

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE FAIRWAY TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FAIRWAY TOWNHOMES (hereafter "Declaration") is made and declared this 8th day of FEBRUARY, 1984, by THE FAIRWAY, a Colorado limited partnership (hereafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of Lots 1 through 6 inclusive, and Tract A situate within Block 1, Replat of The Fairway, Mesa County, Colorado (hereafter referred to as the "Property").

B. Declarant desires to develop and improve the Property and subject the same to the covenants, conditions and restrictions set forth in this Declaration.

NOW, THEREFORE, Declarant hereby makes the following declaration of covenants, conditions and restrictions:

ARTICLE I
DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee referred to in Article VI, Section 7, of this Declaration.

Section 2. "Articles" shall mean and refer to the Articles of Incorporation of The Fairway Townhomes Association, a Colorado non-profit corporation.

Section 3. "Association" shall mean and refer to The Fairway Townhomes Association, a Colorado non-profit corporation.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "Buildings" shall mean and refer to any building or similar structure, including all fixtures and improvements therein contained, situate on the Property.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association.

Section 7. "Common Area" shall refer to all of the Property except Lots 1 through 6.

Section 8. "Declarant" shall mean and refer to The Fairway, a Colorado limited partnership.

Section 9. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

Section 10. "Improvements" shall mean and refer to any improvement to the Property including, but not limited to, structures, parking areas, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mail boxes, irrigation facilities (which may include pumps, pipelines and sprinklers) and landscaping of every type and kind situate on the Property. The term "Improvements" shall include "Buildings" unless the context of this Declaration indicates otherwise.

Section 11. "Lot" shall mean and refer to that part of the Property owned in fee simple by the Owners as described on The Replat.

Section 12. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Lot, including Improvements situate thereon, is encumbered.

Section 13. "Member" shall mean and refer to a person or entity which is a member of the Association.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15. "Property" shall mean and refer to all of the real estate situate within Block 1, Replat of the Fairway, Mesa County, Colorado.

Section 16. "Replat" shall mean and refer to that certain Replat of The Fairway, recorded in Plat Book _____ at Page _____, Reception No. _____ of the Mesa County, Colorado Clerk and Recorder's official records.

ARTICLE II
GENERAL DECLARATION

Section 1. Intent. By making the Declaration hereunder, Declarant intends to enhance, perfect and preserve the value, desirability and attractiveness of the Property and to provide for the maintenance of the Common Areas, Improvements and Buildings thereon in a manner beneficial to all Owners.

Section 2. Estate Subject to Declaration. By signing and recording this Declaration, Declarant subjects the Property to the provisions of this Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

Section 3. Owners' Rights to Common Area. Subject to the limitations contained in this Declaration, each Owner shall have a non-exclusive right and easement with ingress and egress over, across and upon the Common Area for the purpose of using and enjoying the same, getting to and from his Lot, parking area, and public ways for pedestrian and vehicular traffic, which right and easement shall be appurtenant to, and pass with the transfer of title to each Owner's Lot. Any Owner may delegate his right of enjoyment to the Common Area and facilities for the occupants of his Lot, or guests or invitees. The Owner's non-exclusive right to the use of the Common Area shall be subject to the following:

a. The covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other provisions contained in this Declaration or as are set forth in The Replat;

b. The right of the Association to limit the number of guests or invitees of each Owner which may use any of the amenities on the Common Area; and

c. The right of the Association to adopt, from time to time, rules and regulations regarding the reasonable use of the Common Area and any facilities located thereon as the Association may determine is necessary or prudent.

