

BOOK 2784 PAGE 68

29

PAGE DOCUMENT

1977752 12/22/00 1157AM  
MONIKA TODD CLK&REC MESA COUNTY CO  
REC FEE \$145.00

**High Pointe Estates Subdivision  
Declaration of Protective Covenants**

### Table of Contents

Article I	Definitions		Page
	Section 1.1	Articles	5
	Section 1.2	Association	5
	Section 1.3	Association Water	5
	Section 1.4	Board	5
	Section 1.5	Building Envelope	5
	Section 1.6	Bylaws	5
	Section 1.7	CCIOA (Colorado Common Interest Ownership Act)	6
	Section 1.8	Common Area	6
	Section 1.9	Common Expenses	6
	Section 1.10	Declarant	6
	Section 1.11	Declaration	6
	Section 1.12	Design Review Committee	6
	Section 1.13	Engineer	6
	Section 1.14	Improvements	6
	Section 1.15	Irrigation Facilities	6
	Section 1.16	Lot (Lots)	6
	Section 1.17	Map	7
	Section 1.18	Owner (Owners)	7
	Section 1.19	Residences	7
	Section 1.20	Rules & Regulations	7
	Section 1.21	Single Family	7
	Section 1.22	Subdivision	7
Article II	General Restrictions on Use		7
	Section 2.1	Resubdivision Prohibited	7
	Section 2.2	Use of Property	7
	Section 2.3	Approvals	8
	Section 2.4	Nuisances Prohibited	8
	Section 2.5	Animals/Pets	8
	Section 2.6	Waste Storage	8
	Section 2.7	No Temporary Residences	8
	Section 2.8	Sign Limitation	9
	Section 2.9	No Mineral Exploration or Development	9
	Section 2.10	Antennas	9
	Section 2.11	Hazardous Materials	9
	Section 2.12	Reflective Material	9
	Section 2.13	Lights	9
	Section 2.14	Noises	9
	Section 2.15	Mailboxes and Receptacles	10
	Section 2.16	New Construction Required	10
	Section 2.17	Project Start and Completion	10
	Section 2.18	Underground Utilities	10
	Section 2.19	Fencing	10
	Section 2.20	Landscaping and Maintenance	11
	Section 2.21	Parking	12
	Section 2.22	Tennis Courts	13
	Section 2.23	Roof Equipment	13
Article III	Architectural Design & Minimum Construction Standards		13
	Section 3.1	Introduction	13
	Section 3.2	Exterior Design	13
	Section 3.3	Building Restrictions	13
	Section 3.4	Appointment of Design Review Committee	14

	Section 3.5	Authority	15
	Section 3.6	Submission of Plans	15
	Section 3.7	Matters Considered	15
	Section 3.8	Approval	16
	Section 3.9	Limitation on Liability	16
	Section 3.10	Records Retention	16
<b>Article IV</b>	<b>The Association Membership; Voting Rights; Declarant Controls</b>		16
	Section 4.1	Membership	16
	Section 4.2	Allocation of Votes	16
	Section 4.3	No Cumulative Voting	16
	Section 4.4	Membership Appurtenant	16
	Section 4.5	Declarant Control	17
<b>Article V</b>	<b>Covenant for Assessments</b>		17
	Section 5.1	Creation of the Lien and Personal Obligation of Assessments	17
	Section 5.2	Purpose of Assessments	18
	Section 5.3	Initial and Subsequent Assessment	18
	Section 5.4	Date of Commencement of Annual Assessment; Due Dates	18
	Section 5.5	Expense Allocation	18
	Section 5.6	Effect of Nonpayment of Assessments; Remedies of the Ass.	19
	Section 5.7	Priority of Lien	19
<b>Article VI</b>	<b>Budget and Records</b>		19
	Section 6.1	Books and Records	19
	Section 6.2	Annual Budget	19
	Section 6.3	Delivery of Budget	19
	Section 6.4	Ratification of Budget	20
	Section 6.5	Rejection of Budget	20
	Section 6.6	Reserve Fund	20
<b>Article VII</b>	<b>Association Powers</b>		20
	Section 7.1	Authority	20
	Section 7.2	Actions Against Owners	20
	Section 7.3	Conveyance or Encumbrance	20
	Section 7.4	Delegation of Use	20
<b>Article VIII</b>	<b>Association Water</b>		20
	Section 8.1	Management of Association Water	20
	Section 8.2	Easements for Ingress and Egress	21
	Section 8.3	Irrigation Assessments	21
	Section 8.4	Flow Restriction	21
	Section 8.5	Standifer Property Water	21
<b>Article IX</b>	<b>Easements</b>		21
	Section 9.1	Subdivision Map Easements	21
	Section 9.2	Other Easements	21
	Section 9.3	Grant of Easement To The Association	22
	Section 9.4	Use of Irrigation Easement for Standifer Property	22
<b>Article X</b>	<b>Limitation of Liability &amp; Insurance</b>		22
	Section 10.1	Limitation Upon Liability	22
	Section 10.1.1	Indemnification of Officers and Board Members	22
	Section 10.1.2	Limitation Upon Liability of Association	22
	Section 10.2	Association Insurance	23
<b>Article XI</b>	<b>Special Declarant Rights</b>		24
	Section 11.1	Addition and Withdrawal of Property	24
	Section 11.2	Special Declarant Rights	24
	Section 11.3	No Assurances	24
	Section 11.4	Limitation on Additional Property	24
	Section 11.5	Exercise of Development Rights	24
	Section 11.6	Assignment by Declarant	24

	Section 11.7	Sales Office; Models	24
	Section 11.8	Common Areas; Grant of Tracts A & C to the Association	25
Article XII	General Provisions		25
	Section 12.1	Rules and Regulations	25
	Section 12.2	Enforcement	25
	Section 12.3	Term	25
	Section 12.4	Amendment	25
	Section 12.5	Termination	26
	Section 12.6	CCIOA Controls	26
	Section 12.7	Notice	26
	Section 12.8	Section Heading	26
	Section 12.9	Severability	26
	Section 12.10	Binding Effects	26
	Section 12.11	Requirements	26

**Declaration of Protective Covenants  
For  
High Pointe Estates Subdivision**

Titan Land Co. Developments, LLC, a Colorado limited liability company (hereinafter Declarant) owns all of the real property located in Mesa County, Colorado, legally described in the attached Exhibit A, ("Property") which is incorporated by this reference.

Declarant wishes to impose covenants, conditions, and restrictions upon the use of the Property for the benefit of any and all persons now and subsequently owning all or any portion of the Property.

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

- (a) Are for the purpose of protecting the value and desirability of the Property;
- (b) Shall run with, and be appurtenant to, all of the Property except as expressly stated otherwise; and,
- (c) Shall be binding upon and inure to the benefit of all persons or entities now owning or subsequently acquiring any right, title, or interest in all or part of the Property, together with each of their heirs, personal representatives, successors in interest and assigns.

**ARTICLE I**

**Definitions**

- Section 1.1** "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.
- Section 1.2** "Association" shall mean and refer to the High Pointe Estates Homeowners Association, a Colorado nonprofit corporation.
- Section 1.3** "Association Water" shall mean and refer to all shares of the capital stock of Redlands Water and Power Company (hereinafter "Redlands Water") and any other water or water rights ditch or ditch rights, reservoir or water storage rights appurtenant to or used in connection with any portion of the Subdivision or owned by the Association as set forth in Article VIII.
- Section 1.4** "Board" means the Board of Directors of the Association and shall constitute the Executive Board as defined in CCIOA.
- Section 1.5** "Building Envelope" means that part of a lot that has been designated by the Declarant on the Map as the area that must be used for a Residence on that Lot.
- Section 1.6** "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

- Section 1.7 "CCIOA" means the Colorado Common Interest Ownership Act presently codified at C.R.S. 38-33.3-101, et seq., as it may subsequently be amended from time to time.
- Section 1.8 "Common Area" or "Common Areas" shall mean that portion of the Property, including any Improvements thereon, not including the Lots, as such Common Areas are designated on the Map.
- Section 1.9 "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. By way of example and not limitation, such expenses include: insurance costs; water assessments to the Association; construction, maintenance, and repair of all Association fences; all aspects of landscaping and care of Common Areas and any other portion of the Property controlled or maintained by the Association (such as the wetlands and open space); and payment of all utilities charges associated with any Improvements owned or operated by the Association (such as Irrigation Facilities, Association Water and any street lighting owned or controlled by the Association).
- Section 1.10 "Declarant" shall mean and refer to Titan Land Co. Developments, LLC, a Colorado Limited Liability Company, and its successors and assigns.
- Section 1.11 "Declaration" means this Declaration of Protective Covenants.
- Section 1.12 "Design Review Committee" or "DRC" shall mean and refer to that Design Review Committee referred to in Article III of this Declaration.
- Section 1.13 "Engineer" shall mean a Professional Engineer, licensed and practicing in the State of Colorado.
- Section 1.14 "Improvements" shall mean and refer to any and all Residences and any other structures located in, under, or upon the Property, including, but not limited to, fences, driveways, garages, and outbuildings; shrubs, plants, landscaping of all types; irrigation ponds, pipelines and sprinklers, drainage and detention/retention facilities; streets, curbs, and gutters; and all other utility installations such as electric, gas, telephone, cable television, sewer, and domestic water lines.
- Section 1.15 "Irrigation Facilities" shall mean and refer to all Improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering Association Water, and any other water that the Association may be obligated to deliver by contractual obligation or otherwise. Such Irrigation Facilities shall include, but not be limited to, any ponds, reservoirs, waterfalls, or other water-holding or water-circulating equipment or Improvements, plus all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves, and related parts, equipment and materials located in, under, or upon the irrigation and drainage easements within the Subdivision, or elsewhere outside of the Subdivision for the purpose of serving the Subdivision and the Lots with Association Water and the Standifer Property with four (4) shares of Redlands Water as set forth hereinafter in Section 8.5.
- Section 1.16 "Lot" (or "Lots") shall mean and refer to each residential lot shown on the Map, as that Map may be amended from time to time as part of the Special Declarant's Rights described in Article XI below.

