

**AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
PHEASANT RIDGE ESTATES**

**THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**, is made by the undersigned party holding not less than eighty percent (80%) of the Class A and Class B votes of all Lots existing within the Planned Community at the time this Amendment was prepared.

The Declaration of Covenants, Conditions, and Restrictions of Pheasant Ridge Estates recorded in the Office of the Mesa County, Colorado, Clerk and Recorder on the 3<sup>rd</sup> day of July, 1997, in Book 2339 at Page 162, et. seq., (herein the "Declaration"), is hereby Amended pursuant to Article XV, Section 3 thereof, as follows, effective when this document has been executed and recorded with the Mesa County Clerk and Recorder.

**1. The first recital paragraph of the Declaration is hereby amended to read as follows:**

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 Pheasant Ridge Estates as recorded in the Office of the Mesa County, Colorado, Clerk and Recorder on the 3<sup>rd</sup> day of July, 1997, in Plat Book 15 at Pages 341 through 343, (hereinafter the "Plat");

**2. A new Article VI, Section 3 is added as follows:**

Section 3. Landscaping and Planting Areas. Lot owners within the Planned Community shall landscape and install watering systems on their respective lots, at their sole cost and expense, in accordance with the Pheasant Ridge Estates Subdivision Homeowner's Landscape Guidelines, (herein "Landscape Guidelines"), a copy of which are attached hereto. All underground sprinkler systems shall incorporate timing systems and clocks which are capable of starting and stopping irrigation water automatically. All such automatic timing systems shall be set to water landscaping in compliance with the watering schedule contained in the Landscape Guidelines, and shall be programmed to water only at times which do not conflict with the scheduled lawn maintenance by the Homeowners Association.

**3. A new Article VI, Section 4 is added as follows:**

Section 4. Mandatory and Optional Homeowners Association Maintenance.

(a) Mandatory Maintenance. That portion of the turfgrass planted upon each Lot which is visible from the street, (herein the "Visible Yard"), shall be mowed by the Homeowners Association once all turfgrass, curbing, landscaping and irrigation systems have been installed by the Lot owners, at their sole expense, in accordance with the Landscape Guidelines. Each Lot owner shall remain responsible for fertilizing, spraying, and watering

such turfgrass. The responsibilities undertaken by the Homeowners Association hereunder, the performance of such mowing, and the charges imposed for such mowing, shall be as determined by the Homeowners Association from time to time; because of differences in lot size and maintenance requirements, each lot will be separately billed for the services performed by the Homeowners Association with respect to such owner's Lot. The Homeowners Association shall have a license to enter or cross any portion of each Lot within the Planned Community in order to accomplish the maintenance contemplated herein and further shall be permitted to turn off sprinkling systems and/or reset sprinkler system clocks which interfere with scheduled lawn mowing.

(b) Optional Maintenance. At each Lot owner's written election, the Homeowners Association shall also mow the turfgrass lawn planted upon any portion of any Lot which is not part of the Visible Yard and shall maintain any other part of the landscaping which a Lot owner shall request in writing, including, but not limited to watering, maintaining sprinkler systems, fertilizing and spraying turfgrasses, trees, and shrubs, and trimming, pruning, or otherwise maintaining the landscaping within any Lot. Each lot will be separately billed for the services performed by the Homeowners Association with respect to such owner's Lot.

(c) Maintenance Billing and Assessment. Maintenance charges will be billed monthly to each Lot owner. Charges remaining unpaid for forty five (45) days shall be a separate assessment against the Lot involved, enforceable by lien and otherwise in the same manner as other assessments of the Homeowners Association.

4. **Article XI, Section 1, subsection (q) is amended to read as follows:**

(q) Vehicle Storage and Repair. (i) No house trailer, motor home, recreational vehicle, camping trailer, hauling trailer, running gear or boat or accessories thereto, nor any automobile which is not in current running condition and currently licensed, regardless of size, nor any truck, pickup, van, or camper in excess of three-fourths (3/4) ton size (hereinafter "RV"), 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 and unless it is enclosed behind solid privacy fencing at least six feet high. No regulation of the Homeowners Association shall relax the foregoing restrictions or limit the exception expressed herein. 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 to the Homeowners Association or to contractors constructing improvements within the Planned Community.