ARTICLE III
EASEMENT OF ACCESS FOR REPAIR, MAINTENANCE AND EMERGENCIES

The Owners shall have the irrevocable right, to be exercised by the Association as their agent, to have access over, across and upon the Common Area and the Lots from time to time during such reasonable hours as may be necessary for the maintenance, repair, or restoration of the Common Area, Improvements and Buildings, and for making emergency repairs therein necessary to prevent damage to the Common Area, Improvements or Buildings. The Association shall also have a non-exclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

ARTICLE IV
MECHANIC'S LIENS

No labor performed or materials furnished for use in connection with any Lot, or the Buildings or Improvements situate thereon, shall create any rights to file a Statement of Mechanic's Lien against any other Lot or the Common Area. Each Owner shall indemnify and hold harmless all of the other Owners and the Association from and against liability or loss arising from or in connection with a claim of lien for labor performed or materials furnished on such Owner's Lot, Buildings, or Improvements. The Association may, in its discretion, enforce the indemnity given hereunder by collecting from the Owner of the Lot on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs and reasonable attorneys' fees of the Association incidental thereto. Such collection shall be made a reimbursement assessment, chargeable against such Owner, as provided in Article VII, Section 3 below.

ARTICLE V
RESTRICTIONS ON USE

Section 1. Building Restrictions.

A. No structure shall be erected, placed or permitted on any Lot within the Property except for use as a single family townhome having a common party wall on the Lot boundary.

B. Only new buildings shall be permitted within the Property and no building for occupancy shall be moved upon the Property. Further, no temporary building or structure of any type whatsoever shall be used at any time for a residence, either temporary or permanent. No mobile homes,

trailer homes or other moveable structures shall be permitted as dwellings within the Property.

C. No Building shall be rebuilt, repaired, altered or maintained so as to extend the structure outside of the boundary of the Lot upon which it is built.

Section 2. Maintenance of Lots, Improvements and Common Areas.

A. In addition to the maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Building situate upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

B. In the event that the need for maintenance or repair of a Lot or the Improvements situate thereon is caused through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the costs of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. Home Occupations and Offensive Activities.

A. The Lots, Improvements and Common Area may not be used for commercial purposes of any type whatsoever excepting for home occupations. For purposes of this Section, "home occupations" shall mean an occupation by the resident conducted totally within the residential building which does not entail the employment of third persons on the premises and does not entail the delivery of goods or services to customers upon the premises. For example, but not by limitation, an insurance agent may use his residence as a personal office so long as customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited.

B. No noxious or offensive activity of any type whatsoever shall be carried on within any Lot or the Common Area that shall become an annoyance or nuisance to the occupants of other Lots. Owners and occupants and their guests shall exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises, and in using or playing or permitting to be used or played musical instruments, radios, phonographs, television sets, amplifiers and any other instruments or devices in such a manner as may disturb or tend to disturb Owners, tenants or occupants of other Buildings. Parents shall be responsible for keeping children from disturbing other residents.

Section 4. Restrictions on Occupants and Pets. Pets shall be permitted, provided they are limited to a reasonable number; are kept, bred or raised solely as household pets for private use and not for commercial purposes; are not permitted on the Common Area unaccompanied by an adult; and that pet droppings are not left on the Common Area. Dogs and cats shall not be of a size larger than standing sixteen (16) inches at the shoulder. Any animal which shall be a nuisance or annoyance to any Owner shall be prohibited. The Association Board, when requested by any Owner, shall determine whether the number of pets are reasonable

or whether any animal or pet shall be a nuisance to any other Owner.

Section 5. Parking. No vehicle belonging to or under the control of an Owner or occupant, or member of the Owner's or occupant's family, including guests or employees, shall be parked in such a manner as to impede or prevent ready access to any entrance to or exit from a Building. All vehicles shall be parked within designated parking areas. Any traffic flow markings and signs regulating traffic shall be strictly observed.

Section 6. Landscaping.

A. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Property by the Declarant or the Association.

B. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or The Replat such as to hinder or interfere with the purposes for which such easement was created.

Section 7. Signs. No signs of any type shall be displayed in public view on any Lot except such signs as may be required by legal proceedings or one (1) sign of not more than six (6) square feet advertising such Lot for sale, resale or rent.

Section 8. Fences. No fences (including plantings such as hedges or trees which would be in the nature of a fence) shall be placed on any portion of the Property except for such fences as may be installed by the Association with the unanimous consent of the Owners.