Section 1.17 "Map" means the plat of the Subdivision recorded in Plat Book 18, Pages 10-12 of the Mesa County records, a true and correct copy of which is attached to this Declaration pursuant to the requirements of CCIOA.

Section 1.18 "Owner" (or "Owners") shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Multiple persons or entities holding title to a single Lot shall together constitute a single Owner. Unless stated otherwise in this Declaration, the term Owner or Owners shall include the Declarant so long as the Declarant is the Owner of any Lot.

Section 1.19 "Residence" shall mean and refer to the principal permanent residential building or structure upon any Lot, but shall exclude any secondary, detached, or subordinate buildings or structures such as detached garages or storage buildings that are allowed by the Declaration.

Section 1.20 "Rules and Regulations" shall mean those rules and regulations adopted from time to time by the Association as set forth in the Bylaws.

Section 1.21 "Single Family" means a household composed of (i) no more than two (2) principal adults (ii) the children or legal wards of one or both principal adults (iii) and three additional persons, related or unrelated.

Section 1.22 "Subdivision" means all phases or filings of High Pointe Estates Subdivision in Mesa County, Colorado, according to the recorded Map of the Subdivision, as amended from time to time, and together with any additional real property made subject to this Declaration pursuant to Article XI below. The Subdivision is a planned community as defined by CCIOA.

## ARTICLE II

### General Restrictions on Use

Section 2.1 Resubdivision Prohibited. Resubdivision or further division of any Lot shown on the Map is prohibited.

Section 2.2 Use of Property. No portion of any Lot or Improvements shall be used other than for residential purposes or home occupations as authorized in this Declaration. No agricultural or commercial use of any of the Property shall be allowed except as authorized by this Declaration or the Board.

2.2.1 For purposes of this section, "home occupations" shall mean an occupation by the resident conducted totally within the Residence which does not entail the employment of third persons on the Lot, and does not entail the delivery of goods or services to customers upon the Lot. For example, but not by way of limitation, the business activity may not have more than five (5) visits per day and no more than three (3) people per visit, or as such business activity is defined in the zoning ordinance of the City of Grand Junction from time to time, whichever is more restrictive. For example the

establishment of a barbershop or a beauty shop, or similar businesses would be prohibited.

2.2.2 No guesthouse or portion of a dwelling unit may be rented, however, nothing herein shall prevent the Owner from renting or leasing the entire Residence and guesthouse to a Single Family. However the Owner is responsible to the Association for the tenant and the tenant shall be subject to this Declaration, the Articles, Bylaws and Rules and Regulations.

Section 2.3 Approvals. All construction or work of any kind or nature occurring on a Lot, including but not limited to original construction of all Improvements, including landscaping and any additions, external modifications, design changes or color changes to such Improvements, major landscape changes, and driveway changes must be submitted to the DRC for approval in accordance with the provisions of this Declaration before work commences.

Section 2.4 Nuisances Prohibited. No noxious or offensive activities shall take place or be permitted upon any of the Lots, nor shall anything be done on any portion of the Subdivision, which may be or become an annoyance or nuisance to the Owner of any Lot. No trash, junk cars, weeds, or other unsightly, unhealthy, or dangerous items or conditions shall be permitted to remain on any portion of the Subdivision. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish.

Section 2.5 Animals/Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept if they are not kept, bred or maintained for commercial purposes. The maximum number of pets, on any Lot, is four (4). No pets over 30" at the shoulder are allowed. All pets shall be under the control of their owner, whether by containment on the Owner's Lot or on a leash. No pet shall be allowed to run at large, endanger, or harass persons, property, or other animals or constitute a nuisance or annoyance to other Lot Owners or Subdivision occupants. The Board, when requested by any Owner, shall have the final authority to determine whether any animal or pet is a nuisance to any other Owner. In the Common Area (s), Owners are responsible for collecting (with plastic or other suitable bags carried by the pet owner on all walks) and properly and safely disposing of the Owner's pet's waste immediately.

Section 2.6 Waste Storage. Trash, garbage, or other waste shall not be dumped, kept, or allowed to accumulate on any Lot except in closed, sanitary containers. All containers and equipment for storage or disposal of such materials shall be regularly emptied in a lawful manner and in compliance with this Declaration, shall be kept in a clean and sanitary condition and shall be kept inside a closed structure or otherwise screened from view by the public or from neighboring Lots, except to make the same available for collection or delivery. No incinerators shall be permitted in the Subdivision.

Section 2.7 No Temporary Residences.

2.7.1 No structure of a temporary nature (including without limitation trailers, tents, recreational vehicles, shacks, garages, or other outbuildings) shall be used on any part of the Property at any time as a Residence, either temporarily or permanently; provided however, that during the actual construction of a Residence, temporary buildings necessary for storage of materials may be used and must be maintained by the contractor.

2.7.2 The Declarant may construct and maintain sales offices, or management offices and models on one or more Lot(s). Model homes shall conform to



the requirements of this Declaration except that such homes may be used for the Declarant's commercial purposes until sold. Buildings which are not intended to be Residences may be used by Declarant as sales and management offices without complying with the provisions of this Declaration, but shall be removed from the Subdivision after all the Lots have been sold.

**Section 2.8 Sign Limitation.**

- 2.8.1 No sign, graphic, or advertising device shall be placed anywhere in the Subdivision except one sign or graphic not larger than 12 inches by 24 inches showing the Owners' name or address, or both, and one sign of not more than four square feet advertising a Lot or Residence for sale. This provision shall not limit or preclude street, road identification signs, or traffic control signs or devices or such other signs or markers as the Board may determine in its discretion are appropriate for the benefit of the Subdivision.
- 2.8.2 Signs may be used by the Declarant, building contractors or lenders for advertising during construction of Residence and sale of Lots in the Subdivision. No sign can be larger than four (4) square feet.

**Section 2.9 No Mineral Exploration or Development.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted or undertaken on any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any portion of the Subdivision. No derrick or other structure designed for exploration for oil or natural gas shall be erected, maintained, or permitted on any portion of the Subdivision.

**Section 2.10 Antennas.** Except for satellite television receivers of a diameter less than thirty (30) inches or otherwise as approved by the DRC, no antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot outside of the Residence on that Lot, except a satellite dish installed on the ground and completely screened from view by solid fencing complying with the requirements of the DRC.

**Section 2.11 Hazardous Materials.** No hazardous or flammable materials will be stored anywhere in the Subdivision except of a type and amount used in normal household consumption or use.

**Section 2.12 Reflective Materials.** White, light color, or highly reflective roofing, whether because of color or type of material, which may, in the opinion of the DRC, result in glare into other Residence in the Subdivision, shall not be allowed in the Subdivision. Changes in color of or material on a roof after the Residence is built must first be approved by the DRC. Foil or other light reflective material may not be put in windows or glass areas of a Residence. Windows designed to be reflective are not allowed.

**Section 2.13 Lights.** Exterior lighting shall be designed and placed to avoid directly illuminating any Lot(s) other than the Lot on which the lighting is located. In no event shall exterior lighting be left on continuously during hours of darkness. Lighting for security shall be accomplished by motion sensors or similar devices.

**Section 2.14 Noises.** Noise caused by improperly muffled vehicles; motors or machinery of any kind (such as unmuffled gasoline power saws, etc.) will not be permitted in the

Subdivision. In addition, for noise prevention, heavy construction machinery must be operated within the manufacturers recommendations and specifications. Reasonable operating hours as determined by the Board for any construction, yard, landscaping or similar equipment must be adhered to.

Section 2.15 Mailboxes and Receptacles.

- 2.15.1 The Declarant shall construct community mailboxes at an appropriate location in the Common Area, which shall be maintained by, and be the property of the Association.
- 2.15.2 The installation and use of individual Lot or curbside mail receptacles are prohibited. Newspaper receptacles must be approved by the DRC.

Section 2.16 New Construction Required. All Improvements in the Subdivision shall be new or newly constructed. No previously erected building, structure, or improvement shall be moved to, or placed upon, any Lot. No modular or manufactured homes and no mobile homes, trailer homes, trailers, tepees, tents, shacks, barns, sheds, basements or movable structures shall be permitted as a Residence within the Subdivision.

Section 2.17 Project Start and Completion.

- 2.17.1 No site work or construction of or relating to any Improvement (the "Project") may commence on any Lot (including preliminary site clearing, grubbing, grade alteration, storing of material, foundation excavation, etc.) until the Project has received an approval letter from the DRC and a building permit has been issued.
- 2.17.2 All Project construction shall be completed no later than nine (9) months after the later of issuance of the building permit by the City of Grand Junction or issuance of the letter of approval from the DRC.

Section 2.18 Underground Utilities. All utility lines within the Subdivision shall be underground.

Section 2.19 Fencing.

