

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TIMBERLANE HEIGHTS HOMEOWNERS ASSOCIATION

This Declaration, is made this 16th day of July, 1996, by Edmond A. Hajim, hereinafter called Declarant.

ARTICLE I

GENERAL PURPOSE OF CONDITIONS

The real property described in Article III hereof (hereinafter the "Property") is hereby subjected to the following covenants, restricts, condition, reservations, liens and charges hereby declared for the purpose of: insuring the best use and the most appropriate development and improvement of each lot within the Property; to protect the owners of lots against improper use of surrounding property which could depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection, on the Property, of poorly designed or proportioned structures, and structures build of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage the erection of attractive homes on the Property, with appropriate locations thereof; to prevent haphazard and/or inharmonious improvement of sites; to secure and maintain proper setbacks from streets and boundary lines, and to insure adequate free spaces between structures; and in general to provide adequately for high quality types of improvements on the Property, and thereby to enhance the values of investments made by Purchasers of building sites within the Property. By imposing these covenants and restrictions, it is the Declarant's intent to create a "planned community" common interest community as such terms are defined by the Colorado Common Interest Ownership Act.

- A. No structures shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished or be permitted to remain on any building site other than one detached single family dwelling unit, which dwelling unit shall not to exceed 26 feet in height above floor on lowest living space, whether or not finished, a detached private garage for no more than two cars, and other outbuildings, such as boat shelters incidental to residential use of the premises, unless approved by The Architectural Control Committee (the "Committee").
- B. No building or improvement shall be erected, placed or altered on any premises in said development until the building plans, specifications, and plot plan showing the location of such building or improvement have been approved in writing as to conformity and harmony of external design with existing structures in the development, and as to location of the building or improvement with respect to topography, boundary lines and finished ground elevation, by the Architectural Control Committee. The plans shall include, at a minimum, the following:
 - a. Square footage of finished space, including floor plans.
 - b. Exterior elevations from all sides
 - c. Perspective view of house from the street.
 - d. Roof plan/site plan.
 - e. Tree removal plan.

In the event said Committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been

submitted to it, it shall be deemed that approval has been granted. In any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.

- C. A portion of the single-family dwelling allowed on each Lot may be used as a private office without any other employees. The sale of goods as a business from the single-family dwelling is prohibited. No nightly rentals, bed and breakfast, boarding or rooming house is allowed. No noxious or offensive trade or activity shall be carried on upon any building site nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- D. No tent, shack, garage, barn, or outbuilding erected on a Lot covered by these Covenants shall at any time be used for human habitation temporarily or permanently. The keeping of registered automobiles, inoperative automobiles, or mobile homes, either with or without wheels, on any parcel of property covered by these Covenants is prohibited. Boats, trailers, or other recreational vehicles may be maintained, stored, or kept on any parcel of property covered by these covenants only if sheltered completely by a structure which has been architecturally approved under the provisions of Paragraph B hereof or is otherwise approved by the Architectural Control Committee. No modular housing, manufactured home or factory-built home will be permitted. For the purpose of this Covenant, modular shall mean built substantially off site.
- E. The total square footage of all buildings and structures, including detached garages, but excluding outbuildings, decks and shelters for the storage of recreational vehicles, shall not exceed twenty percent (20%) of the total square footage of the Lot. The square footage of each secondary roof form on the single-family dwelling unit may only be up to one-half of that of the primary roof, with the exception of more than one primary roof forms which are identical in shape, form, and size. Roofs must meet County requirements as to snow load. Roofs must be designed in such a way that they shed snow. No flat roofs will be allowed.
- F. No animals or poultry of any kind other than house pets shall be kept or maintained on the Property. All animals shall be kept leashed or otherwise under direct owner control at all times. The Board shall have the authority to cause any animal deemed to be vicious by the Board to be removed from the Property at the expense of the animal owner. Any such cost may be collected in the same manner as annual or special assessments.
- G. No fence or wall shall be permitted except for screening fence which fence must be approved by the Committee on the south side of Lots 1-10, Block 5.
- H. Oil drilling, oil development operations; refining, mining operations of any kind, or quarry shall not be permitted upon or in any of the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the Property covered by these Covenants.
- I. There shall be no signs except: 1) signs as may be deemed reasonable and necessary by the Architectural Control Committee, such as, but not limited to: "No Trespassing", "No hunting," "Private Trails," "Slow-Children Playing," etc.; 2) signs used to identify the residential addresses or names of occupants; or 3) standard "For Sale" signs not to exceed four (4) square feet. The combined or total area of such signs described in subparagraphs 1) and 2) shall not exceed two (2) square feet in area on any residential Lot.
All signs except standard "for Sale" signs shall be made of wood with routed or painted letters. No back lighted or neon type illuminated signs shall be allowed on the Property. All signs must comply with Grand County Zoning Regulations, and must be approved by the Architectural Control Committee in advance.

