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**DECLARATION OF GOLF COURSE
 AND COMMUNITY AREA EASEMENTS**

STATE OF COLORADO)
)
 COUNTY OF MESA)

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION OF GOLF COURSE AND COMMUNITY AREA EASEMENTS (the "Declaration") is made and entered into as of the 7th day of July, 2000, by **REDLANDS MESA, LLC**, a Colorado limited liability company ("Declarant").

WHEREAS, Declarant is the owner of Blocks 1 through 11, Redlands Mesa Filing 1, City of Grand Junction, Mesa County, Colorado (hereinafter referred to as the "Community Area"), according to the Plat of Redlands Mesa Filing 1 recorded ~~#1957570~~ 17 July, 2000 in Plat Book 17 at Page 254 in the Office of the Clerk and Recorder of Mesa County, Colorado (the "Plat"); and

WHEREAS, Declarant is also the owner of those certain tracts of land adjacent to the Community Area described as Golf Blocks 12 through 17, Redlands Mesa Filing 1, according to the recorded Plat thereof (hereinafter referred to as the "Golf Land"); and

WHEREAS, Declarant intends to develop a residential community on all or a portion of the Community Area; and

WHEREAS, Declarant, without obligating itself to do so, desires to develop and construct or cause to be developed and constructed a golf course containing eighteen (18) holes of golf, clubhouse, proshop, driving range, and other recreational improvements on the Golf Land (collectively the "Golf Course"); and

WHEREAS, in order to facilitate the development and future operation of the residential community to be located on all or a part of the Community Area, Declarant desires to create certain easements and to place certain restrictions and encumbrances on the Golf Land for the benefit of the Community Area; and

WHEREAS, in order to facilitate the construction and future operation of the Golf Course, Declarant desires to create certain easements and to place certain restrictions and encumbrances on the Community Area for the benefit of the Golf Land.

NOW, THEREFORE, Declarant does hereby create, grant and reserve for the mutual benefit of the Golf Land and the Community Area, the following easements, restrictions, and obligations:

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I.

EASEMENTS

1. **Utility Easements.** On the recorded Plat of Redlands Mesa Filing 1 perpetual, non-exclusive easements have been reserved or granted for the benefit of the Declarant, the Golf Land Owner, and other parties, over all Multi-Purpose Easements, Utility Easements, and Proposed Utility Easements shown on the Plat, for the installation, operation, maintenance and replacement of underground utilities and appurtenances thereto, subject to Plat Note 7 which provides that with respect to the Proposed Utility Easements, permanent utility easements will be granted to said beneficiaries along the as-built alignments thereof upon completion of the utility lines. In addition, Declarant hereby creates and reserves a perpetual, non-exclusive blanket easement over, upon, across and under the Golf Land for the installation, operation, maintenance, repair and replacement of such underground utility lines and appurtenance thereto as may be necessary or appropriate from time to time for the development of the Community Area or any portion thereof, or as may otherwise be required by the City of Grand Junction, provided that Declarant: (a) Pays all costs of installation and design of the utility facilities in such location and manner as not to adversely impact any tees or greens or to otherwise unreasonably interfere with the use and operation of the Golf Course; and (b) restores any disturbed areas as closely as possible to the condition existing prior to the commencement of the work immediately following completion of the work at Declarant's sole cost. This blanket easement shall in no way restrict the Golf Land Owner in the development, use and enjoyment of the Golf Land, except that utility facilities shall not be interfered with or damaged in any manner by the Golf Land Owner once they are actually installed.