- 2.19.1 Only wood or masonry (including stucco, manufactured brick, stone, cultured stone, or manufactured stone, or wrought iron, but excluding unfinished cinder block or cement block) fences shall be permitted, unless otherwise approved by the DRC. Wire fences of any type (other than limited enclosures such as a dog run totally screened from view from all streets and other Lots) shall not be allowed. No fence shall exceed six (6) feet in height.
- 2.19.2 No fence or fencing materials shall be erected or maintained on any Lot within fifty (50) feet from the property line except as provided in Section 2.19.3. The Owner of each Lot shall be responsible for the full cost of maintenance, repair, or replacement of that Owner's fence.
- 2.19.3 On the following Lots, the Lot front and the fencing set back shall be as indicated:
  - A. Lot 3, Block 1
    - 1. Lot front-High Pointe Drive
    - 2. Thirty (30) foot set back from the property line adjacent to High Pointe Circle
  - B. Lot 20, Block 1
    - 1. Lot front-High Pointe Circle
    - 2. Thirty (30) foot setback from the property line adjacent to High Pointe Drive.

C. Lot 3, Block 2

1. Lot front-South facing
2. Thirty (30) foot set back along the east facing side of the Lot

D. Lot 4, Block 2

1. Lot front-East facing
2. Thirty (30) foot set back along the north facing side of the Lot

E. Lot 1 & 2, Block 2

1. May erect and maintain fence on the rear Lot line (adjacent to the open space)

2.19.4 The fences along the southern boundary of Lots 19 and 20, Block 1 shall be the property of the Owners of Lots 19 and 20, Block 1 and shall be maintained in good order, condition, and repair by such Owner.

2.19.5 Fencing on the Common Areas and within the right of way for Colorado Highway 340 and the Subdivision sign at the entrance to the Subdivision shall be the property of the Association and shall be repaired and maintained in good condition by the Association.

Section 2.20 Landscaping and Maintenance.

2.20.1

The landscaping of each Lot which will be visible from any street or any other Lot shall be completed by or on behalf of the Owner of such Lot in accordance with the plans approved by the DRC within ninety (90) days from the date on which the Residence on such Lot is occupied or permitted for occupancy, whichever is earlier; provided, however, for good cause, the DRC may allow a Owner a one-time extension of time for an additional 90 days in which to comply with this provision. It is strongly encouraged that each Owner employ a professional landscaping company to design and install landscape, but there shall be no penalty for failing to do so, provided that all other landscaping requirements are satisfied.

2.20.2

Each Owner shall keep, maintain, and repair the Owner's Lot and the Improvements thereon (including, for example, landscaping) in a neat, clean, cultivated, attractive and well-maintained condition, free from the accumulation of trash or debris. If any Owner fails to keep and maintain that Owner's Lot(s) or Improvements in accordance with this provision, the Board may (but shall not have the obligation to) contract for such maintenance, repairs, or restoration and assess the cost thereof to the Owner, as set forth below, on whose Lot or Improvement such maintenance, repairs or restoration were conducted. It shall be the responsibility of each Owner to provide complete and ongoing landscape maintenance of his/her Lot which shall include, but not be limited to: mowing trimming, pruning, weed control, fertilization, irrigation, disease and pest control, and maintenance of all walls, fences, lighting, patios, decks, outbuildings, hardscape elements, irrigation systems, water features, and other similar Improvements. These requirements shall be strictly enforced by the Board. The Board may proceed to enforce the provisions of this Section 2.20.2 upon fifteen (15) days notice in writing to the Owner.

2.20.3

Except as set forth in Section 2.20.5, landscaping shall cover the entire portion of the Lot and shall be of a type which complements the residential character of the Subdivision, and which is acceptable to the Design Review Committee. No desert landscaping shall be allowed. Xeriscaping is allowed

if approved by the DRC. "Xeriscaping" shall mean the use of low maintenance grasses, trees, ground covers, stone, bark, boulders and the like. Items such as bark and rock may be used on berms, around trees, and for similar purposes. Except for lawns close to the Residence or in front of the house where manicured lawns will be maintained, the DRC will encourage that all grass areas will be native grasses which will remain green with minimal watering. The manicured grass area must be maintained below four (4) inches in height.

2.20.4 At no time will any Owner be permitted to cut down trees over three (3) inches in diameter measured at three (3) feet above the ground, without the approval of the DRC.

2.20.5 Those back portions of Lots 5, 6, 7, 8, 9, 10, 11, and 12, outside of the building envelope and not visible from the street may be left with natural vegetation, but must be kept free from debris and trash and maintained in a sightly manner.

2.20.6 Clothes lines, service yards, outside storage of materials of any kind or nature, air conditioners, coolers, pool filters and pool heaters, meters, storage sheds, gas, electric, and water lines, firewood storage, building supplies, grounds or repair material storage, lawn and yard tools and equipment, and other temporary or permanent equipment must be screened or completely stored in areas approved by the DRC and hidden from the view of streets and other Residences. Basketball goals will not have to be completely hidden, however, specific approval must be obtained in writing from the DRC prior to installation.

## Section 2.21 Parking.

2.21.1 All Residences shall be constructed to provide sufficient off-street parking to accommodate not less than four automobiles, exclusive of the garage. Driveways shall be constructed of asphalt, concrete, or other hard surface, dirt or gravel driveways being expressly prohibited.

2.21.2 On street parking of any vehicles by the Owners, Residents, or guests shall be limited to temporary parking. No vehicle of any Owner, Residence occupants, or guest shall be regularly or permanently parked or stored on a street. Vehicular maintenance or repair, which renders any vehicle inoperable for more than 24 hours, is prohibited on any street, driveway, yard, or other visible location in the Subdivision. No commercial vehicular repair or other repair of vehicles not owned by the Lot Owner shall be conducted within the Subdivision. Vehicles, which do not have a current license, may not be stored outside.

2.21.3 All recreational vehicles of any kind, including trucks, campers, boats, snowmobiles, motorcycles or motorbikes, that are stored on any Lot shall be parked inside the garage or not visible from the view of streets and other Residences, and inside the building envelope. Recreational vehicles are not to be ridden or driven in the Subdivision, except for direct ingress and egress. The DRC shall have authority to require any Owner to install screening approved by the DRC to shield stored vehicles from public view or the view of other Owners.

2.21.4 All Residences shall be constructed with an attached garage large enough to accommodate at least two (2) 18' long side-by-side motor vehicles and not more than three (3) such vehicles. Detached additional garages may only be for two (2) vehicles, or vice versa.

Section 2.22 Tennis Courts. Tennis courts will be permitted only with the approval of the DRC. Tennis courts will be permitted where, in the sole discretion of the DRC, it would not be detrimental to surrounding Lots, or where in the opinion of the DRC they would not distract from the overall character of the Subdivision.

Section 2.23 Roof Equipment. Cooling and air-conditioning units may not be roof mounted, unless installed in the flat portion of the roof and totally screened from view by parapets.

### ARTICLE III

#### Architectural Design & Minimum Construction Standards

##### Section 3.1 Introduction.

- 3.1.1 The quality of the architecture within the Subdivision is very important in maintaining the integrity, appearance, quality, and value of the Subdivision and the Lots.
- 3.1.2 In order to establish a high standard of quality for residential construction in the Subdivision, minimum standards have been adopted. These standards are not intended to prevent variations in methods of construction but rather to establish minimum quality and complimenting appealing appearances.
- 3.1.3 These standards have been adopted for all new construction or a subsequent remodel or renovation.
- 3.1.4 These standards may be interpreted by a majority of the DRC.

Section 3.2 Exterior Design. Log houses, dome houses, A-frame, or other designs deemed "radical" by the DRC are examples of home designs that are prohibited. Except as specifically prohibited herein, the DRC has sole authority to determine what may be an acceptable home design.

##### Section 3.3 Building Restrictions.

- 3.3.1 The total finished living area of any Residence of one level shall be not less than 2,200 square feet. The total finished living area of any Residence having more than one level shall not be less than 1,800 square feet on the main level and not less than 2,600 square feet total. If the residence shall be a split-level, the greatest outside measurement, exclusive of open porches and garages, shall be used to determine the square footage and, therefore, different floor levels which are superimposed upon each other shall be included only once in such measurement. The square footage shall be determined by using outside measurements for finished living area totally above ground, such that garages, porches, patios, basements, and garden levels shall be excluded.
- 3.3.2 Each Lot has a designated building envelope, and any and all structures excluding fences, must be constructed inside the designated building envelope unless a variance is granted by the DRC
- 3.3.3 Any outbuilding such as guesthouses, garages, studios etc., not attached to the Residence, must match the Residence in color, design and exterior material and not exceed 1/3 of the floor square footage of the Residence as defined in Section 3.3.1