Recorded: July 3, 1997

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DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
PHEASANT RIDGE ESTATES

THIS DECLARATION, Made by Just Companies, Inc., 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 Pheasant Ridge Estates as recorded in the Office of the Mesa County, Colorado, Clerk and Recorder on the 3<sup>rd</sup> day of July, 1998, in Plat Book 15 at Page 341-343, (hereinafter the "Plat");

*Amendment 1  
10-21-97*

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 Pheasant Ridge Estates. Further, Declarant hereby declares that all of the property described on the Plat shall be, and the same are 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 and which shall be binding on all parties having any right, title or interest in the Pheasant Ridge Estates 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 Pheasant Ridge Estates Homeowners Association.

ARTICLE I.

DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to the Board of Directors of the Homeowners Association for the Planned Community, or such committee as may be appointed by the Homeowners Association for the purpose of acting as an Architectural Control Committee with respect to improvements constructed within or upon any of the Planned Community.

Section 2. "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 3. "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 4. "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 5. "Covenants" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be amended from time to time.

Section 6. "Declarant" shall mean and refer to person or entity identified as Declarant in the introductory provisions of these Covenants, or such person or entities 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.

Section 7. "Homeowners Association" shall mean and refer to the Pheasant Ridge Homeowners Association, (by whatever name it shall be incorporated), which shall be a Colorado corporation, not for profit, and its successors and assigns.

Section 8. "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 9. "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 10. "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.

Section 11. "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 12. "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 13. "Planned Community" shall mean and refer to all of the real property described on the Plat of Pheasant Ridge Estates, and such additions thereto as may hereafter be brought within the Planned Community.

Section 14. "Planting Area" shall mean an area within the interior lines of a Lot which shall be shown upon the Plat or which Declarant shall designate as a "Planting Area". The improvement, landscaping, maintenance and upkeep of such area shall be the responsibility of the Lot Owner. If not designated upon the Plat, such designation shall be made prior to the conveyance of a particular Lot to one or more Purchasers and such Purchaser(s) shall be advised by Declarant of the size, shape and location of the Planting Area prior to purchase of the Lot.

Section 15. "Plat" shall mean and refer to that subdivision plat for Pheasant Ridge Estates, as above referenced, which has been filed in the Mesa County, Colorado Clerk and Records Records.

Section 16. "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. Pheasant Ridge Estates 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. The configuration and location of Lots, shall be as shown on the Plat of Pheasant Ridge Estates.

Section 2. Governing Law and Documents. The Planned Community known as Pheasant Ridge Estates, 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 or Unit 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 an instrument signed by at least eighty percent (80%) of each class of members agreeing to such dedication or transfer has been recorded.

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

#### 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 or determined to be encumbrances either on the Common Elements, Limited Common Elements, or upon the improvement, structure, or 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 such 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 or Unit 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, 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.

Declarant may designate any portion of any Lot as a Planting Area, (which shall be a Limited Common Element), it shall be the responsibility of the Owner of any Lot to maintain such Planting Areas within such Lot in a safe, sanitary and attractive condition. Upon the failure of any such Owner to so maintain or repair any such area, 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. The Architectural Control Committee shall define from time to time, by rule or on a case by case basis, as it sees fit, what it means to maintain a Planting Area in a "safe, sanitary, and attractive condition", and such rules or directions may impose landscaping requirements and other maintenance requirements.

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.

Amendment 1  
10-21-97

Sec 3 - added.  
Sec 4 - added.  
(a)  
(b)  
(c)

## 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 owner 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 unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. 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 ten (10) 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) two years after the right of the Declarant to add additional property to the Planned Community has expired.

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 forgoing 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 on each Unit 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 monthly. Both annual and special assessments shall be fixed at a uniform rate for all Units and Lots, irrespective of their ownership interest in the Common Elements. Such assessments shall be allocated equally among each Lot.

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.

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 each class of Members who are voting in person or by proxy at a meeting duly called for this purpose and at which a quorum is present.

**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 fifty percent (50%) 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 one-quarter (1/4) 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 first mortgage or trust deed upon the Property, except to the extent that such liens of the Homeowners Association are given a priority ahead of such first mortgage or similar security instrument by the Colorado Common Interest Ownership Act.

