any Board member voted into office by Class B shares may only be removed by a vote of sixty-seven percent (67%) of such Class B shares voting at a meeting at which a quorum of such shares is present.

ARTICLE VIII.

ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation for Common Expenses. The Declarant, with respect to all property within the Planned Community, hereby covenants, and each Owner of any Lot within the Planned Community, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and hereby agrees to pay to the Homeowners Association: (1) assessments of all Common Expenses, which will include an amount considered to be adequate to maintain a reserve fund for maintenance, repairs and replacement of all Common Elements that must be maintained or replaced on a periodic basis, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The foregoing assessments, together with interest at the rate of 18% per annum from the date an assessment is due, costs and reasonable attorney's fees incurred by the Homeowners Association in collecting any assessment, whether or not suit is filed, shall be a charge on each Lot and shall be a continuing lien upon each such Lot against which each such assessment is made with the priority provided by the Colorado Common Interest Ownership Act.

All assessments for Common Expenses shall be based upon the proposed budget for Common Expenses, as provided below, (unless the budget has been rejected as below provided), and shall be paid by all Lot Owners at least annually in installments established by the Board. Both annual and special assessments shall be fixed at a uniform rate for all Lots, irrespective of their ownership interest in the Common Elements. Such assessments shall be allocated equally.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for any delinquent assessments shall not pass to such Lot Owner's successors in title upon any transfer of title, however, the prior Lot Owner shall not be relieved of liability therefor by such transfer.

Section 2. Creation of a Lien and Personal Obligation for Limited Common Expenses. The Declarant, with respect to all property within the Planned Community, hereby covenants, and each Owner of any Lot within the Planned Community, by acceptance of a deed therefor,

whether or not it shall be so expressed in such deed, is deemed to covenant and hereby agrees to pay to the Homeowners Association: (1) assessments of all Limited Common Expenses which the Homeowners Association shall determine is a benefit to such Owner(s)' Lot, which assessment may include an amount considered to be adequate to maintain a reserve fund for maintenance, repairs and replacement of all such Limited Common Elements that must be maintained or replaced on a periodic basis, and (2) special assessments for capital improvements to such Limited Common Elements, such assessments to be established and collected as hereinafter provided. The annual and special assessments of Limited Common Expenses, together with interest at the rate of 18% per annum from the date an assessment is due, costs and reasonable attorney's fees incurred by the Homeowners Association in collecting any assessment, whether or not suit is filed, shall be a charge on each Lot determined to benefit therefrom, and shall be a continuing lien upon the Lot against which each such assessment is made with the priority provided by the Colorado Common Interest Ownership Act.

Any assessment for Limited Common Expenses shall be based upon the proposed budget(s) for such Limited Common Expenses, as provided below, (unless a particular budget has been rejected as below provided), and shall be paid by all affected Lot Owners monthly. Both annual and special assessments shall be fixed at a uniform rate for all Lots benefiting from a particular Limited Common Expense, irrespective of ownership interest in the Limited Common Elements. Such assessments shall be allocated equally among each Lot which shall be determined by the Homeowners Association to benefit from the Limited Common Expense for which the assessment has been made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for any delinquent assessments shall not pass to such Lot Owner's successors in title upon any transfer of title, but the prior Lot Owner shall not be relieved of liability therefor by such transfer.

Section 3. Purpose of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Planned Community and for the improvement and maintenance of the Common Elements. In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, guests, tenants or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner's Lot is subject.

Section 4. Assessment Procedure. The Homeowners Association shall fix the assessment no less frequently than annually for all Limited Common Expenses and all Common Expenses in accordance with the requirements of the Colorado Common Interest Ownership Act. The Homeowners Association, through its Board of Directors, shall adopt a

budget for Common Expenses and a separate budget for Limited Common Expenses benefiting any particular Lots, not less frequently than annually. Within thirty (30) days after adoption of any proposed budget(s), the Board shall mail, by ordinary first-class mail, or shall personally deliver a summary of the budget(s) to all Lot Owners affected by the budget(s), and the Board shall set a date for a meeting of the Lot Owners affected by such budget(s) to consider ratification of the budget(s) affecting them. The date for such meeting shall be not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of a particular budget summary. Unless at the meeting, a majority of the affected Lot Owners reject the budget, the budget shall be deemed to be ratified, whether or not a quorum of such Lot Owners is present at the meeting. In the event that a proposed budget is rejected, the periodic budget last ratified by the affected Lot Owners shall be continued, until such time as the affected Lot Owners ratify a subsequent budget which has been proposed by the Board.

However, if the proposed budget recommends an increase in assessments of more than five percent (5%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington D.C.) for the preceding month of July (whichever is greater), then the budget is not ratified unless approved by fifty one percent (51%) of Class A votes outstanding, or by two-thirds of the Class A votes present at a meeting (including, if necessary, a continued or subsequent meeting) duly called pursuant to this Article VIII, Section 6, at which there is the quorum of Class A votes called for in this Article VIII, Section 6.

No Lot shall be exempt from liability for payment of any assessments by waiver of the use or enjoyment of any of the Common Elements or Limited Common Elements, or by abandonment of any Lot against which an assessment is made.

Section 5. Special Assessments for Capital Improvements. In addition to the assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements or Limited Common Elements, including fixtures and personal property related thereto, not contemplated under the assessment procedure above, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of Class A Members who are voting in person or by proxy at a meeting duly called for this purpose and at which a quorum is present.