- 3.3.4 Garages that dominate the house in the opinion of the DRC shall not be allowed. Where practical in the opinion of the DRC, each garage shall be accessed from the side or back of the house. For example, it is encouraged that garages be designed to appear as part of the house and overhead doors be designed to not be visible from the street. Other design techniques may also be employed in combination with the foregoing to further reduce the visual impacts of the garage or the garage doors. These techniques are, siting of the Residence, garage orientation to the rear of the Residence, protective overhangs, projections, special door facing materials, color, door design, and/or landscape screening.
- 3.3.5 No Residence shall exceed thirty-two (32) feet in height measured from average grade at the center of the Residence, to the highest part of the roof.
- 3.3.6 All Residences shall be constructed of manufactured brick, brick veneer, stone, cultured stone, manufactured block, natural wood siding, stucco, or a combination of these materials. Unfinished cement block is prohibited.
- 3.3.7 All metal flashings, vents, gutters, downspouts, wires, or pipes must be matched to the roof or wall color or out of the same materials.
- 3.3.8 No asphalt shingle roofs shall be allowed.
- 3.3.9 Reflective house sidings or other exterior materials deemed reflective by the DRC must be screened from the view of other dwellings.
- 3.3.10 Roof design must be pitched on 75% of house, unless an exception is approved by the DRC.
- 3.3.11 Windows are a key design element and should be placed in a manner that will complement the overall design. The use of metal clad wood windows is encouraged. All windows shall have standard or non-reflective glazing. Mirrored glazing and reflective films are prohibited.
- 3.3.12 Foundations and Residence Location.
- a) A subsoil investigation performed by a soil-testing laboratory under supervision of a licensed Engineer is required for each area of residential construction to determine soil-bearing conditions for foundation design.
  - b) The design of each Residence foundation shall be based on the subsoil investigation and shall be prepared by a licensed Engineer.
  - c) WITH RESPECT TO LOTS 8-12 INCLUSIVE, BLOCK 1, THE OWNER PRIOR TO CONSTRUCTION SHALL OBTAIN AT A MINIMUM A SLOPE STABILITY TEST AND SUCH OTHER TESTS AS THE OWNER AND THE OWNER'S ENGINEER DEEM APPROPRIATE. THE TESTS SHALL BE PERFORMED BY A LICENSED ENGINEER HIRED AND PAID BY THE OWNER, AND THE ENGINEER SHALL DETERMINE THAT CONSTRUCTION AT THE PLANNED LOCATION OF THE RESIDENCE IS SUITABLE IN THE ENGINEER'S OPINION AS A SITE TO CONSTRUCT THE IMPROVEMENTS.

Section 3.4

Appointment of Design Review Committee. The DRC shall consist of three (3) individuals, each of whom may be an Owner, the spouse of an Owner, or a manager, member, director, shareholder or general partner of a legally constituted entity that is an Owner, to be appointed by a majority of the Board. A majority of the DRC may designate in writing, a representative to act for it. Any member of the Board may also serve as a member of the DRC. The method and manner of the DRC's appointment, replacement, and removal, as well as the DRC's method of operation, to the extent not provided in this Declaration, shall be as set forth in the Articles or Bylaws of the Association or if not in such documents, in the Rules and Regulations.

**Section 3.5** Authority. No exterior Improvement (including, for example, landscaping, but excluding interior remodeling of a Residence) shall be installed, erected, or altered anywhere within the Subdivision except upon compliance with this Article III and in accordance with the submission of plans to, and their approval by, the DRC. Failure of any Owner to comply with this Article III shall be deemed a violation of this Declaration, entitling the Association, or any Owner, to exercise enforcement powers under this Declaration, CCIOA, or as otherwise permitted by law. No Improvements shall be changed, altered, or modified subsequent to approval of the DRC without first obtaining the written approval of the DRC with respect to such change, alteration, or modification.

**Section 3.6** Submission of Plans.

- 3.6.1 It is strongly recommended that all Plans, including semi custom design Plans and custom architecturally designed Plans be submitted as preliminary concept drawings to the DRC as soon as they have been developed by the Owner. This will minimize the potential of an Owner investing significant efforts and funds into the final design of a Plan that may not be approved.
- 3.6.2 Duplicate copies of plans and specifications relating to an Improvement (collectively the "Plan" or "Plans") shall be submitted to the DRC for review and final approval. Plans shall contain, without limitation, plot plans showing layout, including setbacks, flow, and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations, showing doors, windows, and exterior materials and colors, landscaping plans showing the location and types of all plantings, including trees, shrubs, bushes, and grass, and all other features reasonable or necessary to explain any feature or component of the Improvement or to enable the DRC to properly consider and determine approval or disapproval of such Improvement. The DRC may disapprove any Plans that are insufficient for it to exercise the judgment required by it under this Declaration.
- 3.6.3 The Design Review Committee shall prohibit the construction of any dwelling or other structure in excess of thirty-two (32) feet in height, as per City requirements. In addition, all Lot height restrictions will be on a Lot by Lot review basis, in an effort to avoid hindering adjacent Lots views.
- 3.6.4 An Owner may make application to the DRC for a variance from any provision of the Declaration. The application must reference the specific provision for which the variance is requested and demonstrate either a hardship or condition of the variance that would meet or exceed the design intent of the Declaration. It is in the sole discretion of the DRC to deny, modify, or approve any variance applications but any approval must be by unanimous vote of all members of the DRC. Any failure to approve a variance request shall be deemed to be a denial.

**Section 3.7** Matters Considered. In addition to reviewing all technical aspects of the Plans, the DRC shall consider the aesthetic and functional design, appearance, and impact of any Improvement, including, but not limited to, the following:

- 3.7.1 The overall nature and character of the site and appearances of structures, including orientation with regard to sun, wind, view, and privacy, and the consistent quality use of exterior materials;
- 3.7.2 The harmony of all Improvements and landscaping, including alterations thereof, with natural surroundings and existing Improvements, considering

external design, materials, color, siding, height, topography, foliage, grading, and finish and ground elevation. The use of earthen tones is recommended and encouraged and the use of bright colors is discouraged, and may be prohibited at the discretion of the DRC;

3.7.3 The blending of patio structures, such that they will complement appurtenant structures, aluminum or plastic patio roofing material being prohibited;

3.7.4 The use of plantings and ornamental shrubbery complementary to the residential character of the Subdivision.

Section 3.8 Approval. The DRC shall approve or disapprove in writing all Plans, including requests for variances, within thirty (30) days after submission. If the DRC fails to approve or disapprove Plans within such 30-day period, the proposed Improvement shall be deemed approved. A majority vote of all of the members of the DRC shall be required for the approval or disapproval of the Plans for any proposed Improvement.

Section 3.9 Limitation on Liability. The DRC shall not be liable for damages to any Owner or other person submitting requests for approval or to any Owner or other person within the Subdivision due to any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to any request. The actions of the DRC shall be deemed conclusively binding upon the Owners. Any Owner submitting or causing to be submitted any Plans to the DRC agrees and covenants on behalf of himself and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against the DRC, or its members, advisors, employees, or agents, for any act or omission of the DRC.

Section 3.10 Records Retention. The DRC shall keep records of its actions for a period of five (5) years, including records of Plans, approvals, or disapprovals, and other actions taken by it pursuant to this Declaration.

## ARTICLE IV

### The Association

#### Membership; Voting Rights; Declarant Controls

Section 4.1 Membership. Every Owner of one or more Lots in the Subdivision shall be entitled and required to be a member of the Association, subject to the voting rights provisions of this Article IV. No person or entity other than an Owner of one or more Lots in the Subdivision may be a member of the Association.

Section 4.2 Allocation of Votes. Each Lot shall be allocated one vote in the Association, subject to Section 4.5 below.

Section 4.3 No Cumulative Voting. In the election of directors, cumulative voting shall not be allowed.

Section 4.4 Membership Appurtenant. Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with and at the time of the transfer of ownership of a Lot.



Section 4.5

Declarant Control

- 4.5.1 Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Lots was last exercised, Declarant may appoint and remove officers and members of the Board, subject to the limitations stated in this section.
- 4.5.2 Not later than sixty (60) days after conveyance of 25% of the Lots to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board must be elected by a majority of the Owners of Lots other than Declarant.
- 4.5.3 Not later than sixty (60) days after conveyance of 50% of the Lots to Owners other than Declarant, not fewer than 33 1/3% of the members of the Board must be elected by a majority of Owners other than Declarant.
- 4.5.4 Not later than the termination of the period of Declarant control specified in subsection 4.5.1 of this Article, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board so elected and officers shall take office upon termination of the period of Declarant control specified above.
- 4.5.5 Notwithstanding anything to the contrary stated elsewhere in this Article IV, by a vote of sixty-seven percent (67%) of all Owners present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board other than a member appointed by Declarant, may be removed with or without cause.

ARTICLE V

Covenant for Assessments

Section 5.1

Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree to pay to the Association: (a) all assessments or charges levied against that Lot by the Association; and (b) all fees, charges, late charges, attorneys fees, fines, interest, and collection costs as set forth in C.R.S. 38-33.3-316 or any other provision of CCIOA, this Declaration, the Articles and Bylaws ((a) and (b) collectively being the "Assessments"). All Assessments from the time such Assessments become due, shall be a charge on and a covenant running with the land and shall be a continuing lien on the Lot from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. Each such Assessment shall also be the joint and several personal obligation of each person and entity that was the Owner of the Lot at the time when the Assessment became due. This personal obligation shall not pass to an Owners' successors in title unless expressly assumed by them. No Owner may be exempt from liability for Assessments by waiver of use or enforcement of Common Expenses, Association Water, Irrigation Facilities, or other assets or benefits of the Association, or by abandonment of a Lot or Residence.

**Section 5.2** Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety, or welfare of the residents in the Subdivision; or for the benefit of the Common Area or Association Water, or for any other purpose of the Association, as those purposes are specified by the Articles or Bylaws (as amended from time to time) or as otherwise authorized by CCIOA.