- J. No dwelling house shall be constructed on said land unless there is concurrently designated on the same land adequate off-street parking for at least two (2) automobiles per residence. Driveways shall not be hard surfaced, such as asphalt and concrete, but shall be gravel, stone, or dirt.
- K. No site shall be used for any type of equipment or material storage, except during construction. Such materials and equipment shall be expeditiously removed upon completion of the construction. No business or commercial enterprise shall be allowed to operate within the boundaries of the Property, except those allowed by this Declaration. An application must be submitted to the Board for approval of any business or commercial use. The Board reserves the right to impose any requirements it deems necessary to mitigate any objectionable impacts of such use.
- L. Log siding, bark siding, stone or logs are the only materials that can be used as exterior wall material, with the exception that 25% of the exterior wall can be natural wood siding. Wood may have a clear finish or stain, but shall not be painted. Stains shall be muted greens, browns, or earth tones. The entry way to the residential building shall incorporate a structure to protect it from the elements. The primary entry way shall be visible from the access street. Trim may be painted as an "accent" to siding material.

There must be at least one pane of glass, divided into three sections, on all the exterior of the residential building and visible from the street. No single continuous pane of glass shall be larger than twenty-one square feet. Windows must not be curvilinear in any form. The sides of bay windows must be perpendicular to the horizontal face of the residence.

All exterior lighting must be designed to provide ambient lighting—not spot lighting.

Garages may have one of two types of doors; (a) roll-up doors, in which case the garage must be perpendicular to the street; or (b) "barn door" style, which may face the street.

All structures shall be properly maintained. Out buildings are specifically allowed; however, they shall conform (in the opinion of the Committee) to the restrictions herein contained as to design, color, construction and placement. Between 6" and 12" of foundation may be exposed between the bottom of siding and the ground. Foundation should be painted to minimize visual impact.

- M. Each building, structure or improvement which is commenced on any Lot shall have the exterior walls and roof completed within twelve (12) months after commencement of construction.
- N. Easements for utilities as reserved on the Final Plat shall allow any and all public utility companies to enter on to the Property and trim or fell trees and vegetation as necessary to install such utilities. However, any such utility company shall be required to abide by the clean-up provisions of Article I-T, below. All utility lines, including, but not limited to, electric, cable TV, telephone, gas and sewer, must be underground.
- O. No sewage disposal system, sanitary system, cesspool or septic tank shall be constructed, altered or allowed to remain or to be used on any Lot. There shall be no outside burning.
- P. All clothes lines, equipment, service yards, plumbing or heating vents, satellite dishes or storage piles on any Lot must be approved by the Architectural Control Committee as to nature, size and location, and shall be kept screened to the satisfaction of the Architectural Committee so as to conceal them from the view of neighboring Lots, streets, and access roads. Rubbish and trash cans must be screened from view of the street. All rubbish and trash must be stored in a sanitary manner and shall be removed from each Lot at least once each week and shall not be allowed to accumulate and shall not be burned thereon. If an Owner does not comply with this paragraph, the Board shall be authorized to go on the Lot and remove or cause such rubbish

and trash to be removed and charge Owner the cost therefor, which cost shall become an assessment against the Lot pursuant to Article VI, Section 1 of this Declaration.