However, no annual or special assessments shall be made for the construction of capital improvements until all Class B membership has been converted to Class A membership pursuant to Article VII, Section 2.

Section 6. Notice and Quorum for any Action Authorized. Written notice of any meeting called for the purpose of taking any action authorized under in this Article shall be sent to all members not less than 14 days nor more than 60 days in advance of the meeting.

At any such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership at the meeting shall constitute a quorum. If the required quorum is not present, the meeting may be continued by an announcement at the failed meeting without any additional notice, or a new meeting may subsequently be called, subject to the notice requirement, and the required quorum at the continued or subsequent meeting shall be thirty percent (30%) of all the votes of each class of membership entitled to vote at the meeting. No such continued or subsequent meeting shall be held more than 60 days following the failed meeting.

Section 7. Date of Commencement of Assessments. The assessments provided for herein shall commence, as to all Lots within the Planned Community, on the first day of the month following the conveyance to a Purchaser of the first Lot within the Planned Community. The first assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates of any assessments shall be established by the Homeowners Association. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments - Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the date the assessment fell due at the rate of eighteen percent (18%) per annum. The Homeowners Association may bring an action at law against any Owner personally obligated to pay the same, or foreclose the lien against any Lot in accordance with the Colorado Common Interest Ownership Act. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as the payments which became due prior to such sale or transfer, except to the extent that such assessment lien is given a priority over such mortgage or other security instrument by the Colorado Common Interest Ownership Act. No sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall relieve the Lot Owner of personal liability for such assessments. Further, no sale or transfer shall relieve any Lot, (including any Mortgagee who is the successful purchaser at such foreclosure sale), from liability for any assessments thereafter coming due or from the lien thereof.

Section 9. Subordination of the Lien to Mortgages. The lien of any assessments provided for herein shall be subordinate to the lien of any prior recorded first mortgage, trust deed, or executory land sales contract, except to the extent that such liens of the Homeowners Association are given a priority ahead of such first mortgage, security instrument, or land sales contract by the Colorado Common Interest Ownership Act. However, the lien of such assessments shall be superior to any homestead exemption as now or hereafter may be provided by Colorado law and the acceptance of a deed to any land subject to these Covenants shall constitute a waiver of the homestead exemption as against the assessment lien of the

Homeowners Association. Sale or transfer of any Lot shall not affect the assessment lien, and, further, shall not relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX.

POWERS AND DUTIES OF THE HOMEOWNERS ASSOCIATION

Section 1. Homeowners Association Duties. In addition to those powers and duties vested in the Homeowners Association by the Colorado Common Interest Ownership Act, the Homeowners Association shall have the obligation, subject to, and in accordance with, these Covenants, to perform each of the following duties for the benefits of the Owners of each Lot within the Planned Community:

(a) Homeowners Association Property. To accept and exercise jurisdiction over all property, real and personal, conveyed free and clear of all liens and encumbrances to the Homeowners Association by Declarant, including (1) Common Elements, (2) Limited Common Elements, if not conveyed to the Lot Owners benefiting therefrom, (3) Easements for operation and maintenance purposes over any Common Elements and Limited Common Elements, and (4) Easements for the benefit of the Lot Owners within the Common Elements and Limited Common Elements.

For purposes of this paragraph, any easement in favor of the general public or portions thereof on any property conveyed to the Homeowners Association, shall not constitute a lien or encumbrance, and shall not preclude the acceptance by the Homeowners Association of such property.

(b) Title to Property Upon Dissolution. To convey, upon dissolution of the Homeowners Association, the assets of the Homeowners Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Homeowners Association was created, or to a nonprofit corporation, association, trust or other organization organized and operated for such similar purposes.

In no case, however, shall the Homeowners Association be dissolved prior to the termination of the Planned Community without the approval of two-thirds of the Class A votes and of the Class B votes. Furthermore, the Homeowners Association shall in no case be dissolved unless the entity to which the property of the Homeowners Association is transferred assumes the duties imposed upon the Homeowners Association by these Declarations.

(c) Operation of Common Elements. To operate and maintain, or provide for the operation and maintenance of all Common Elements which it owns, or in which it

owns an easement for operation and maintenance purposes for the benefit of Lot Owners; and to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair.

(d) Payment of Taxes. To pay all real property taxes, assessments and charges, if any, levied upon any property conveyed, leased or otherwise transferred to the Homeowners Association, to the extent not assessed to the Owners thereof. Such taxes, assessments and charges may be contested or compromised by the Homeowners Association; provided, however, that they must be paid or a bond insuring the payment must be posted prior to the sale or other disposition of any property to satisfy the payment of such taxes. Declarant shall provide written notice to the Mesa County Assessor indicating the individual lots created hereunder, and thereafter all taxes, assessments, and charges of any taxing jurisdiction shall be assessed against and collected from each Lot Owner separately, and any liens for taxes assessed to any Lot Owners shall be confined and shall in no way affect title to any other Lot Owner or the Planned Community as a whole.

(e) Insurance. The Homeowners Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as provided in these Covenants.