**Section 5.3** Initial and Subsequent Assessment.

- 5.3.1 The initial Assessment of the Association shall be fixed in an amount set by, and made upon the resolution of, the Board based upon the Association's Budget adopted or set forth in Article VI.
- 5.3.2 After the initial Assessment has been made by the Association, Assessments shall be made no less frequently than annually based on a budget adopted by the Association as set forth in Article VI.
- 5.3.3 Until the Board makes an Assessment, all Common Expenses shall be paid by Declarant.
- 5.3.4 If at any time during the fiscal year the regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further Assessment in the amount of such actual or estimated inadequacy. The special Assessment shall be assessed to the Owners by dividing the total estimate by the total number of Lots and assessing the resulting amount to the Owner of each Lot, such Assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.
- 5.3.5 The Board may levy an Assessment against any Owner as a result of such Owner's failure to landscape his Lot, including a sprinkler system, rebuild damaged Improvements or to restore or maintain his Lot or the Improvements situated thereon. Such Assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance, or restoration of such Owner's Lot or Improvements, and shall be due and payable to the Association when levied.

**Section 5.4** Date of Commencement of Annual Assessment Due Dates. The first Assessment shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject to the Assessment. The Board shall establish the due dates for payment of each Assessment. The Association shall, upon demand or set forth in CCIOA, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

**Section 5.5** Expense Allocation. Except as otherwise stated in this section, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots then in the Subdivision.

- 5.5.1 Any Common Expense or portion of any Common Expense benefiting or caused by fewer than all Lots shall be assessed against the Lots benefited by

5.5.2 or causing the Common Expense in the degree to which such Lots are benefited by or cause such Common Expense, as determined by the Board. If Common Expense liabilities are reallocated (for example, by addition of Lots to the Subdivision under Article XI), Assessments and any installment of them not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

5.5.3 Association Water and Irrigation Facilities expenses shall be prorated by the Board among the Lots based on the amount of water provided to each individual Lot. The pro rate may change in the event that certain parcel presently owned by Imojean C. Standifer at 2458 Broadway, Grand Junction, Colorado, adjoining the Property and more specifically described on Exhibit B, attached hereto and by this reference made a part hereof (the "Standifer Property"), is subdivided. In the event of such subdivision, that certain agreement, dated July 6, 2000, between Titan Land Co. Developments, LLC, and Imojean C. Standifer, provides for the sharing of expense associated with the delivery of irrigation water in accordance with the provisions outlined in said agreement.

5.5.4 **Section 5.6** Effect of Nonpayment of Assessments: Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate not to exceed twenty-one percent (21%) per annum set annually by the Board at the time the Budget is determined or if no interest rate is then set, at the rate of twelve percent (12%) per annum.

Section 5.7 Priority of Lien. The lien for Assessments shall have the priority specified in CCIOA.

## ARTICLE VI

### Budget and Records

Section 6.1 Books and Records. The Board shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles. All books, records, and papers of the Association shall be available for inspection and copying by any Owner or the Owner's representative during regular business hours at the principal office of the Association. The Board may establish reasonable rules concerning notice to be given the custodian of the records by anyone desiring to inspect them, and payment of costs of reproducing any documents requested by any member.

Section 6.2 Annual Budget. The Board shall cause to be prepared no less than annually an operating budget, balance sheet, and cash flow statement for the Association.

Section 6.3 Delivery of Budget. Within thirty (30) days after adoption of any proposed budget, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary.

- Section 6.4 Ratification of Budget. Unless at the meeting described in Section 6.3 above, Owners representing eighty percent (80%) of all Lots reject the budget, the budget is ratified, whether or not a quorum is present at such meeting.
- Section 6.5 Rejection of Budget. In the event that the proposed budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.
- Section 6.6 Reserve Fund. As part of each annual budget, the Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of any personal property, fixtures, and Improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

## ARTICLE VII

### Association Powers

- Section 7.1 Authority. The Association shall have all rights, powers, and authority specified or permitted by: (a) CCIOA; (b) any other applicable law; (c) this Declaration; and (d) the Articles and Bylaws, to the extent not inconsistent with (a), (b), or (c), herein.
- Section 7.2 Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, the Articles, Bylaws, or Rules and Regulations (together the "Subdivision Documents") and may obtain mandatory or injunctive relief, may obtain damages for noncompliance and exercise any other right or remedy for enforcement of the Subdivision Documents permitted by law. All of such rights and remedies of the Association shall be cumulative.
- Section 7.3 Conveyances or Encumbrance. The Association shall have the right to encumber, dedicate, or convey all or any part of the Common Area or the Association interest in Association Water or any other Association asset. However, no such encumbrance, dedication, or conveyance shall be effective except by the vote or agreement of eighty percent (80%) of all Owners and an instrument properly reflecting such encumbrance, disclosure or conveyance has been properly recorded.
- Section 7.4 Delegation of Use. Any Owner may delegate, subject to the Bylaws of the Association, his right of enjoyment to the Common Area and use of Association Water to the members of his family residing with him, his tenants, or contract purchasers who reside on the Lot owned by that Owner.

## ARTICLE VIII

### Association Water

- Section 8.1 Management of Association Water. The Board shall have the exclusive authority to allocate, deliver, manage, and control the use of Association Water. Further, the

Board shall have the exclusive authority to operate, repair, and maintain the Irrigation Facilities. The Board authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand.

**Section 8.2** Easements for Ingress and Egress. All Irrigation Facilities shall be owned, operated, and maintained by the Association. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on the Map for the purpose of operating, repairing, or maintaining Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which shall interfere with the ownership, operation, and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering Improvement or structure.

**Section 8.3** Irrigation Assessments. All billings by Redlands Water and Power Company associated with Association Water shall be Common Expenses, subject to Article V, Section 5.5.

**Section 8.4** Flow Restriction. The Association shall install and maintain flow restrictor valves on the irrigation pipelines delivering Association Water to each Lot. So long as the amount of Association Water is no more than 22 shares of Redlands Water and Power Company stock, those flow restrictor valves shall permit delivery of no more than 15 gallons per minute to each Lot, apportioned share to each Lot.

**Section 8.5** Standifer Property Water. The Irrigation Facilities shall also deliver no more than four (4) shares of Redlands Water and Power Company water to the Standifer Property through the irrigation easements in the Subdivision and utilizing the Irrigation Facilities, the expenses associated with such delivery only being charged as set forth in that certain Agreement discussed in Section 5.5.3 at such time as the Standifer Property is subdivided but not before.

## ARTICLE IX

### Easements

**Section 9.1** Subdivision Map Easements. The Association shall have the right to utilize all utility easements shown on the Map of the Subdivision as amended from time to time, for the purposes specified in this Declaration and also for any other Association purposes or in the exercise of any powers granted to the Association in its Articles, Bylaws or as permitted by law.

**Section 9.2** Other Easements. Any easement over, under, or across the property outside of the Subdivision transferred by Declarant to the Association before or after the date of this Declaration, whether or not so stated in the deed of that easement, shall be subject to all uses to which Declarant or its successors and assigns might put the property on which the easement is granted at any time, including by way of example and not limitation, use of that property for the ownership, construction, maintenance, operation, repair, removal, replacement, resizing, alteration, remodeling, or renovating of facilities for the delivery and storage of irrigation water

and underground pipelines, pumps, valves, gates, and other structures, facilities or improvements for the storage or delivery of irrigation water to property owned on or after the date of this Declaration by Declarant or its successors or assigns.

Section 9.3

Grant of Easement To The Association. The Declarant has granted and conveyed to the Association, its successors, and assigns, by the separate Deed, the irrigation and drainage easements designated on the Map recorded in Plat Book 18, Page 70-72, of the Mesa County records, together with the right of ingress and egress on, along, over, under, through and across such irrigation and drainage easements for the purpose of installation, maintenance, repair, replacement, operation and construction of the Irrigation Facilities with respect to the irrigation easements and such Improvements as are appropriate relating to the drainage easements. The Association shall be fully responsible for maintaining the easements hereby granted in a fashion consistent with the maintenance of the areas of the Subdivision immediately adjacent to such easements or as otherwise appropriate. All such easements shall be kept clear of structures that might interfere with the reasonable use of such easements.

Section 9.4

Use of Irrigation Easements for Standifer Property. The irrigation easements as designated on the Map, recorded in Plat Book 18, page 70-72, shall be available to deliver irrigation water to and for the benefit of the Standifer Property as set forth in Section 8.5.

ARTICLE X

Limitation of Liability and Insurance

Section 10.1

Limitation Upon Liability.

10.1.1 Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, the DRC, any officer of the Association or any agent or employee of the Association to the fullest extent of the law, including by way of example only, from any and all costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorney's fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, the DRC or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

10.1.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Property or

by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

Section 10.2

Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable.

10.2.1 Property insurance on the Common Area and also on property that might become a Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

10.2.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner, Board Member, and Member of the DRC. Owners shall be included as an additional insured but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

10.2.3 Insurance policies carried pursuant to both immediately preceding subsections of this Section 10.2 must provide that:

- A. Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or membership in the Association;
- B. The insurer waives its rights to subrogation under the policy against any Owner or member of his household;
- C. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- D. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

10.2.4 Worker's Compensation coverage upon employees.

10.2.5 Fidelity bonds to protect against dishonest acts on the part of those who handle receipt and disbursement of Association funds. Such bonds shall (1) name the Association as an obligee; (2) be written in an amount not less than Fifty Thousand Dollars (\$50,000.00); (3) contain waivers of any defense based upon the exclusion of persons serving without compensation from any definition of "employee" or similar expression; (4) provide that no modification in any substantial manner, or cancellation shall be had without thirty (30) day's prior written notice to the Association.