- Q. No towers radio or television antennae shall be erected on any Lot without the proper authorization of the Architectural Control Committee. All such towers and antennae must be attached to the dwelling house.
- R. All landscaping must be Colorado native grasses, flowers or trees, buffalo grass or xeriscaping materials. Any tree or vegetation removal shall be subject to the clean-up requirements contained herein. At such time as the conveyance of a Lot is consummated, any further tree and vegetation removal shall be subject to the following:
- a. No trees or brush growing on the Property shall be felled or trimmed, nor shall any natural area be cleared or landscaping performed which changes the character of the land on any Lot without the prior written permission of the Board. In the event any trees or brush are felled or trimmed, the Owner shall be required to remove all portions of the tree or brush from the Lot, including the slash. The cutting of trees into firewood and the same stacked neatly on a Lot shall be deemed to meet the requirement of removal from the Lot. Stumps may be left if cut off to ground level or they shall be removed and hauled away.
 - b. In the event an Owner does not properly remove and clean up any residual debris after tree removal, the Board is hereby authorized to cause the clean up to be done at the Lot Owner's expense and, if not timely paid, the Board may collect such unpaid sums in the same manner as an annual or special assessment.
 - c. Subject to the written approval of the Board, trees may be removed on any Lot as follows:
 - i. Actual land occupied for buildings, plus a ten (10) foot clearance strip adjacent to the perimeter thereof;
 - ii. One (1) entrance driveway not more than thirty (30) feet in width, and an off-street parking area no larger than required to accommodate two (2) parking spaces;
 - d. An Owner may apply to the Board for removal of trees to allow sunlight to reach the improvements and to allow visibility of surrounding mountains from the improvements, provided such tree removal does not make the improvement or planned improvement more visible to the residential building site of adjacent Lot Owner. An owner may also apply to the Board for removal of additional trees to mitigate forest fire danger. Such tree removal between Lots may be permitted by the Board pursuant to a mutually executed written agreement between the adjoin property Owners which agreement shall be recorded.
 - e. Owners are permitted to remove dead and diseased trees, brush or lifeless limbs of trees which in any way create a health or safety hazard without Board approval. When notified in writing by the Board of diseased trees, fallen trees or trees damaged by natural causes, an Owner shall remove such trees within a reasonable time and at Owner's expense. If an Owner fails to comply, the Board shall be authorized to remove or cause such trees to be removed and charge the Owner for the Cost thereof. If the costs therefore are not timely paid, the Board may collect such unpaid sums in the same manner as an annual or special assessment. Other trees which interfere with utility lines may be removed by authorization of the Board. Any other tree removal shall only be allowed by application to and approval by the Board.
- S. Owners shall comply with all applicable Federal, State, and County rules, regulations, laws or ordinances in connection with the ownership and use of the Lots. A violation of any such rules,

regulations, laws or ordinances shall also constitute a violation of the provisions of this Declaration of Covenants, Conditions, and Restrictions.

- T. No person, group or organization shall attempt to stop any owner from building on such owner's property so long as such building complies with the requirements of these covenants, the Committee, and all applicable laws.

ARTICLE II

DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the Timberlane Heights Homeowners Association.
- (b) The "Property" shall mean and refer to all of the "Existing Property" as identified in Exhibit "A" and additions thereto, which are subject to this Declaration or any Supplemental Declaration under the provisions of Article III, hereof.
- (c) "Common Properties" shall mean and refer to (1) those areas of land shown on any recorded subdivision plat of the Property (or otherwise identified herein) and intended to be non-residential building area devoted to the common use and enjoyment of the owners of the Property, and (2) easements for ingress, egress and utilities, and roadways as shown on the recorded Subdivision Plat.
- (d) "Declarant" shall mean and refer to Edmund A. Hajim, his successors and assigns.
- (e) "Lot" shall mean and refer to any plot of land designated as a Lot upon any recorded subdivision plat of the Property with the exception of Common properties as heretofore defined.
- (f) "Dwelling Unit" shall mean a building which contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by code, for not more than one family.
- (g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.
- (h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section I hereof.
- (i) "Architectural Control Committee," also known as "Committee" referred to in this document shall mean the body that shall control the approval of and supervision of construction, development, and maintenance of the improvements to be constructed in Timberlane Heights Subdivision.
- (j) "Board" or "Board of Directors" shall mean the Board of Directors of Timberlane Heights Homeowners Association.
- (k) "Subdivision plat" or "plat" shall refer to the subdivision plat of Timberlane Heights Subdivision recorded on 5/12/96 at Reception Number 94209, in the office of the Clerk and Recorder of Grand County, Colorado, which is incorporated into and made a part of this Declaration of Covenants, Conditions, and Restrictions by this reference.

**ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION**

SECTION 1. EXISTING PROPERTY

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Grand, State of Colorado, and is more particularly described in Exhibit "A" which is attached hereto and made a part hereof by this reference. All of the real property described in Exhibit "A" shall hereinafter be referred to as "Existing Property."