2. **Drainage Easements.** On the recorded Plat of Redlands Mesa Filing 1, perpetual, non-exclusive easements have been reserved or granted for the benefit of the Declarant, the Golf Land Owner, and other parties, over all Drainage Easements shown on the Plat, for the installation, operation, maintenance, repair and replacement of drainage facilities. In addition, Declarant hereby creates and reserves a perpetual, non-exclusive blanket easement over, upon, across and under the Golf Land: (a) For the benefit of the Community Area, the Open Space Tracts, the Declarant, and the Redlands Mesa Master Association, for the continuation of historic and/or other natural drainage flows and systems; and (b) for the installation, operation, maintenance, repair and replacement of drainage facilities for the purpose of draining the Community Area and the Open Space Tracts onto or across the Golf Land. The Golf Land Owner shall be responsible for the cost of maintaining and repairing historic and/or natural drainage flows and systems upon or across the Golf Land. Declarant and/or the Master Association shall be responsible for the cost of installing and maintaining any man-made drainage facilities that may be determined to be necessary or appropriate upon the Golf Land for purposes of draining the Community Area. The Golf Land Owner shall construct and operate the Golf Course and related facilities in such location and manner as not to obstruct or interfere with any historic and/or natural drainage flows or man-

made drainage facilities, and if it wishes to alter the same, shall first obtain the written approval of the City of Grand Junction in connection therewith. If the Declarant installs any drainage facilities after the Golf Course is constructed, at Declarant's sole cost Declarant: (i) Shall pay all costs of installation; (ii) shall design and install the drainage facilities in such location and manner as not to adversely impact any tees or greens or to otherwise unreasonably interfere with the use and operation of the Golf Course; and (iii) shall restore any disturbed areas (excepting the drainage facilities themselves) as closely as possible to the condition existing prior to the commencement of the work promptly following completion of the work. Except as provided herein with respect to historic and/or natural flows or existing man-made drainage systems, this blanket easement shall in no way restrict the Golf Land Owner in the development, use and enjoyment of the Golf Land; provided that drainage facilities shall not be interfered with or damaged in any manner by the Golf Land Owner once they are actually installed.

3. Grading Easements. Perpetual, non-exclusive easements are hereby granted to the Golf Land Owner, and reserved to the Declarant, over and upon all Grading Easements shown on the Plat, for the purpose of all forms of grading necessary or appropriate for the construction, operation and maintenance of water features on adjacent portions of the Golf Land.

4. Restoration Obligation. Within 60 days after completion of any utility installation, drainage construction or grading work within the easements established under Paragraphs 1, 2 or 3 above, the party performing the work shall restore the surface area disturbed thereby (with the exception of any above-ground utility or drainage facilities) as nearly as practicable to the condition existing prior to the commencement of the work, including without limitation ground cover, native vegetation, landscaping, roads, sidewalks, and other improvements.

5. No Build Easements. Perpetual, non-exclusive easements are hereby created over and upon all No Build Easements shown on the Plat, for purposes of enhancing the safety of the Community Area. Such No Build Easements shall be for the benefit of the Golf Land. No above-ground residential improvements, including without limitation residences, decks, patios, and children's recreation equipment, shall be constructed, placed or permitted to remain within or upon said No Build Easements, excepting such fencing and landscaping as may be approved in advance in writing by the Design Review Committee of the Redlands Mesa Master Association. Neither the Golf Land Owner, its agents, employees, invitees or contractors, or permitted users of the Golf Course, shall have any right to enter upon said No Build Easements, unless pursuant to the Golf Course Play Easement established in Paragraph 8 below, and except that where a Golf Cart Path Easement crosses a No Build Easement, said Golf Cart Path Easement may be used for its intended purpose.

6. Golf Cart Paths. Perpetual, non-exclusive easements are hereby granted and reserved for the benefit of the Golf Land Owner for the construction, maintenance, repair, and replacement of golf cart paths along the alignment of all "Golf Cart Path Easements" designated on any Plat or Plats of the Community Area, to provide ingress

and egress by and between portions of the Golf Land and for the installation, operation and maintenance of underground irrigation lines (the "Golf Cart Path Easements"). The Golf Land Owner shall maintain the Golf Cart Path Easements in a safe and attractive condition and shall keep them in good repair. Inclusive within the foregoing grant of Golf Cart Path Easements shall be the right of the Golf Land Owner and users of the Golf Course to operate golf carts and Golf Course machinery, equipment and maintenance vehicles on all Golf Cart Path Easements. Also, inclusive within the foregoing grant of Golf Cart Path Easements shall be the right of the Golf Land Owner to install, replace, maintain, and repair directional and safety signage within the Golf Cart Path Easements, as deemed reasonably necessary by the Golf Land Owner. Such signage shall be made of materials and of the type as to be reasonably consistent, as determined by the Golf Land Owner, with materials and type of signage employed for similar purposes on the Community Area and the Golf Course.