10.2.6 Such other insurance as the Board may deem desirable for the benefit of the Owners or the Association.

10.2.7 Insurance policies issued to the Association do not obviate the need for Owners to obtain insurance for their own benefit.

# ARTICLE XI

## Special Declarant Rights

- Section 11.1 Addition and Withdrawal of Property. Declarant reserves the right to add or withdraw real estate from the Property covered by this Declaration and to create lots and common elements within the Subdivision. The maximum number of lots that the Declarant reserves the right to create inclusive of the Lots as indicated on the Map, is 30.
- Section 11.2 Special Declarant Rights. Declarant reserves all special Declarant rights available under CCIOA, currently codified at Section 38-33.3-103(29), C.R.S.
- Section 11.3 No Assurances. No assurance is given concerning the creation, size, location, or continued existence of Lots, Common Areas, easements, or Improvements except those shown on the Map attached to this Declaration.
- Section 11.4 Limitation on Additional Property. Declarant's development right to add property to the Subdivision is limited to that property described in this section.
- 11.4.1 Declarant may add to the Subdivision any property contiguous to that shown on the attached Map at any time within ten (10) years after the date of recording this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, unless extended or allowed by law or by the Association
- 11.4.2 The Declarant, in addition to any other development right, may amend the Declaration, to add real estate to the Subdivision; at any time within ten (10) years after the date of recording this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado; provided the area of such unspecified real estate added to the Subdivision pursuant to this section shall not exceed 10% of the total area of the Subdivision described in Exhibit A, and the number of Lots in the Subdivision shall not be increased beyond the maximum number stated in Section 1 of this Article.
- Section 11.5 Exercise of Development Rights. Declarant's development rights (as defined in CCIOA) may be exercised with respect to the additional property described in Section 11.4 at different times. No assurance is made as to the boundaries or orders of those parcels of the Subdivision as to which such development rights may be exercised covered by this Declaration. Any development right exercised as to any portion of the Subdivision need not be exercised in all or any other portion of the remainder of the Subdivision.
- Section 11.6 Assignment by Declarant. Except as restricted by CCIOA or other applicable Law, Declarant may assign (from time to time) some or all of Declarant's rights or obligation or liability assigned.
- Section 11.7 Sales Office: Models. Despite anything to the contrary stated elsewhere in this Declaration, the Declarant may maintain a sales and/or management office and model homes in the Subdivision. The office may be located on any Lot owned by Declarant and may be relocated to any other Lot owned by Declarant from time to time, at Declarant's sole discretion. The office shall be no more than 1,000 square feet in size and may (but need not be) a mobile or modular home. If Declarant ceases to own any Lot, Declarant shall have a period of 30 days in which to remove



the office described above from the Subdivision. The Declarant may maintain one or more signs on the Common Area (including, without limitation, the area between the Subdivision fence and Colorado Highway 340 (Broadway)) for the purposes of advertising the Subdivision and the sale of Lots. The provisions of this section shall control in the event of any conflict with any other provision contained in this Declaration.

**Section 11.8** Common Areas.

- 11.8.1 The Common Area identified, as Tract B on the Map shall be transferred by the Declarant to the Association within a reasonable time following the recording of the Map. There is confusion regarding the proper location of the boundary line between Tract B and the adjoining properties to the east due to variations among multiple surveys and no boundary agreement has been reached with the affected adjoining landowners. As a result, the final location of the boundary line between Tract B and the adjoining properties to the east shall be subject to the results of a quiet title action to be undertaken by and at the expense of the Declarant prior to the transfer of Tract B to the Association. In no event shall the results of the quiet title action in any way affect the Lots adjoining Tract B.
- 11.8.2 The Declarant has granted and conveyed to the Association, its successors, and assigns, by separate Deed, Tract A and C as referenced on the Map, recorded in Plat Book 18, Page 70-72 of the Mesa County recorded.

**ARTICLE XII**

General Provisions

- Section 12.1** Rules and Regulations. The Association shall have the right to impose Rules and Regulations upon the Owners concerning use of the Common Area, Association Water, and any other Association property, and otherwise as set forth in the Bylaws.

**Section 12.2** Enforcement.

- 12.2.1 The Association or the Owner of any Lot may enforce any provision of this Declaration in an action at law or in equity. The relief sought may include damages (including, for example, consequential and incidental damages) for any violation, or injunctive relief, or both. This listing of possible remedies is not exclusive. It is the intent of the Declarant that the Association or an Owner may obtain any relief available under the then applicable law or the provisions of this Declaration for violation of any provision of this Declaration. All such rights and remedies shall be cumulative.
- 12.2.2 In litigation or other proceeding concerning enforcement or interpretation of this Declaration, the prevailing party shall be entitled to recover reasonable attorneys fees and court costs, in addition to any other relief available to that party.

- Section 12.3** Term. The provisions of this Declaration shall each constitute a covenant running with the land applicable to all of the Lots, binding Declarant and all persons and entities claiming by, through, or under it in perpetuity or until revoked in

accordance with the applicable provisions of Section 38-33.3-218 and all subsequent amendments thereto.

- Section 12.4 Amendment. The Declaration may be amended only by complying with the applicable provisions of C.R.S. Section 38.33.3-217 and all subsequent amendments thereto.
- Section 12.5 Termination. Termination of the Declaration and the common interest community shall only take place in accordance with C.R.S. Section 38-33.3-218, as amended from time to time provided, however, that no such termination shall occur except upon a vote of ninety percent (90%) of the Association.
- Section 12.6 CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.
- Section 12.7 Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the Mesa County, Colorado real estate records by which that Owner took title and to the street address of that Lot, if any.
- Section 12.8 Section Heading. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration.
- Section 12.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.
- Section 12.10 Binding Effect. The provisions of this Declaration shall be binding upon and inure to the benefit of Declarant and each and all of its successors in interest and assigns.
- Section 12.11 Requirements. It must be expressly understood that this Declaration and any variances granted by the DRC are in addition to any governmental requirements. Therefore, all necessary permits or variances must be obtained from the City of Grand Junction, Mesa County, the State of Colorado, or any other agency, having jurisdiction. All requirements, ordinances, laws, stipulations, etc. of governing towns, counties, states, and agencies must be adhered to.

DATED: Dec 15, 2000

BOOK 2784 PAGE 94

By: Titan Land Co. Developments, LLC

Darren Caldwell  
Darren Caldwell  
Assistant Manager

STATE OF COLORADO

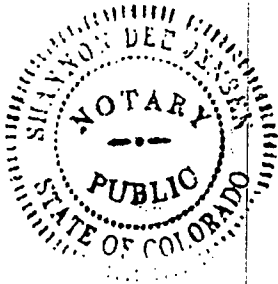
COUNTY OF MESA

)  
) ss.  
)

Titan Land Co. Developments, LLC, Darren Caldwell as Assistant Manager of Titan Land Co. Developments, LLC, acknowledged the foregoing instrument the 15 day of December 2000.  
WITNESS hand and official seal.

My commission expires: 11/18/2003

Shannon Dee Jensen  
Notary Public



That part of the W1/2 SE1/4 of Section 16, Township One South, Range One West of the Ute Meridian, City of Grand Junction, County of Mesa, Colorado, described as follows:  
 Commencing at a Mesa County Survey Marker for the S1/4 Corner of said Section 16, from whence a Mesa County Survey Marker for the Southeast corner of said Section 16 bears S89°56'49"E 2627.62 feet; thence N04°19'38"E 1119.91 feet to a 5/8-inch rebar and alloy cap (L.S. 18469) and the point of beginning; thence along a perimeter marked by 5/8-inch rebars and alloy caps (L.S. 18469) the following nine courses and distances: 1. N08°05'34"E 208.17 feet; 2. N08°37'34"E 253.44 feet; 3. N77°33'24"E 264.48 feet; 4. N67°00'48"E 275.46 feet; 5. N00°41'36"W 142.75 feet; 6. S74°14'26"E 213.74 feet; 7. S50°44'26"E 240.72 feet; 8. S18°09'26"E 266.08 feet; 9. S05°44'34"W 120.60 feet; thence S12°00'34"W 229.78 feet to a 5/8-inch rebar and alloy cap (L.S. 11643); thence N85°43'23"W 164.62 feet to a 5/8-inch rebar and alloy cap (L.S. 18469); thence S53°30'21"W 150.69 feet to a 5/8-inch rebar and alloy cap (L.S. 11643); thence S69°20'27"W 123.12 feet; thence S00°06'20"W 260.70 feet to a 5/8-inch rebar and alloy cap (L.S. 18469) on the northerly right-of-way line of Colorado State Highway 340 (Broadway); thence N65°31'30"W on said right-of-way line for a distance of 300.61 feet to a 5/8-inch rebar and alloy cap (L.S. 18469); thence, leaving said right-of-way line, N00°08'48"E 295.95 feet to a 5/8-inch rebar and alloy cap (L.S. 18469); thence N89°06'16"W 318.79 feet to the beginning.

[16.38 Acres]

Mesa County, Colorado

FIRST AMENDMENT  
TO THE  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HIGH POINE ESTATES SUBDIVISION

This FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE OF HIGH POINTE SUBDIVISION ("First Amendment") is made as of December 6, 2001 by TITAN LAND CO. DEVELOPMENTS, LLC.

A. Declarant has heretofore caused to be recorded in Book 2784 at page 68. Mesa County, Colorado records a Declaration of Protective Covenants for High Pointe Estates Subdivision (the "Declaration") and is the owner of more than ninety (90) percent of the lots covered by the Declaration.