SECTION 2. SUBDIVISION

No Lot shall be re-subdivided into smaller tracts or Lots not conveyed or encumbered in any size less than the full dimensions as shown on the recorded subdivision plat; provided, however, reasonable adjustments, conveyances or dedications of easements for utilities or roads may be made.

**ARTICLE IV
MEMBERSHIP, PURPOSE, FUNCTION AND VOTING RIGHTS IN THE ASSOCIATION**

SECTION 1. MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

SECTION 2. PURPOSE

The purpose of the Association is as set forth in the Articles of Incorporation of the Association, its By-Laws and these Covenants, together with every other right or privilege reasonably to be implied therefrom or granted by law. It is the intent of this Declaration of Covenants, Conditions and Restrictions to provide for fair and cooperative use, maintenance and regulation of the property.

SECTION 3. PRINCIPAL FUNCTIONS FO THE ASSOCIATION

The Association shall provide for the care, operation and management of the Property included hereunder; serving as the Architectural Control Committee as herein provided; and enforcing the compliance with the obligations imposed upon Lot Owners by this Declaration. The rights of the Association shall be broadly construed to allow it to implement the policies established in the Covenants and to promote the health, safety, common good and general welfare of the residents of the Property. The Association may adopt any rules and regulations which it may deem necessary in order to fulfill its purpose and to carry out its functions.

SECTION 4. VOTING RIGHTS

The Association shall have one class of voting membership:

- A. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for 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 such Lot.
- B. In the event title to a Lot is held by a trust, partnership, corporation, limited liability company or other entity, then the designated representative of that entity shall be entitled to exercise the vote for such Lot. The Board shall be entitled to rely on the representations made by the representatives of such an entity or made by any joint owner unless the Board has been informed by other representatives of the entity or other joint owner that a dispute exists with regard to the exercise of a vote. In the event of any such dispute, the Board may elect to 1) make such inquiry as it deems reasonable and necessary and conclude therefrom who shall be entitled to exercise the vote or 2) reject the vote whose exercise is in dispute and tabulate all remaining votes as if the vote in dispute were otherwise disqualified.
- C. In the event one Owner, other than the Declarant, owns more than one Lot on the Property, which Lots are all adjacent to each other, such Lots may be permanently joined together and made into one single Lot; provided, however, that the Owner of such Lots shall comply with the provisions of this Declarant and all applicable Federal, State, and County rules, regulations, laws, ordinances and procedures necessary at his own expense. The Owner shall continue to be liable for assessments for the same number of Lots owned prior to joining the Lots into one and shall also continue to have one vote for each Lot owned prior to joining them into one Lot.

SECTION 5.

All decisions to be made by the membership must be adopted by two-thirds of the Members present, in person or by proxy, at any meeting at which a quorum is present. In the event of a deadlock on any matter coming before the Members for vote, such deadlock, if not broken within thirty (30) days of its occurrence, upon written request by any party shall be submitted to the Board of Directors of the Association for decision. If the Board of Directors is unable to make a decision with the affirmative vote of 100% of the Board of Directors, then such decision shall be submitted to mediation. The parties will jointly appoint an acceptance mediator and will share equally in the costs of such mediator. If mediation proves unsuccessful, the parties may then proceed with arbitration under the rules of the American Arbitration Association. The results of such an arbitration shall be binding upon the Membership and, obtaining such an arbitrated decision shall be a condition precedent to the initiation of any court action. Any such action may only be initiated in the state courts of Grand County, Colorado.

SECTION 6.

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to owners other than the Declarant, at least one Director and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by owners other than the Declarant. Not later than sixty (60) days of after conveyance of fifty percent (50%) of the Lots to owners other than the Declarant, not less than thirty-three and one-third (33-1/3%) of the Directors must be elected by owners other than the Declarant. At the time fifty-one percent (51%) of the Lots are sold to owners other than the Declarant or two years after the last conveyance of a Lot by the Declarant in the ordinary course of business, whichever first occurs, Declarant's control over the Board and the Association shall terminate. Not later than the termination of Declarant's control, the owners shall elect the Board of Directors having at least five members, at least a majority of whom must be owners other than the Declarant or designate

representatives of owners other than the Declarant. The Board shall elect officers. The Directors and officers shall take office upon election.

ARTICLE V
PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 1. MEMBERS' EASEMENTS OF ENJOYMENT.

Subject to the provision of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

SECTION 2. TITLE TO COMMON PROPERTIES.