## ARTICLE IX.

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained within the Planned Community, (except for the exemption of the Declarant as provided below), nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee, as to harmony of external design, finish, color and location in relation to surrounding structures and topography within the Planned Community. In the event the Architectural Control Committee, fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

## ARTICLE X.

### 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, or to convey such title in one or more undivided common ownerships to the Lot Owners benefiting from such property.

(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 easements 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 are paid or a bond insuring the payment is 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.

(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, any property of the Homeowners Association, and any Lots within the Planned Community. 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 XI.

### RESTRICTIONS UPON USE OF PROPERTY WITHIN THE PLANNED COMMUNITY

#### Section 1. General Restrictions.

(a) Antennae and Tanks. No exterior radio and/or television antennae shall be erected or maintained within the Planned Community, except as approved by the Architectural Control Committee, and no elevated or underground tanks of any kind shall be permitted.

(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, or 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, or 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 without the approval of the Architectural Control Committee, (except such signs as may be used by Declarant in connection with the development of the Planned Community and sale of any Lots which shall be exempt), and except such signs of customary and reasonable dimensions as approved by the Architectural Control Committee as may be displayed on or from a Lot advertising the Lot for sale or lease.

(e) Animals. No animals of any kind shall be raised, bred or kept, except that not more than a total of two animals, limited to only dogs, cats, or household birds may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are, at all times, kept upon a leash or are kept within their owner's Lot.

(f) Lights. No exterior lights, other than exterior lights which are switch controlled and which

are required by applicable building codes shall be allowed, except as approved by the Architectural Control Committee.

(g) Trash. The Homeowners Association may provide trash pick-up for some or all 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 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 Architectural Control Committee. 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 or the Architectural Control Committee. A permanent easement for drainage purposes across all Common Elements which do not contain improvements restricting such drainage is hereby granted.

(m) No Hazardous Activities. No activities shall be conducted within the Planned Community and no improvements shall be constructed within the Planned Community which are or might be unsafe or hazardous to any person or property.

(n) No Temporary Structures. No tent or shack or other temporary building, improvement or structure, including trailer houses, shall be placed or remain within the Planned Community.

(o) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement within the Planned Community, nor removal of any improvement in the Planned Community (except for the Declarant's exemption) without the prior approval of the Architectural Control Committee. Further, there shall be no detached accessory buildings constructed without the approval of the Architectural Control Committee, and all such buildings shall be constructed with peaked roofs and siding similar to the primary structure located upon the particular Lot.

(p) 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 dwelling within any Lot, for residential purposes, subject to all the provisions of these Covenants.

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

## ARTICLE XII.

### 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 mortgagees, 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 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.

(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.

**Section 2. Use of Proceeds to Rebuild Damaged Improvements.**

If such damage 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:

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 Limited Common Elements, or Common Elements, and all other Owners. The Homeowners Association or the affected Unit Owners shall thereupon contract to repair or rebuild the damaged 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 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 Units, 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 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.

**ARTICLE XIII.**

**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 or Units 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 XIV.

##### 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, 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 Architectural Control Committee 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.

Section 2. Addition of Property to the Planned Community. Declarant expressly reserves the right to enlarge this Planned Community. Any such addition of property to this Planned Community shall be expressed in and by a duly recorded supplement to this Declaration and a supplemental subdivision plat, as may be required. Declarant's right to add property to this Planned Community shall exist only for a period of two (2) years from the date of recording these Covenants.



ARTICLE XV.

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 way 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, for a term of twenty (20) years from the date these Covenants are recorded, after which time they shall be automatically extended for successive periods of ten (10) years. These Covenants may be repealed or amended by an instrument signed by not less than eighty percent (80%) of the Class A and 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.

Section 4. Termination. This Planned Community may be terminated by the affirmative vote of not less than eighty percent (80%) of each of the Class A and 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 Class B votes of all Lots existing within the Planned Community at the time such amendment is proposed.

IN WITNESS WHEREOF, the undersigned Declarant herein has hereunto set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 1996.

DECLARANT  
JUST COMPANIES, INC.

By \_\_\_\_\_

STATE OF COLORADO)  
                          ) ss.  
COUNTY OF MESA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by Edison S. Lenhart, President of Just Companies, Inc., the Declarant.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public