(f) Manager. The Homeowners Association may retain and pay for the services of a person or firm to manage the Homeowners Association property (the "Manager") to the extent deemed advisable by the Homeowners Association, as well as such other personnel as the Homeowners Association shall determine to be necessary or convenient for the proper operation of the Homeowners Association or the conduct of the business of the Homeowners Association, whether such personnel are employed directly by the Homeowners Association or are furnished by the Manager. The Board and officers of the Homeowners Association may delegate any of its duties, powers or functions to the Manager, provided that any such delegation shall be revocable upon notice by the Homeowners Association. The Owners hereby release the Members of the Board of Directors of the Homeowners Association, and the officers from liability for any omission or improper exercise by the Manager of any such duty, power or function as may be delegated in good faith.

(g) Legal and Accounting Services. To retain and pay for legal and accounting services necessary as proper in the operation of the Homeowners Association, the enforcement of these Covenants, or in performing any of the other duties or rights of the Homeowners Association.

(h) Homeowners Association Property Services. To pay and assess the affected Members for water, sewer, garbage, electrical, telephone, gas, maintenance, and

gardening service, and other necessary utility or other services for that portion of any property owned or maintained by the Homeowners Association, or any other Lot for which separately metered services do not exist.

(i) Recreational Facilities. To construct, maintain and repair, to the extent deemed advisable by the Homeowners Association, recreational facilities and all Improvements relating to such facilities.

(j) Services. To provide and assess affected Units or Lots for a regular trash collection service for each Lot, if this service is not available from a municipal source.

(k) Contracts. Neither Declarant, nor any agent of Declarant, nor the Homeowners Association, its Board or officers, shall enter into any contract which would bind the Homeowners Association for a period in excess of One (1) year, unless reasonable cancellation provisions are included in such contract.

(l) Maintenance of Utility Lines. To maintain and assess the affected Lots for repair all utility lines, including but not limited to, water and sewer lines within the perimeter of the Planned Community.

(m) Rule Making. To make, establish, promulgate, amend and repeal the Rules for use of any Common Elements and Limited Common Elements within the Planned Community.

(n) Enforcement of Covenants and Rules. To perform such other acts, whether or not expressly authorized by the Colorado Common Interest Ownership Act or these Covenants, as may be reasonably necessary govern the Planned Community, and to enforce any of the provisions of these Covenants and any Rules made by the Homeowners Association.

(o) Other. The Homeowners Association shall also have all incidental powers necessary or convenient to carry out the duties of the Homeowners Association as set forth in the Colorado Common Interest Ownership Act, these Covenants, the Articles of Incorporation, and the Bylaws governing the Homeowners Association.

Section 2. Rules. The Homeowners Association may adopt such Rules as it deems proper for the use and occupancy of the Common Elements, the Limited Common Elements and any property of the Homeowners Association. A copy of said Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner, and may, but need not be, recorded. Upon such mailing, delivery or recordation said Rules shall have the same force and effect as if they were set forth in and were a part of these Covenants and may be enforced against such Owner.

Section 3. Liability of Homeowners Association Members, Directors, and Manager. No Member of the Homeowners Association, or any committee of the Homeowners Association, or member of the Board of Directors of the Homeowners Association, or the Manager shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Homeowners Association Member, the Homeowners Association Board, the Manager or any other representatives or employees of the Homeowners Association, or any committee, provided that such Homeowners Association Member, Board member, Committee member, or the Manager has, upon the basis of such information as was possessed by such person at the time any such action was taken, not intentionally or willfully acted in bad faith, or in an illegal manner.

ARTICLE X.

RESTRICTIONS UPON USE OF PROPERTY
WITHIN THE PLANNED COMMUNITY

Section 1. General Restrictions.

(a) Antenna and Tanks. No elevated or underground tanks of any kind shall be permitted. Any antenna or satellite dish larger than 24 inches in diameter shall be behind a privacy fence.

(b) Insurance Rates. Nothing shall be done or kept on or about the Planned Community which will increase the rate of insurance on any other property within the Planned Community, including any structure which may exist upon any Lot, Common Elements, or Limited Common Elements without the approval of the Board of the Homeowners Association, nor shall anything be done or kept within the Planned Community which would result in the cancellation of insurance on any structure which may exist upon any Lot, Common Elements, or Limited Common Elements, or which would be in violation of any law.

(c) No Further Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Homeowners Association for the transfer or sale of any Lot to more than one person to be held by them in common ownership.

(d) Signs. No sign of any kind shall be displayed to the public view except one sign of not more than six (6) square feet for such purposes as the Lot owner sees fit.

(e) Animals. No animals, including, but not limited to, horses, cows, pigs, goats, chicken, ducks, rabbits or other domesticated animals, except household pets, shall be maintained temporarily or permanently on any Lot or Limited Common Area.

(f) Trash. The Homeowners Association may, but need not, provide trash pick-up for Lots. All trash shall be placed in designated receptacles. The Homeowners Association will notify each Owner as to the particular trash receptacle to be used and the day(s) of the week the trash pick-up(s) will be made. Lot Owners for whom this service is provided by the Homeowners Association shall pay their respective share of the cost of such services as a Limited Common Expense.

(g) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the Planned Community, and no odors shall be permitted to arise therefrom so as to render any property within the Planned Community or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound device (other than security devices used exclusively for security purposes) shall be located, used or placed within the Planned Community without the prior written approval of the Homeowners Association.

(h) Underground Utilities. All utility lines, including all gas, electric, telephone, and television lines, shall be buried underground from their primary source to any structure served thereby at the Lot Owners expense.