The Declarant may retain the legal title to easements for ingress, egress and utilities which are Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey said Common Properties to the Association, free and clear of all liens and encumbrances, not later than the date of termination of Declarants control of the Board of Directors.

SECTION 3. EXTENT OF MEMBERS' EASEMENTS.

The rights and easements of enjoyment created hereby shall be subject to the following:

- a) The right of the Declarant and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and, in aid thereof, to mortgage said properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees, as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and
- b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member including the right to vote for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its duly adopted rules and regulations; and
- d) The right of the Association to charge reasonable maintenance fees for the use of the Common Properties; and
- e) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility and in accordance with the Articles of Incorporation for such purpose and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast seventy-five percent (75%) of the votes of membership has been recorded, agreeing to such dedication transfer, purpose, or conditions, and unless written notice of the proposed agreement and

action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

The Declarant for each Lot owned by it within the Property hereby covenants and the Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is hereby deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; (2) Special assessments for capital improvements; (3) Special charges to an Owner for the removal of rubbish, trees, tree debris, diseased or fallen trees, vicious animals or any other expense caused by the misconduct of a Lot owner; such assessments to be fixed, established, and collected from time to time as hereinafter provided. These assessments together with such interest thereon, and costs of collection (including reasonable attorney's fees) as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the joint and several personal obligation of the persons who were the Owners of such property at the time the assessment became due.

SECTION 2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the "Property" and, in particular, for the enforcement of these Covenants; the services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement, and additions thereto, for the cost of labor, equipment, materials, management, and supervision thereof, and for the establishment of a reserve fund.

SECTION 3. BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

Until the year beginning January 1, 1998, the base annual assessment shall be \$200.00 dollars per Lot. From and after January 1, 1998, the base annual assessment may be increased by vote of the Board, as hereinafter provided, for the next succeeding one (1) year and at the end of each such period of one (1) year for each succeeding period of one (1) year.

The annual assessment shall include in addition to the base annual assessment, an amount not to exceed Fifty percent (50%) of the base amount of the assessment, which amounts shall be reserves held by the Association in a separate account for the purpose of paying for any emergency or extraordinary repairs or maintenance of the Common Properties.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual assessments authorized by Section 3 hereof, the 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 or reconstruction repair, or replacement of a described capital improvement upon the Common Properties in excess of any reserve funds, provided that any

such assessment shall have the assent of sixty-seven percent (67%) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. CHANGE IN BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

Subject to the limitations of Section 3 hereof, and for the period therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for such period, provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of Members, who are voting in person or by proxy, at a meeting duly called for this purpose.

SECTION 6. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4 AND 5.

The quorum required for any action shall be as set forth in the By-Laws of the Association.

SECTION 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES.

The annual assessments provide for herein shall commence on the date (which shall be the first day of a month fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of January of said year unless the Board shall otherwise provide for monthly or quarterly installments.

The amount of the annual assessment which may be levied for the remainder of the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve.

The due date(s) of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

SECTION 8. BOARD OF DIRECTORS

- A. The duties of the Board of Directors are as provided in the Articles of Incorporation, By-Laws and this Declaration, including the responsibility to serve as an Architectural Control Committee or to appoint the same as provided herein. Additionally, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

No Assessment Waiver. The omission or failure to fix the Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owner from his obligation to pay the assessment.

Estoppel Certificate. Upon payment of a reasonable fee not to exceed fifty dollars (\$50) and upon written request of any Owner or any person with any right, title or interest in a Lot or

person intending to acquire any right title or interest in a Lot (in which case the fee shall be paid by such prospective purchaser), the Board shall furnish a written statement setting forth the amount of all assessments, charges, fines or penalties, if any due or accrued and then unpaid with respect to the Owner of the Lot and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

- B. By a vote of sixty-seven percent (67%) of all persons present and entitled to vote at any meeting of the owners at which a quorum is present, the owners may remove any Director with or without cause, other than a Director appointed by the Declarant.

SECTION 9. EFFECT OF NON-PAYMENT OF ASSESSMENT; THE PERSONAL OBLIGATION OF THE OWNER; THE LIEN; REMEDIES OF ASSOCIATION.