Section 9. Miscellaneous.

A. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.

B. No Lot shall be further subdivided or split into other parcels.

C. No outside clothes lines or other outside clothes drying or airing facilities shall be kept or maintained upon any Lot.

D. All facilities for permanent utilities' service shall be kept or maintained underground, or in the original condition at such time the Lot and Improvements thereon are first conveyed to the Owner by Declarant.

E. No antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except as shall be permitted by the Architectural Control Committee. Further, no wiring for electric or telephone installation or for any other purpose, or machines or air-conditioning units shall be installed on the exterior of any Building which shall protrude through the walls or the roof unless expressly authorized by the Architectural Control Committee.

F. Any damage to the Common Area caused by the Owner or occupant, or the Owner's or the occupant's child or pets

or guests, shall be repaired at the expense of such Lot Owner. Anyone selling a Lot shall provide the new Owner or occupant with a list of approved regulations of the Association.

ARTICLE VI
THE ASSOCIATION

Section 1. General Purpose. The Association shall be a non-profit corporation organized under the laws of the State of Colorado. The Association is organized for the general purpose of being and constituting the entity for the furtherance of the mutual interests of the Owners of the Property including, without limitation, enforcement of this Declaration; repairing and maintaining the Common Area and Improvements; levying and enforcing assessments to defray the costs and expenses of operation; and providing other services pursuant to this Declaration, the Articles and Bylaws.

Section 2. Membership. By accepting a deed to a Lot, each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from ownership of any Lot. Membership in the Association shall automatically transfer along with the transfer of title to any Lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership. Class A Members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. Class B Members shall be Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership whenever the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership or five (5) years from the date of recording of this Declaration, whichever first occurs. When more than one (1) person or entity holds an interest in any Lot, all persons or entities shall be Members. The vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 4. Duties and Powers.

A. Common Area. The ownership, maintenance, repair and restoration of the Common Area, together with Improvements thereon, shall be vested solely in the Association. All costs and expenses incurred in connection with the ownership, maintenance, repair and restoration of the Common Area and Improvements thereon shall be borne by the Owners as a regular assessment.

B. Improvements and Buildings Situate on Lots. With respect to Buildings and Improvements situate on Lots, the Association shall have the responsibility for the exterior maintenance and repair thereof, including, the painting and caulking of the exterior surfaces including trim, repair and maintenance of roofs, repair and maintenance of utility lines, and the proper cultivation of all landscaping and vegetation.

C. Utilities and Domestic and Irrigation Water.

(a) All charges and billings for services rendered to the Lots that are not separately metered or assessed shall be billed to the Association and charged to the Owners as a regular assessment.

(b) The irrigation facilities to be owned by the Association shall consist of a system of pipes, pipelines, pumps, electrical connections and sprinklers so as to provide irrigation water to the Common Area and Lots. The irrigation facilities, including easements in connection therewith, shall be operated and maintained by the Association.

D. Enumeration Not a Restriction. By enumeration of powers and duties herein, this Section 4 shall not be construed nor is it intended to constitute a limitation upon other powers and duties of the Association as set forth in this Declaration, the Articles and Bylaws.

Section 5. Delegation of Duties. The rights, interest, obligations and duties of the Association may be transferred, assigned or delegated to any person or entity, including the engaging of services of a professional manager or managing agent, provided:

A. No transfer, assignment or delegation shall relieve the Association from the obligations and responsibilities set forth in this Declaration;

B. No transfer, assignment or delegation shall revoke or change any of the rights or obligations of the Owners as are set forth in this Declaration; and

C. Any agreement for professional management or any other contract providing for the services of Declaration shall be in writing, not exceed three (3) years, and provide for the termination by other party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 6. Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable:

A. Insurance coverages against loss or damage by irrigation, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, fire and all other casualty as covered under standard coverage provisions for the full insurable replacement cost of all improvements on the Common Area or other property owned by the Association. Insurance coverage shall also include protection for electrical pumps and associated electrical wiring used to service and maintain the irrigation system.