(i) Payment of Utilities. Each Owner shall be responsible for the payment of all utilities, including gas, electricity, telephone, water and sewer which are provided to each Owner's Lot. Said utilities shall be flat rate or metered, as appropriate, and bills for each shall be sent to each Lot Owner, or tenant thereof, by the utility companies providing said services, where feasible.

(j) Homeowners Association Rules. No Owner shall violate any rules or regulations, (herein the "Rules"), adopted by the Homeowners Association, from time to time, for governance of the Planned Community. If any Owner, his family, or any guest, licensee, lessee or invitee violates such Rules, the Homeowners Association may suspend the right of such person, including such persons family, or any guest, licensee, lessee or invitee, to use the Common Elements or Limited Common Elements, under such conditions as the Homeowners Association may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any suspension, the Homeowners Association shall give such person Notice and Hearing. In the event any Owner of any Lot shall violate any Rule which shall result in damage to any part of the Common Elements or Limited Common Elements upon any of the Planned Community, the

Homeowners Association shall have the right after Notice and Hearing to assess the cost of repair of such damages against the Owner or Owners responsible for such damage. Such assessment shall be added to and become a part of the Assessment to which such Lot is subject. Notwithstanding anything to the contrary in these Covenants, the Homeowners Association shall not have the power to bar any Owner from use of the Common Elements or Limited Common Elements necessary to allow the Owner access to and from the Owner's Lot.

(k) Drainage. There shall be no interference with the established drainage pattern over any property within the Planned Community unless adequate provision is made for proper drainage and is approved by the Board of Directors. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of any of the Planned Community Properties are Purchased, or which is shown on any Plat or plans approved by Mesa County. A permanent easement for drainage purposes across all Common Elements which do not contain improvements restricting such drainage is hereby granted.

(l) No Temporary Structures. No tent (except for use up to several times a year for backyard camping or special events for not more than forty-eight hours on any one occasion) or shack or other temporary building, improvement or structure, including trailer houses, shall be placed or remain within the Planned Community, except as used by the Declarant for construction purposes and except for storage buildings on the rear half of a Lot only five feet from the property line except where ten foot or greater easements exist as shown on the plat. Storage buildings may be metal or frame, temporary or permanent.

~~(m) Residential Use - Rentals. No Lot shall be used for any purpose other than single-family residential purposes. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot, provided, however, that nothing in these Covenants shall prevent the rental of any Lot, or any dwelling within any Lot, for residential purposes, subject to all the provisions of these Covenants.~~

(n) Vehicle Storage and Repair. No house trailer, camping trailer, hauling trailer, running gear or boat or accessories thereto, or any automobile which is not in current running condition and currently licensed, regardless of size, nor any truck, pickup, van, or camper van in excess of three-fourths (3/4) ton size, shall be parked, stored, repaired, or maintained on any Lot, Limited Common Elements, or Common Elements, whether or not within a designated parking space, except in the designated RV parking area or pursuant to rules adopted by the Homeowner's Association. Nor shall recreational vehicles and trailers be used as a residence at any place within the Planned Community. This restriction shall not apply to commercial or other vehicles making business or service calls or deliveries to the residents or Owners of the Lots or

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to the Homeowners Association or to contractors constructing improvements within the Planned Community.

(o) Fences. No fence, foliage or hedge in the nature of the fence shall be planted, maintained, constructed or erected in any area between a line bisecting the Lot which is even with the front of the residence on that Lot and the street or road providing access to that Lot.

(p) Basketball goals. No basketball goals of a permanent nature are allowed in front of a privacy fence. Any temporary basketball goals shall be removed from view at night.

(r) Move and set. All construction within the subdivision shall be new construction and no previously erected building, structure, or improvement shall be moved and set upon any Lot from any other location.

(t) Land use. No lots shall be used except for residential purposes. Only single-family dwellings, private garages for not more than three cars, and other outbuildings directly incidental to residential use shall be erected, altered, placed or permitted to remain on any Lot. The ground area of the main structure on any Lot exclusive of open porches and garages shall not be less than 1300 square feet, outside measurements, with either a double or triple car garage. The setbacks and building requirements shown on the Plat and filings herein are hereby incorporated as binding restrictions on this subdivision subject only to amendment in accordance with the provisions for amending this Declaration.

(u) Landscaping. Landscaping, including, but not limited to a sprinkler system, grass, sod, rock, shrubs or other plants (or comparable xeriscaping) shall have been completed on the front and side yards of said Lot within six months of transferring of the deed from the Declarant to the Owner, and shall not be permitted to fall into such a state of disrepair as to reach a point at which it is an unsightly or unattractive eyesore, violates city ordinances, or interferes with neighboring properties by propagating weeds, grass seeds, dust, or mud.

Upon the failure of any such Owner to so maintain or repair any such landscaping, the Homeowners Association shall, have the right, but not the duty, to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the responsible Lot Owner. Such cost shall be a separate assessment against the Lot involved, and shall create a lien enforceable in the same manner as other assessments by the Homeowners Association.

ARTICLE XI.

INSURANCE

Section 1. Homeowners Association Insurance. The Homeowners Association shall obtain insurance for the benefit of the Homeowners Association, the Owners and their mortgagees, covering the risks on all buildings and improvements and all personal property owned by the Homeowners Association, or included in the Common Elements, or Limited Common Elements which are not otherwise insured by the Owners benefiting therefrom. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado, and paid for out of the assessments of the Homeowners Association.