7. Signage. A perpetual, non-exclusive easement is hereby granted to and reserved for the use and benefit of the Golf Land Owner for the construction, repair, maintenance, and replacement of directional and informational signage within the Community Area along the roads, streets, and rights-of-way located therein, for the purpose of providing directions to users of the Golf Course. Such signage shall: Be constructed of materials and of a type of signage utilized for similar purposes on the Community Area and the Golf Land; require the prior written approval of the Declarant, which approval shall not be unreasonably withheld; and (where applicable) comply with all City of Grand Junction rules and regulations pertaining to public rights-of-way.

8. Golf Course Play Easement. There is hereby created, granted to and reserved for the benefit of the Golf Land Owner, which the Owner may use for itself and for users of the Golf Course, a perpetual, non-exclusive easement over and across the Community Area for the following purposes:

8.1 Retrieval of golf balls that are visible from the fairway, including the right to enter upon the Community Area and any residential lot created thereon to accomplish such retrieval. Golf balls lying in the Community Area can only be picked up and returned to the fairway, and may not be hit out of the Community Area. Declarant may construct, or lot owners may be allowed to construct pursuant to the Design Guidelines, fences along portions of the common boundary between the Golf Land and the Community Area. Gaps shall be provided in any such fences for ball retrieval purposes. Persons retrieving golf balls from within the Community Area shall: Behave in a courteous and respectful manner; cause no noise or other disturbances or nuisances; and be liable for any damages or injuries that may result from their presence upon the Community Area.

Notwithstanding the foregoing, no entry shall be allowed into, and no golf balls may be retrieved from, any internal portion of a residential lot that is enclosed by a privacy fence or other landscaping barrier. One sign indicating "No Ball Retrieval Beyond This Point" may be located on such privacy fence or barrier.

8.2 Flight of golf balls over, across, and upon the Community Area;

8.3 Doing of every act necessary and incident to the playing of golf and other recreational activities on the Golf Land, including, but not limited to, the creation of usual and common noise levels associated with such recreational activities;

8.4 Creation of noise related to the maintenance, operation, and/or repair/reconstruction of the Golf Course, including, but not limited to, the operation of mowing and spraying equipment, which may occur from early morning until late evening; and

8.5 An easement for the over-spray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Community Area located adjacent to the Golf Land.

9. Declarant Right to Relocate Platted Easements. The recorded Plat of Redlands Mesa Filing 1 dedicates and depicts various easements across portions of the Community Area and/or the Golf Land for the benefit of one or both of said properties. Future Plats of portions of the Community Area may dedicate other such easements. Subject to prior approval of the City of Grand Junction ("City"), Declarant hereby reserves and shall have the right at any time and from time to time to relocate and/or replat any of the easements shown on said Plats (and any facilities installed therein), as said Plats may be amended from time to time, provided that Declarant shall pay all actual out-of-pocket costs associated with relocating and replatting such easements and facilities, and shall promptly upon demand reimburse the Golf Land Owner for any actual out-of-pocket construction costs paid by the Golf Land Owner in relocating any Golf Facilities as a consequence of Declarant's relocation of any easement/facility pursuant to the terms hereof. In exercising any such relocation rights, Declarant shall provide the Golf Land Owner with written notice describing the planned relocation at least 30 days prior to Declarant's implementation thereof. Declarant shall design and perform any relocation work so as to minimize adverse affects on any tees or greens and otherwise in a manner reasonably established to minimize interference with the Golf Land Owner's use and operation of the Golf Land. In addition, Declarant shall provide to the Golf Land Owner an as-built survey following completion of the relocation. The Golf Land Owner agrees to execute any Plat amendments or other documents that may be necessary to accomplish the above-described easement relocations.