B. In Article XII Section 4, of the Declaration sets out the provision for amendment.

C. Declarant wishes to amend the Declaration as hereinafter set forth:

1. Article II, Section 2.1, is hereby amended to read as follows:

Resubdivision (A). "Resubdivision or further division of any Lot shown on the map has to have prior approval of the Design Review Committee."

Resubdivision (B). Lots 5 & 6 shall be joined to form Lot 5A

2. Conflicts Between documents. In case of conflict between the Declarations as amended hereby and the Articles and the Bylaws of the Association, the Declaration as amended shall control.

DATED as of the day and year first above written.

TITAN LAND CO LLC.

By: \_\_\_\_\_

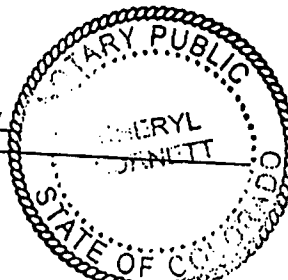
Gerry Tucker, Manager

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December 2001, by Gerry Tucker, manager of Titan Land Co, LLC.

Witness my hand and official seal  
My Commission Expires: 4/3/05

Cheryl Burnett  
Notary Public



BOOK 3006 PAGE 592

Reception No. \_\_\_\_\_  
 Recorded at \_\_\_\_\_ o'clock \_\_\_\_\_ M., \_\_\_\_\_ Recorder

## WARRANTY DEED

Grantor(s), Titan Land Co. Developments, LLC whose address is 518 28 Road, Suite A207, Grand Junction CO 81501, for the consideration of One dollar and other consideration in hand paid, hereby sell(s) and convey(s) to The Patricia Gail Tucker Living Trust, as to an undivided 1/2 half interest and The Gerald Arthur Tucker Living Trust, as to an undivided 1/2 interest whose legal address is 518 28 Road, Suite A207, Grand Junction CO, the following real property in the County of Mesa, and State of Colorado, to wit:  
 Lot 5A of HIGH POINTE ESTATES II

2036693 01/22/02 12:38PM  
 MONIKA TODD (L&P&C MESA COUNTY) CO  
 REC'FEE \$5.00  
 DOCUMENTARY FEE \$10.00

also known as street and number: 2461 High Pointe Circle, Grand Junction, CO 81503

with all its appurtenances, and warrant(s) the title to the same, subject to taxes for 2001, payable in 2003 and all subsequent years, easements, rights of way, reservations and restrictions of record.

Signed this 30th day of December, 2001.

Titan Land Co. Developments, LLC

by: Patricia Gail Tucker  
 Patricia Gail Tucker, manager

STATE OF COLORADO,

County of Mesa

} ss.

The foregoing instrument was acknowledged before me this 30th day of December, 2001 by Patricia Gail Tucker, manager of Titan Land Co. Developments, LLC.

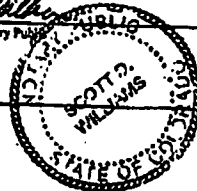
My commission expires: 1/13/2003

Witness my hand and official seal.

Robert D. Williams  
 Notary Public

Wife Devere, born "Clayton".

Name and Address of Person Creating Newly Created Legal Description (§ 38-35-106, C.R.S.)



Form 107, Rev. 6-02 WARRANTY DEED (Short Form)  
 Version Form 1000100 Rev. 1003/07

Abstract & Title Company of Mesa County, Inc.  
 1114 N. 1st Street, Suite 201, P.O. Box 3728  
 Grand Junction, CO 81502 (970) 242-8134  
 Fitch 00005550

SECOND AMENDMENT TO THE  
DECLARATION OF PROTECTIVE COVENANTS FOR  
HIGH POINTE ESTATES SUBDIVISION

BOOK 3144 PAGE 427

Titan Land Co. Developments, LLC, a Colorado limited liability company, as Declarant, together with The Patricia Gail Tucker Living Trust and The Gerald Arthur Tucker Living Trust (hereinafter the "Tuckers' Trusts"), owners of Lot 1, High Pointe Estates III, the Declarant and the Tuckers' Trusts together being the present owners of more than sixty-seven percent (67%) of all lots in the Subdivision, all in accordance with C.R.S. 38-33.3-217, hereby amend the Declaration of Protective Covenants for High Pointe Subdivision, previously recorded in Book 2784, Page 68 of the Mesa County Records on December 22, 2000 at reception number 1977752 (the "Original Covenants") as follows:

1. Section 11.8.1, a portion of Section 11.8 Common Areas is deleted and replaced with the following:

11.8.1 The Declarant obtained boundary agreements with the landowners adjoining Tract B, as it was described in the Map recorded in Plat Book 18, Pages 70-72, such that the confusion regarding the boundary line between Tract B and the adjoining landowners to the east has now been resolved. Tract B has been revised, reconfigured and renamed as Tract B1 as described in the plat of High Pointe Estates III, a replat of High Pointe Estates II and Lots 7, 8 and Tract B of High Pointe Estates, recorded in Plat Book 19, Pages 105 (hereinafter "Replat III"). The Declarant has granted and conveyed to the Association, its successors and assigns, by separate deed, Tract B1 as referenced in Replat III.

11.8.1.1 By separate deed, the Declarant has transferred to the Tuckers' Trusts that portion of Tract B as originally described in the Map that adjoins Lot 1 as set forth on Replat III.

2. Sections 3.3.1 and 3.3.6, being a portion of Section 3.3 Building Restrictions are deleted and replaced with the following:

3.3.1 The term "finished living area" as used in this Article III shall mean the total floor area, measured in square feet, of all portions of a Residence that are designed and completed as areas both heated and cooled mechanically or artificially and in which the integrated activities of daily living of the residents are conducted. The term "finished living area" shall not include garages, porches, patios, basements, courtyards and garden levels.

3.3.1.1 With respect to all Lots, and except as set forth herein, the square footage of the finished living area of a Residence, whether single or multi-level, shall be determined by using outside measurements for the finished living area totally above ground. On lots where elevations are conducive to such construction, the DRC is encouraged to allow, as a variance to these

requirements and to be used to meet the minimum square footage required by this Section 3.3, walk-out basements or similar areas that otherwise meet the definition of finished living area and are otherwise constructed in conformity to the letter and spirit of the Original Covenants.

3.3.1.2 The finished living area of any Residence of one level shall be not less than 3,000 square feet, provided however that with respect to Lots 1, 2, 3 and 12, Block One and Lot 4, Block Two, the finished living area of any Residence of one level shall be not less than 2,500 square feet.

3.3.1.3 The finished living area of a multi-level Residence, counting each level, shall not be less than 3,400 square feet and the "footprint" on the ground, transposed to a horizontal plane, of the finished living area of the Residence shall be not less than 2400 square feet. With respect to Lots 1, 2, 3 and 12, Block One and Lot 4, Block Two, the total finished living area of a multi-level Residence, counting each level, shall not be less than 2,800 square feet and the "footprint" on the ground, transposed to a horizontal plane, of the finished living area of the Residence shall be not less than 2,200 square feet.

3.3.6 All Residences shall be constructed of manufactured brick, brick veneer, stone, cultured stone, manufactured block, natural wood siding, stucco, or a combination of these materials. Use of wooden siding shall be restricted to use only as a limited feature in protected areas to compliment stucco, stone or brick walls. Unfinished cement block is prohibited.

3. Section 2.19.2, being a portion of Section 2.19 Fencing is deleted and replaced with the following:

2.19.2 No fence or fencing materials shall be erected or maintained on any Lot within fifty (50) feet from the front property line except as provided in Section 2.19.3 and provided further that landscaping and decorative walls may be allowed within fifty (50) feet from the front property line but only with prior written approval of the DRC. The Owner of each Lot shall be responsible for the full cost of maintenance, repair or replacement of that Owner's fence.

4. The definition of terms set forth in the Original Covenants shall apply to the terms set forth in this Second Amendment.

5. Except as modified, deleted or replaced by the terms of this Second Amendment, the Original Covenants and the First Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision recorded in Book 2978, Page 293 of the Mesa County Records on December 7, 2001 shall remain in full force and effect.



DATED this 9th day of July, 2002

TITAN LAND CO. DEVELOPMENTS, LLC, a  
COLORADO LIMITED LIABILITY COMPANY

By Gerald A. Tucker  
Gerald A. Tucker, Manager

THE PATRICIA GAIL TUCKER LIVING TRUST

By Patricia Gail Tucker  
Patricia Gail Tucker, Grantor and Trustee

THE GERALD ARTHUR TUCKER LIVING  
TRUST

By Gerald Arthur Tucker  
Gerald Arthur Tucker, Grantor and Trustee

State of Colorado )  
County of Mesa )

The foregoing instrument was acknowledged before me this 9th day of July, 2002 by Gerald A. Tucker as Manager of Titan Land Co. Developments, LLC, a Colorado limited liability company; by Patricia Gail Tucker as Grantor and Trustee of The Patricia Gail Tucker Living Trust and by Gerald Arthur Tucker as Grantor and Trustee of The Gerald Arthur Tucker Living Trust.

My commission expires: 11-21-2002

WITNESS my hand and official seal.

Gynthia S. Col  
Notary Public



THIRD AMENDMENT  
TO THE  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HIGH POINTE ESTATES SUBDIVISIONS

THIS THIRD AMENDMENT to the Declaration of Protective Covenants for **High Pointe Estates Subdivision** is made and entered into as of May 1<sup>st</sup>, 2006 by the Members of the Homeowners Association.