Such insurance shall include the following:

(a) Casualty Insurance. A policy or policies of fire insurance, with extended coverage endorsement and coverage against vandalism and malicious mischief, or such other fire and casualty insurance as the Homeowners Association shall determine gives substantially equal or greater protection to the Owners and their mortgages, as their respective interests may appear, for casualty to any improvements upon the Common Elements or Limited Common Elements not otherwise insured, and which policy or policies shall provide, in each case, for a separate loss payable endorsement in favor of the Owner(s) and the mortgagee(s) of each Lot as their respective interests may appear. The insurance coverage shall be in a face amount equal to the full replacement value of such insured improvement(s) determined as of the effective date of the policy, (excluding land, excavation costs, and foundation costs), and shall comply with the requirements of the Colorado Common Interest Ownership Act.

The policy or policies, to the extent that such insurance is available without inordinate cost, shall provide that each Owner is an insured person with respect to liability arising out of such Owners ownership interest in the Planned Community, and shall provide for a waiver of the insurer's rights of subrogation under the policy against any Owner, their family members, guests, invitees, or tenants. The policy or policies shall also provide, to the extent that such insurance is available without inordinate cost, that no act by any Owner (unless acting as an agent for the Homeowners Association) shall void or be a condition to recovery under the policy, and each policy shall have an endorsement so that the rights of named insureds under the policy or policies shall not be prejudiced as respects an insured's action against another named insured.

(b) Comprehensive General Liability Insurance. The Homeowners Association shall maintain in full force a comprehensive general liability insurance policy or policies, in connection with the ownership, existence, use, or management of all Limited

Common Elements and all Common Elements within the Planned Community, insuring the Homeowners Association, its Board, officers, agents and employees, any manager, its agents and employees, and all Lot Owners, their agents, guests, invitees, or tenants, against any liability to the public or to any Owners of any Lots or Limited Common Elements, incident to the ownership, maintenance, and/or use of the Common Elements or Limited Common Elements, and including the personal liability exposure of the Owners with respect to activities conducted in, upon or in connection with the property, including (without limitation) fire legal liability and water damage legal liability.

The insurance coverage shall be in an amount deemed sufficient by the Homeowners Association, (such limits and coverage to be reviewed at least annually by the Homeowners Association and increased in its discretion), and such policies shall comply with the requirements of the Colorado Common Interest Ownership Act. The insurance coverage shall insure the Homeowners Association, its employees, agents, and its management agent, if any. The Lot Owners, (including the Declarant, in its capacity as a Lot Owner), shall be included as an additional insureds for claims and liabilities arising in connection with the ownership, maintenance, use, or management of the Common Elements and Limited Common Elements of the Planned Community.

The policy or policies, to the extent that such insurance is available without inordinate cost, shall provide that each Owner is an insured person with respect to liability arising out of such Owners ownership interest in the Planned Community, and shall provide for a waiver of the insurers rights of subrogation under the policy against any Owner, their family members, guests, invitees, or tenants. The policy or policies shall also provide, to the extent that such insurance is available without inordinate cost, that no act by any Owner (unless acting as an agent for the Homeowners Association) shall void or be a condition to recovery under the policy, and each policy shall have an endorsement so that the rights of named insureds under the policy or policies shall not be prejudiced as respects an insured's action against another named insured.

(c) Other Insurance. The Homeowners Association may procure additional insurance coverages as it shall deem necessary or prudent from time to time. However, Lot owners may not be required to maintain hazard insurance on residences and mandatory assessments may not be used to pay premiums on such insurance. Participation in any group or blanket insurance program providing coverage for other than Common Elements and Limited Common Elements must be voluntary.

Section 2. Use of Proceeds to Rebuild Damaged Improvements. In the event of damage by fire or other casualty limited to a single Lot, all insurance proceeds shall be paid to the Owner(s), or mortgagees of the Owner(s) of such Lot as their respective interest may appear; and such Owner(s) or mortgagees shall and hereby covenant to use the same to rebuild or repair such Lot to substantially the same condition as it was prior thereto or changed as said

Owner and Mortgagee may elect to the extent of the Owner's right to alter such Lot under these Covenants.

If such damage extends to two or more Lots, or extends to any part of the Common Elements or Limited Common Elements, the following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(a) If the available insurance proceeds initially offered or paid by the insurer do not exceed the cost of repairing or rebuilding the improvement by more than \$15,000.00, then such insurance proceeds shall be paid to the Homeowners Association in trust for the Owners of damaged Lots, Limited Common Elements, or Common Elements, and all other Owners. The Homeowners Association or the affected Lot Owners shall thereupon contract to repair or rebuild the damaged Lots, Limited Common Elements, or Common Elements, and the funds held in the trust shall be used for that purpose. If the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding, the Owners of the Lots or Limited Common Elements, or Common Elements affected by such casualty, shall pay for the portion of the insufficiency attributed to their Lot by the Homeowners Association, and the Homeowners Association shall levy a special assessment on all affected Owners, in proportion to the interest of each Owner in the damaged Lots, Limited Common Elements, or Common Elements, to make up any deficiency. The Homeowners Association may request that all insurance proceeds be paid to a bank or trust company designated by the Homeowners Association to be held for the benefit of the affected Owners and their mortgages as their respective interest may appear. The Homeowners Association is authorized to enter on behalf of the Owners into such agreement, consistent with these Covenants, with such insurance trustee, relating to its powers, duties and compensation, as the Homeowners Association may approve.