II.

HAZARDS OF ERRANT GOLF BALLS

Declarant, for itself and each and every subsequent owner of any portion of the Community Area including platted lots thereon, hereby acknowledges and agrees that the existence of the Golf Course on the Golf Land is beneficial and highly desirable; however, each such owner acknowledges and agrees that portions of the Community Area located adjacent to the Golf Land are subject to the risk of property damage, personal injury or death due to errant golf balls. All owners of lands within the Community Area, their invitees, guests, agents, successors and assigns, hereby assume such risk of property damage, personal injury or death and hereby release the City, the Declarant, and the Golf Land Owner, and the successors and assigns of each, from any and all liability for property damage, personal injury or death caused by errant golf balls in, on, or around the Community Area, and agree to indemnify, defend and hold the City, the Declarant, and the Golf Land Owner, and the successors and assigns of each, harmless from any and all claims, actions, costs or liability arising from any property damage, personal injury or death caused, directly or indirectly, by golf balls flying, landing, hitting, or resting in or around the Community Area. This obligation to indemnify, defend, and hold harmless shall pass with title to each portion of the Community Area. Once ownership of land within the Community Area has transferred, the obligation ceases as to the transferor for all subsequent occurrences and that obligation passes to the new owner. Nothing contained herein shall be deemed to limit the liability of an individual golfer who has struck an errant golf ball for any property damage, personal injury or death that he or she may cause.

III.

MISCELLANEOUS

1. **Fencing Restrictions.** With the exception of fences that may be built by Declarant, or that may be allowed to be built by lot owners (pursuant to the Design Guidelines), along portions of the common boundary between the Community Area and the Golf Land, which fences will be maintained by the Master Association and cannot be altered or removed by lot owners, no owner of land within the Community Area shall construct a fence or other barrier along or near said common boundary.

2. **Liability for Damages.** The Golf Land Owner, its successors and assigns, agrees to be responsible for the repair and restoration to original condition of any damage or disturbance to the Community Area or improvements thereon resulting from repair, maintenance, reconstruction, replacement, enlargement or improvement from time to time of the Golf Course, or any improvements or facilities thereon, or any utility, drainage or other facilities or improvements within the Community Area, by the Golf Land Owner. In the event of any such damage or disturbance, the owner of the damaged land or improvements shall notify the Golf Land Owner in writing of such event and allow a reasonable time to repair or restore such damaged property. Likewise, the

Declarant and/or the Redlands Mesa Master Association shall be responsible for the repair or restoration to original condition of any damage or disturbance to the Golf Land or improvements thereon resulting from repair, maintenance, reconstruction, replacement, enlargement or improvement from time to time of any utility, drainage or other facilities or improvements within the Golf Land by the Declarant or the Master Association. In the event of any such damage or disturbance, the Golf Land Owner shall notify the Declarant or the Master Association in writing of such event and allow a reasonable time to repair or restore such damaged property. In the event the responsible party fails to perform its repair/restoration obligations in a timely manner, the injured party may accomplish the necessary repair or restoration and bill the responsible party for the cost of the same. Such bill shall be due and payable in full 30 days after it is delivered to the responsible party, and shall bear interest at 18 percent per annum from date of delivery if not paid in a timely manner, and the injured party shall be entitled to all costs of collection including reasonable attorney's fees if a collection action becomes necessary.

3. Entire Agreement. This instrument contains the entire agreement between the parties relating to the subject matter hereof. Any oral representations or agreements relating to the subject matter hereof shall be of no force of effect, and this instrument shall not be amended except by a subsequent modification in writing, signed by the party to be charged therewith.

4. Transfer of Golf Land. Upon the transfer of the Golf Land by Declarant to another person or entity, all of Declarant's rights, duties and obligations arising under this Declaration as owner of the Golf Land shall be deemed transferred and assigned to such other person or entity, and Declarant shall have no further liabilities, obligations or duties arising under this Declaration as owner of the Golf Land for periods after the transfer.