If any assessments or other charge provided for herein is not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection (including reasonable attorney's fees) as hereinafter provided, constitute a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, successors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain a joint and several personal obligation unless such assumption is coupled with payment in full of the obligation.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall be subject to a late charge of five percent (5%) of the amount due and shall bear interest from the date of delinquency at the highest rate permitted by law not in excess of twenty-one percent (21%) per annum. The Association may bring an action at law or equity against the Owner personally obligated to pay the same or may foreclose the lien against the property. In the event a judgment is obtained, such judgment shall include interest on the assessment, as above provided, and reasonable attorney's fee together with the costs of the action.

SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall, except for the provisions of 38-33.3-316, C.R.S. be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall only apply to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Nothing contained herein shall constitute a waiver of the lien priority afforded by Section 38-33.3-316.

SECTION 11. EXEMPT PROPERTY

All Common Properties as defined in Article II-C hereof shall be exempt from the assessments, charges, and liens created herein.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessment, charges, or liens.

ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

The Architectural Control Committee shall be composed of three (3) or more representatives appointed by the Board. All notices, requests for approvals and any request for any action with respect thereto shall be sent by regular United States mail or hand delivered with receipt acknowledged by the Board of Directors at such address as shall be furnished by the Board of Directors to the Lot Owners from time to time.

In the event of death, resignation, removal or disqualification of any member of said Committee, the remaining member, or members, shall have full authority to approve or disapprove any design and location, or to designate a representative with like authority.

Neither the members of such Committee, nor its designated representatives shall be entitled to any compensation for services performed pursuant to the covenant.

ARTICLE VIII GENERAL PROVISIONS

SECTION 1. DURATION.

The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of sixty-seven percent (67%) of the Lots shall have been recorded, agreeing to change said covenants and restrictions in whole, or in part. No such agreement to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

SECTION 2. NOTICES.

Any notice required to be sent to any Member or Owner under the provisions of the Declarations shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Except as a greater period is specified in this Declaration, each Owner shall be entitled to not less than ten (10) but not more than fifty (50) days' notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state (in conformity with 38-33.3-308, C.R.S.) the date, time, place and subject matter of the meeting which is known to the Association at the time notice of the meeting is given. Any notice shall be deemed given and any information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material. Any notice, information, or material shall be deemed properly addressed to an Owner if it is addressed to the name and most current address shown

on the Association's records and as furnished to the Board by such Owner or, if a name and address is not so furnished, if it is addressed to the "Owner" at the address of the Lot number of such Owner. It is the obligation of the Owner to keep the Association informed as to his current mailing address.

SECTION 3. ENFORCEMENT.

Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 4. ARBITRATION.

In the event a dispute arises under this Agreement and mediation is unsuccessful, the parties hereto agree to submit such dispute to binding arbitration. The arbitration shall be before one neutral arbitrator to be selected in accordance with the Commercial Rules of the American Arbitration Association and shall proceed under the Expedited Procedures of said Rules. Either party may apply to the Grand County District Court to have the decision of the arbitrator made into an Order of the Court. No legal action may be initiated by a party hereto until after a final decision is rendered by the arbitrator. Exclusive court jurisdiction over this Agreement shall be in the state courts of Grand County, Colorado, and Colorado Law shall control.

In any arbitration hereunder, the arbitrator shall decide (by documents only or with a hearing, at the arbitrator's discretion) any pre-hearing motions which are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary judgment.

In any arbitration hereunder, discovery shall be permitted, but shall be limited as provided in Rule 26.1(c) of the Colorado Rules of Civil Procedure. Discovery shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator.

The Colorado Rules of Evidence shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however, no error by the arbitrator in application of the Rules of Evidence shall be grounds, as such, for vacating the arbitrator's award.

The arbitrator shall award to the substantially prevailing party, if any, as determined by the arbitrator, all of that party's costs and fees. "Costs and fees" means all reasonable pre- and post-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, expert witness and witness fees, and attorney's fees.

SECTION 5. SEVERABILITY

Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**ARTICLE IX
ROADWAY MAINTENANCE**

Declarant shall build the roadway system and transfer the same to the Association for improvement and maintenance, including snowplowing.

**ARTICLE X
WATER WELL PERMITS**

No one may sue or in any way interfere with the rights of any other property owner or the developer to drill a well or otherwise acquire water. Wells must be drilled within two years of the date on the well permit that is issued in connection with the property.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 16th day of July, 1996.

Edmund A. Hajim
Declarant

STATE OF COLORADO
COUNTY OF DENVER

The foregoing instrument was acknowledged before me the 16th day of July, 1996 by Edmund A. Hajim as Declarant.

My commission expires: 1-21-98

Notary Public