In order to effect repairs or reconstruction of any Lots, Limited Common Elements, or Common Elements, the Homeowners Association shall obtain firm bids from two or more responsible contractors for rebuilding the property in accordance with its condition prior to damage and destruction, modified at the direction of the Homeowners Association, to comply with building codes and construction standards in effect at the time of the rebuilding and shall, as soon as reasonably possible thereafter, call a special meeting of the Members of the Homeowners Association to consider such bids. To be considered, any such bid shall include the premium payable for a sufficient labor and material payment bond from a reputable bonding company. If the Homeowners Association fails to do so within sixty days after the casualty occurs, any affected Owner may obtain such bids and call and conduct such meeting as herein provided. Failure to call such meeting, or to repair such casualty damage, within 12 months from the date of such damage occurring shall be deemed, for all purposes, a decision not to rebuild said damaged improvements. At such meeting, the Owners may elect to reject

all bids and thus not to rebuild. A vote in excess of eighty percent (80%) of the total votes of each class entitled to vote shall be required to reject any such bid; provided, however, that a vote in excess of fifty percent (50%) shall be required to reject any such bid requiring the contribution by the affected Owners of an amount of more than \$15,000.00 in excess of available insurance proceeds to pay the contractor for performance of the work. Failure to reject all bids shall authorize the Homeowners Association to accept the unrejected bid it considers most favorable. If a bid is to be accepted, the Homeowners Association shall levy a special assessment in proportion to the interest of each affected Owner to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding.

(b) Within sixty (60) days after any damage or destruction occurs which invokes the provisions of this subparagraph, the Manager, the Homeowners Association, or if they do not, any Owner, the insurer, the insurance trustee or any mortgagee of any Owner may record a sworn declaration stating that such damage has occurred, describing it, naming any insurer against whom claim is or may be made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this paragraph of these Covenants, and that a copy of such sworn declaration has been served on the Owners. If the Owners vote, or by their actions indicate, a desire not to rebuild, the Homeowners Association shall see that all Owners of non-damaged Lots, and all Owners of Lots that are damaged, who are desirous of rebuilding and state same in writing, and first mortgagees of each, are fairly compensated out of insurance proceeds for any diminution in value of their Lots because of the election of the requisite number of Owners not to rebuild. Said compensation shall also reflect any anticipated increases in annual assessments, due to a reduced number of Lots, and said compensation shall be paid to said Owners, and/or first mortgagees, out of insurance proceeds before any other distributions are made of said proceeds.

ARTICLE XII.

CONDEMNATION

Section 1. Total Taking. If all of the Planned Community shall be taken or condemned by any authority having the power of eminent domain, the Homeowners Association shall have the right to act on behalf of Owners with respect to the Planned Community and the award shall be payable in accordance with the allocation made in such proceeding (if such allocation is so made) or, otherwise, the award shall be divided between affected Owners, as their interests may appear, as determined by the Board of the Homeowners Association.

Section 2. Partial Taking. If part of the Planned Community shall be taken or condemned by any authority having the power of eminent domain, such that any Lot(s), or part thereof, (including Limited Common Elements or Common Elements assigned to any Lot) are taken, the Homeowners Association shall have the right to act on behalf of such Owner with respect to the Limited Common Elements and Common Elements, and the condemnation proceeds shall be payable to the beneficial owners thereof as set forth in such award, (if such allocation is so made) or, otherwise, the award shall be divided between affected Owners, as their interests may appear, as determined by the Board of the Homeowners Association. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lot(s). The award so made shall be distributed through the Homeowners Association, first to restore the Lot(s) and improvements on the remaining Limited Common Elements or Common Elements to the extent possible, attempting to rebuild structures of the same number, size and basic plan as the Lots taken, with any excess award distributed as hereinafter provided.

For the purposes of this Article, "Partial Taking" shall mean the condemnation of only a portion of the Planned Community, but shall include a taking of all or any part of any individual Lot(s) or Limited Common Elements, or Common Elements appurtenant thereto.

In the event that the Homeowners Association determines that such taking so removes land and buildings such that the improvements cannot effectively be restored or replaced substantially in compliance with the original construction plans, and unless Members entitled to exercise not less than eighty percent (80%) of the voting power of each class of stock of the Homeowners Association and eighty (80%) of all the first Mortgagees approve an alternative reconstruction plan, then such proceeds shall be distributed to the Owners of the affected Lot(s), and the interests of such Owner(s) in the Planned Community shall be reallocated in accordance with the Colorado Common Interest Ownership Act.

If part of the Planned Community shall be taken or condemned by any authority having the power of eminent domain, such that no Lot(s) are taken, all compensation and damages with respect to the taking of the Limited Common Elements or the Common Elements, exclusive of compensation for consequential damages to the affected Lot(s), shall be payable to the Homeowners Association, as Trustee, for all Owners and their first Mortgagees according to their interest in such Limited Common Elements or Common Elements. The Homeowners Association, acting through the Board of the Homeowners Association, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Limited Common Elements and Common Elements, without limitation on the right of the Owners to represent their own interest. The proceeds shall be paid to the Homeowners Association and shall be used promptly to the extent necessary for restoring and replacing the improvements so taken on the remaining property within the Planned Community in a manner as close to the original plan and elevation of the improvements as possible or, if the Homeowners Association determines

that it is not possible or feasible, then according to plans and specifications approved by the Homeowners Association, to restore the general value of the Planned Community. In the event that there is an award in excess in the amount necessary to so substantially restore the Limited Common Elements or Common Elements, it shall be distributed by the Homeowners Association to the Owner(s) or Mortgagee(s) of such Owner(s), as their interest may appear. Such remittance shall be payable jointly to the affected Owner(s) and Mortgagee(s), in proportion to each such Owner(s)' interest in the Limited Common Elements or Common Elements taken. Nothing herein is to prevent Owners whose Lot(s) are specially affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lot(s), or personal improvements therein, exclusive of damages relating to the Limited Common Elements or Common Elements. In the event that the condemnation award does not allocate consequential damages to specific Lot(s), but includes an award for reduction in value of two or more Lots, without allocation, the award shall be divided between affected Owners as their interests may appear as determined by the Board of the Homeowners Association.