5. Assignability of Declarant's Other Rights and Obligations. Declarant shall have the right from time to time to assign in writing all or any portion of Declarant's other rights and obligations under this Declaration to the Redlands Mesa Master Association or to any other person or entity, and upon such assignment Declarant shall have no further liabilities, obligations or duties arising under this Declaration with respect to the rights and/or obligations so assigned.

6. Duration and Enforceability. The easements and restrictions set forth in this Declaration shall constitute covenants running with the land in perpetuity, burdening the Community Area, the Open Space Tracts and the Golf Land, and benefiting the Community Area, the Open Space Tracts and the Golf Land, and shall be binding upon Declarant, its successors and assigns, and all persons or parties claiming through, by, or under Declarant, its successors and assigns, including, but not limited to, any property or lot owners. Each owner of a lot or unit in the Community Area, by accepting a deed to a lot or unit, shall be deemed to have read this Declaration, to be familiar with the terms hereof, and to have accepted and agreed to the same.

7. Effectiveness of Agreement. Notwithstanding anything herein to the contrary, this Declaration shall not be effective for any purpose until all parties shown below have executed this document and it has been filed of record in Mesa County, Colorado.

8. Persons Entitled to Enforce Declaration. The Declarant, the Golf Land Owner, the owner of the Open Space Tracts, the City (which shall have the right but not the duty), and the Redlands Mesa Master Association (on behalf of all lot owners belonging to the Master Association) shall each have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration. The right of enforcement shall include without limitation the right to bring an action for actual damages suffered as well as an action to enjoin any violation of any provision of this Declaration or to compel the performance of any obligation set forth herein.

9. Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person or party entitled to enforce the provisions of this Declaration.

10. Enforcement of Self-Help. Any person or party entitled to enforce the provisions of this Declaration may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by a written notice delivered to the defaulting party at least thirty (30) days prior to the exercise of such self-help remedy.

11. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

12. Costs and Attorneys' Fees. If there is any action or proceeding under this Declaration, including any action to interpret or enforce the same, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

13. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

14. Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

15. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

16. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

17. Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

18. Notice to Property Owners Within Community Area. NO OWNER OF PROPERTY (INCLUDING A RESIDENTIAL LOT OR UNIT) WITHIN THE COMMUNITY AREA SHALL HAVE ANY RIGHTS IN OR TO THE GOLF LAND, THE GOLF COURSE, OR ANY RECREATIONAL FACILITIES OR ACTIVITIES SITUATED OR OCCURRING THEREON, INCLUDING, BUT NOT LIMITED TO, A VISUAL OR SIGHT EASEMENT OVER AND ACROSS ANY PORTION OF THE GOLF LAND, RIGHT OF MEMBERSHIP IN OR TO THE GOLF COURSE OR THE FACILITIES THEREON, OR RIGHTS OF ACCESS TO, ACROSS OR FROM THE GOLF LAND, UNLESS SUCH RIGHT OR RIGHTS HAVE BEEN GRANTED OR CONVEYED IN WRITING BY THE GOLF LAND OWNER OR ITS SUCCESSORS AND ASSIGNS. ADDITIONALLY, THE GOLF LAND OWNER, ITS SUCCESSORS AND ASSIGNS, HAS THE RIGHT, WITHOUT NOTICE, TO CONSTRUCT, ALTER, AND RELOCATE IMPROVEMENTS AND LANDSCAPING FEATURES ON THE GOLF LAND FROM TIME TO TIME AND TO PLANT, REMOVE, AND TRIM LANDSCAPING, TREES OR BUSHES ON THE GOLF LAND AS IT DEEMS ADVISABLE, IN ITS SOLE AND ABSOLUTE DISCRETION.

19. No City Liability. Notwithstanding any other provision herein to the contrary, no obligation, duty or liability including a duty to pay money, interest, attorneys' fees or other costs, shall be assumed by, transferred to, or imposed on the City of Grand Junction pursuant to this document, or by virtue of the City's ownership of any Tract within Redlands Mesa.