- A. In Article XII Section 4, of the Declaration sets out the provision for Amendments.
- B. Declarant wishes to amend the Declaration herein after set forth.
1. Article 3.3.1.2 is hereby amended to read as follows: "The finished living area of any residence of one level shall be not less than 3000 square feet, provided however with respect to Lots 1, 2, 3, 12, 19, and 20 Block one and Lot 4, Block two. The finished area of any residence of one level shall not be less than 2500 square feet.
2. Article II  
General Restrictions on Use – add 2.24 no basket ball courts or hoops shall be allowed on individual lots.

DATED as of the day and year first above written.

<u>Lot/Name</u>	<u>Date</u>	<u>Signature</u>
1. Lot 1 Block 1 - Hoeckel, Ernie & Chris	_____	_____
	_____	_____
2. Lot 2 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
3. Lot 3 Block 1 – Jensen, Clark & Kristi	_____	_____
	_____	_____
4. Lot 4 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
5. Lot 5&6 Block 1 – Tucker, Gerald & Patricia	_____	<u>Pat Tucker</u>
	_____	_____

6. Lot 7 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
7. Lot 7 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
8. Lot 9 Block 1 – Andrews, Keith & Paula	_____ _____	_____ _____
9. Lot 10 Block 1 – Edson, Dennis & Sue	_____	_____
10. Lot 11 Block 1 – Titan Land Company	_____ _____	<u>Pat Tucker</u> _____
11. Lot 12 Block 1 – Lenahan, Art & Deborah	_____ _____	_____ _____
12. Lot 13 Block 1 – Lenahan, Art & Deborah	_____ _____	_____ _____
13. Lot 14 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
14. Lot 15 Block 1 – Titan Land Company	_____	_____
15. Lot 16 Block 1 – Brown, Gordon & Tammi	_____ _____	_____ _____
16. Lot 17 Block 1 – Caldwell, Darren & Rena	_____ _____	_____ _____
17. Lot 18 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
18. Lot 19 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
19. Lot 20 Block 1 – Titan Land Company	_____	<u>Pat Tucker</u>
20. Lot 1 Block 2 – Laycock, Lowell & Linda	_____ _____	_____ _____

21. Lot 2 Block 2 – Titan Land Company

\_\_\_\_\_

Pat Tucker

22. Lot 3 Block 2 – Conquest Homes, LLC

\_\_\_\_\_

Pat Tucker

23. Lot 4 Block 2 – Lane, Dave & McLaughlin, K

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOURTH AMENDMENT  
TO THE  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HIGH POINTE ESTATES SUBDIVISION

THIS FOURTH AMENDMENT to the Declaration of Protective Covenants for High Pointe Estates Subdivision is made and entered into as of the 2<sup>nd</sup> day of February, 2015, by the High Pointe Estates Homeowners Association, in accordance with CRS 38-33.3-217.

RECITALS

- A. The Declaration of Protective Covenants for High Pointe Estates Subdivision was recorded in the records of Mesa County in Book 2784, at Page 68 (Declaration). The Declaration was amended as follows:
- o First Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision, recorded in the records of Mesa County in Book 2978, at Page 293,
  - o Second Amendment to the Declaration of Protective Covenants for the High Pointe Estates Subdivision, recorded in the records of Mesa County in Book 3144
  - o Third Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision, recorded in the records of Mesa County in Book 4158, at Page 76
- B. Section 12.4 of the Declaration sets forth the provision for amendment of the Declaration.
- C. The Members of the High Pointe Estates Homeowners Association wish to amend the Declaration as set forth herein.
- D. The High Pointe Estates Homeowners Association, by a vote of more than sixty-seven percent (67%) of the present owners of all lots in the Subdivision, which vote was taken at a meeting of the association on February 2, 2015, has approved the amendments contained herein.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Sections 3.3.1, 3.3.1.2 and 3.3.1.3, subsections of section 3.3 Building Restrictions, are hereby deleted and replaced with the following:

3.3.1 The building "footprint" on the ground, transposed to a horizontal plane, of the finished living area of the Residence shall be not less than 2,500 square feet. The term "finished living area" as used in this Article shall mean the total floor area, measured in square feet, of all portions of a Residence that are designed and completed as area both heated and cooled mechanically or artificially and in which the integrated activities of daily living of the residents are conducted. The term "finished living area" shall not include garages, porches, patios, basements, courtyards and garden levels. Lots 1, 2, 3 and 12 in Block 1 and Lot 4 in Block 2 are exempted from this Amendment and not affected by this change.

2. Section 3.3.8, is hereby deleted and replaced with the following:

3.3.8 All roofs shall be constructed using Eagle Roofing products, Number 3520, Capistrano. If that product becomes discontinued or unavailable, a product as near that product in specifications as possible shall be used.

3. A new Section 3.3.13 is added as a new subsection of Section 3.3 Building Restrictions, as follows:

3.3.13 Conquest Construction, its successor or assigns, is hereby designed as the only approved Construction Company in the subdivision for New Residences or work that changes the exterior of a Residence.

4. The definition of terms set forth in the Declaration shall apply to the terms set forth in this Fourth Amendment.
5. Except as modified, deleted or replaced by the terms of this Fourth Amendment, the Declaration, as previously amended, shall remain in full force and effect.

DATED to be effective as of the day and year first above written.

HIGH POINTE ESTATES HOMEOWNERS ASSOCIATION

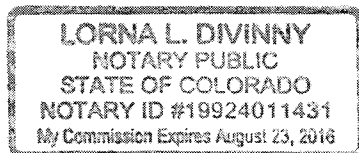
By: Pat Tucker President

STATE OF COLORADO )  
 ) SS.  
County of Mesa )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of Sept, 2015, by Pat Tucker, the President of High Pointe Estates Homeowners Association.

Witness my hand and official seal

My commission expires: 8-23-16



Lorna L. Divinny  
Notary Public

**FIFTH AMENDMENT TO HIGH POINTE ESTATES SUBDIVISION  
DECLARATION OF PROTECTIVE COVENANTS**

This Fifth Amendment to High Pointe Estates Subdivision Declaration of Protective Covenants ("Fifth Amendment") is made and effective the 5<sup>th</sup> day of March, 2025.

**RECITALS**

A. The High Pointe Estates Subdivision Declaration of Protective Covenants (the "Original Declaration") was recorded on December 22, 2000, at Reception#: 1977752, in the real property records of Mesa County, Colorado (the "County").

B. A First Amendment to the Declaration of Protective Covenants for High Poine [*sic*] Estates Subdivision was recorded on December 7, 2001, at Reception#: 2029863, in the real property records of the County.

C. A Second Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision was recorded on August 30, 2002, at Reception#: 2074016, in the real property records of the County.

D. A Third Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision was recorded on May 16, 2006, at Reception#: 2317324, in the real property records of the County.

E. A Fourth Amendment to the Declaration of Protective Covenants for High Pointe Estates Subdivision was recorded on September 2, 2015, at Reception#: 2736119, in the real property records of the County.

F. The Original Declaration and the foregoing amendments are collectively referred to as the "Declaration" in this Fifth Amendment. Unless otherwise defined in this Fifth Amendment, capitalized terms in this Fifth Amendment shall have the same meanings as in the Declaration.

G. The property subject to the Declaration and this Fifth Amendment is all of High Pointe Estates Subdivision (the "Property").

H. Pursuant to Section 12.4 of the Declaration and C.R.S. § 38-33.3-217, an amendment to the Declaration may be approved upon the affirmative vote of 67% of the Owners.

I. At a meeting of the Owners on March 5, 2025, more than 67% of the Owners voted, in person or by proxy, to approve the amendments to the Declaration set forth below.

THEREFORE, the Declaration is amended as follows:

## TERMS

1. A new Section 2.2.3 is adopted as follows:

2.2.3. The term "lease" as used in this Section 2.2.3 shall include any agreement for the leasing or rental of a Residence, regardless of what the operative instrument is called. An owner leasing their Residence under Section 2.2.2 must comply with the following conditions: (a) all leases shall be in writing; (b) all leases and the lessee's occupancy of the Residence shall be subject in all respects to the provisions of this Declaration and the Articles, Bylaws and rules and regulations of the Association; (c) a lessee's failure to comply with any of those documents, in any respect, shall be a default under the lease; and (d) a copy of any such lease, together with any modifications, amendments, and extensions, shall be provided to the Association.

2. A new Section 2.2.4 is adopted as follows:

2.2.4. The leasing of a Residence for fewer than ninety (90) days, whether directly by an Owner, through an intermediary, or through a company such as VRBO, Airbnb, HomeAway, or any similar organization that administers short-term rentals, is prohibited.

IN ALL OTHER RESPECTS the Declaration shall remain as written.

HIGH POINTE ESTATES  
HOMEOWNERS ASSOCIATION

  
Eileen Blanchard, President

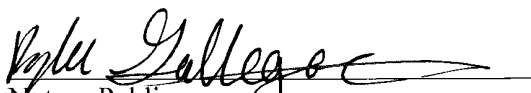
STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

Subscribed and sworn to before me the 17 day of ~~March~~ April, 2025, by Eileen Blanchard, President of High Pointe Estates Homeowners Association.

WITNESS my hand and official seal.

My commission expires: 10/25/27

RYLEE GALLEGOS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20234040539  
MY COMMISSION EXPIRES 10/25/2027

  
Notary Public