ARTICLE XIII.

DECLARANT'S RIGHT OF DEVELOPMENT

Section 1. Exemption of Declarant. Nothing in these Covenants shall limit the right of Declarant to complete excavation, grading and construction of improvements upon any property within the Planned Community owned by Declarant (including erection of dwellings and other improvements on Block A and Block B of the Plat which shall be a part of the Faircloud Subdivision and within the scope of these Declarations), or to alter the same or to construct such additional improvements as Declarant deems advisable in the course of development of the Planned Community so long as any Lot is owned by the Declarant, or to use any structure in the Planned Community as a model home or real estate sales or leasing office. Declarant need not seek or obtain approval with respect to the improvement of any property within the Planned Community owned by Declarant. The rights of Declarant hereunder and elsewhere in these Covenants shall accrue to the benefit of the Declarant's successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and either succeed to all or substantially all of the assets of the Declarant, or receive a written assignment of Declarant's rights under these Covenants.

ARTICLE XIV.

GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants,

reservations, liens and charges now or hereafter imposed by the provisions of these Covenants. Failure by the Homeowners Association or by 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 one of these Covenants by judgment or court order shall in no wise affect any other provisions which is not adjudged invalid, and such remaining provisions shall remain in full force and effect.

Section 3. Amendment. These Covenants shall run with and bind the land within the Planned Community, in perpetuity. It is noted that the rule against perpetuities does not apply to defeat any provision of the declarations, bylaws, or rules and regulations pursuant to section 38-33.3-203, C.R.S. These Covenants may be repealed or amended by an instrument signed by not less than eighty percent (80%) of the Class A and of the Class B votes of all Lots existing within the Planned Community at the time such amendment is proposed. Any amendment and any statement repealing these Covenants must be recorded before it shall become effective.

The Articles of Incorporation of the Homeowner's Association may be repealed or amended by an instrument signed by not less than eighty percent (80%) of the Class A and of the Class B votes of all Lots existing within the Planned Community at the time such amendment is proposed.

Section 4. Termination. This Planned Community may be terminated by the affirmative vote of not less than eighty percent (80%) of the Class A and of the Class B votes of all Lots existing within the Planned Community at the time such termination is proposed. A statement setting forth the termination of the Planned Community must be recorded before it shall become effective. Upon such termination, title to the Limited Common Elements and Common Elements shall vest in the beneficial Owners thereof, as tenants in common, in such fractional interests as provided by the Colorado Common Interest Ownership Act.

Section 5. Annexation of Additional Property. Apart from the Declarant's right to add additional property to the Planned Community in accordance with these Covenants, additional residential property, Limited Common Elements, and Common Elements maybe annexed to the Planned Community only with the affirmative vote of not less than eighty percent (80%) of the Class A and of the Class B votes of all Lots existing within the Planned Community at the time such amendment is proposed.

Section 6. Merger and Consolidation. This Planned Community and its Homeowner's Association may merge or consolidate with another planned community, association, or other entity, only by the affirmative vote of not less than eighty percent (80%) of the Class A votes (excluding all Class B votes) of all Lots existing within the Planned Community at the time

such merger or consolidation is proposed. A statement setting forth the merger or consolidation of the Planned Community must be recorded before it shall become effective.

IN WITNESS WHEREOF, the undersigned Declarant herein has hereunto set its hand and seal this 26 day of October, 1998.

DECLARANT:

J. P. WHITE CONSTRUCTION CO., a Colorado corporation

By Darlena White
Darlena White, President


STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 26 day of October, 1998, by Darlena White as President of J. P. White Construction Co., a Colorado corporation, Declarant.

Witness my hand and official seal.
My commission expires:

My Commission Expires
05/27/2001

Denise M. [Signature]
Notary Public



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**AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
FAIRCLOUD SUBDIVISION – ALL FILINGS**

KNOW ALL MEN BY THESE PRESENTS THAT THE FAIRCLOUD HOMEOWNERS ASSOCIATION DOES HEREBY DECLARE AND ADOPT THE FOLLOWING AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF FAIRCLOUD SUBDIVISION (“THE COVENANTS”) WHICH DECLARATION WAS ORIGINALLY RECORDED WITH THE MESA COUNTY CLERK AND RECORDER ON OCTOBER 27, 1998 IN BOOK 2504 AT PAGE 810. THIS AMENDMENT SHALL RUN WITH THE REAL PROPERTY HEREINAFTER DESCRIBED AND SHALL BE BINDING UPON ALL PARTIES OWNING AND/OR ACQUIRING ANY INTEREST THEREIN OR THERETO.

1. The Property. The real property affected by this Amendment is all that real property described on the plats recorded with the Mesa County Clerk and Recorder known as:

Faircloud Subdivision, Filing One;
Faircloud Subdivision, Filing Two; and
Faircloud Subdivision, Filing Three;
all in Mesa County, State of Colorado.

2. Authorization. The Declarant, as originally described in The Covenants, has been succeeded in interest by a new Declarant by virtue of the new Declarant’s acquisition of more than one undeveloped Lot for the purpose of development of same; and by virtue of the new Declarant’s acquisition of all, or substantially all, of the assets of the original Declarant’s assets with respect to Faircloud Subdivision. The new Declarant is NEGJLAND Investors, Inc., a Colorado corporation. NEGJLAND Investors, Inc. still maintains over 80% control of the votes of the Faircloud Homeowners Association, and; as such, has control and authority to make this Amendment to The Covenants.

3. Amendment. Section 1, Paragraph (m) of The Covenants is hereby deleted and revoked in its entirety. In its stead, the following paragraph will be inserted:

(m) Residential Use. Nothing in these Covenants shall prevent the rental of any Lot, or any dwelling within any Lot, for residential purposes, subject to all the provisions of these Covenants. No Lot or Improvements situated thereon may be used for commercial purposes excepting for "Minor Home Occupations" as those are described in the Mesa County Land Development Code, Section 5.3.6(B), Effective May 1, 2000, ("Exhibit A"), which is attached hereto and which, by this reference, is incorporated herein as though fully set forth at length. Day care centers, run by a single person are permitted, in accordance with Mesa County regulations.

The foregoing Amendment shall be effective as of the date of signing. All other provisions of The Covenants, except the revoked Section 1, Paragraph (m), remain in full force and effect.

The undersigned, as the new Declarant of Faircloud Subdivision, all Filings, and as having full control of the Faircloud Homeowners Association, executes this instrument this ____ day of August, 2001.

NEGJLAND Investors, Inc.,
A Colorado Corporation

By Stanley L. Seligman, its Vice-President

STATE OF COLORADO)
) SS
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of August, 2001 by Stanley L. Seligman as Vice-President of NEGJLAND Investors, Inc., a Colorado corporation.

Witness my hand and official seal.

Notary Public

EXHIBIT A

5.3.6 | Home Occupations

A. General

Some types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding area. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living), and that the residential viability of the dwelling unit is maintained. There are two types of home occupations—Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use, although Major Home Occupations shall not be allowed unless a Conditional Use Permit is reviewed and approved in accordance with Sec. 3.8.

B. Minor Home Occupations

The regulations of this subsection apply only to Minor Home Occupations.

1. Allowed Uses

The Minor Home Occupation regulations of this subsection establish performance standards rather than detailed lists of allowed home occupations. Uses that comply with all of the standards of this subsection will be allowed as Minor Home Occupations unless they are specifically prohibited.

2. Where Allowed

Minor Home Occupations that comply with the regulations of this section shall be allowed as an accessory use to any allowed Household Living use.

3. Prohibited Uses

a. Vehicle and Large Equipment Repair

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines), or of large appliances (such as washing machines, dryers, and refrigerators), or any other work related to automobiles and their parts, is prohibited as a Minor Home Occupation.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as Minor Home Occupations.

c. Animal Care or Boarding Facilities

Animal care or boarding facilities are not allowed as Minor Home Occupations. This includes animal hospitals, kennels, stables, and all other types of animal boarding and care facilities.

- d. **Medical Offices or Clinics**
Medical offices and medical clinics are not allowed as Minor Home Occupations. This includes doctors' offices, dentists' offices, psychologists' offices, hospitals and all other medical care facilities. The prohibition will not be interpreted as preventing medical practitioners from seeing patients in their home on an emergency basis.
4. **Employees**
No Minor Home Occupation shall have nonresident employees. For the purpose of this provision, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.
5. **Resident Operator**
The operator of a Minor Home Occupation shall be a full time resident of the dwelling unit.
6. **Customers**
Customers may visit the site only during the hours of 8 a.m. to 8 p.m., and no more than six customers or clients may visit the site in any single day.
7. **Floor Area**
No more than 25 percent of the total floor area of the dwelling unit may be used to house a Minor Home Occupation.
8. **Signs**
Minor Home Occupations shall be limited to nameplate signs, not exceeding two square feet in area. Such signs shall be mounted on the house. Freestanding signs shall be prohibited.
9. **Outdoor Activities**
All activities and storage areas associated with Minor Home Occupations must be conducted in completely enclosed structures.
10. **Exterior Appearance**
There shall be no visible evidence of the conduct of a Minor Home Occupation when viewed from the street right of way or from an adjacent lot. There may be no change in the exterior appearance of the dwelling unit that houses a Minor Home Occupation, or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting.
11. **Operational Impacts**
No Minor Home Occupation, or equipment used in conjunction with a Minor Home Occupation, may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.
12. **Trucks**
No truck or van with a payload rating of more than 1½ ton may be parked at the site of a Minor Home Occupation.

Chapter 5/ Use Regulations

13. Deliveries

Deliveries or pick-ups of supplies or products associated with Minor Home Occupations are allowed only between 8 a.m. and 8 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

14. Retail Sales

Retail sales of goods is prohibited except when conducted entirely as an accessory activity to any services provided on the site (e.g., hair care products sold to hair style customers).

15. Number

No more than one Minor Home Occupation may be conducted on a single site.