B. Comprehensive public liability insurance in a minimum amount of \$1,000,000 bodily injury per occurrence and \$100,000 property damage per occurrence and workmen's compensation coverage upon employees and other liability insurance insuring the Association, Board of Directors, managers and agents.

C. Such other insurance as the Board may deem desirable for the benefit of the Owners.

Section 7. Architectural Control Committee.

A. The Architectural Control Committee shall consist of three (3) persons to be appointed by the majority of the

Board. The method and manner of the Architectural Control Committee's appointment, replacement and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles and Bylaws of the Association.

B. No Improvement, including landscapings, shall be installed, erected or altered within the Property except upon the prior written consent and approval of the Architectural Control Committee.

C. Duplicate copies of plans and specifications relating to an Improvement shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including flow and manner of surface drainage, finish and natural grade elevations; floor plans showing overall dimensions; roof plans showing pitch, roof materials, and color; exterior elevations showing doors, windows and exterior materials and colors; a perspective sketch if requested; and other details necessary to explain any feature or component of the Improvement.

D. The Architectural Control Committee shall consider the aesthetic and functional design of any Improvement as to the quality of workmanship and materials, harmony of exterior design with existing Improvements, location with respect to topography and finished grade elevation, and the preservation and enhancement of the value and the visual appearance of existing Improvements.

E. The Architectural Control Committee shall approve or disapprove all written plans within sixty (60) days after submission. In the event the Architectural Control Committee fails to take any action within such sixty (60) day period, the proposed Improvement shall be deemed approved. The majority of vote of the Architectural Control Committee shall be required for the approval or disapproval of any proposed Improvement.

F. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

Section 8. Amplification. The Association may exercise any and all other rights and privileges given to it by this Declaration, by its Articles or Bylaws, or as may otherwise be given to it by law, reasonable or necessary to carry out its purposes as are set forth in this Declaration and under the Articles and Bylaws. However, the Association shall not be entitled to:

A. Change the obligation of any Owner for paying assessments or charges hereunder;

B. Partition or subdivide any Lot; or

C. Partition, subdivide, encumber, sell or transfer the Common Area, except for the granting of easements for public utilities or other public purposes consistent with the intent and purpose of this Declaration.

Section 9. Rules and Regulations. Upon majority vote of the Board, the Association may make and the Owners shall comply with rules and regulations governing the use of the Common Area and personal property for common use, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

ARTICLE VII
ASSESSMENTS

Section 1. Owner's Obligation. By accepting a deed to any Lot, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in this Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

Section 2. Regular Assessments. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions pursuant to this Declaration, the Articles and Bylaws (including a reasonable provision for contingencies and replacements), and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The sum or net estimate so determined shall be assessed to the Owners as a regular assessment by dividing the total estimate by the total number of Lots and assessing the resulting amount to the Owner of each Lot. Regular assessments shall be paid in twelve (12) equal monthly installments, due on or before the 10th day of each month, payments to commence with the first month of the fiscal year. Assessments shall accrue interest at eighteen percent (18%) per annum, compounded annually, from and after the due date thereof.

Section 3. Special Assessments. If, at any time during the fiscal year, the regular assessment proves inadequate for any reason, including non-payment 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. Special assessments shall accrue interest at eighteen percent (18%) per annum, compounded annually, from and of their due date.

Section 4. Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner as a result of such Owner's, or such Owner's guests or occupants, damage to any Improvement or to the Common Area exceeding ordinary wear and tear, regardless of whether such damage was caused by the willful or negligent act or omission of such Owner, or Owner's guest or occupant. 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 damage, and shall be due and payable to the Association when levied. Reimbursement assessments shall accrue interest at

eighteen percent (18%) per annum, compounded annually, from and of their due date.

Section 5. Enforcement. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

A. The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

B. The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including reasonable attorneys' fees.

C. All delinquent assessments not paid when due shall be a lien on the Owner's Lot which shall bind the Owner and his heirs, devisees, personal representatives and assigns. At any time following an Owner's failure to pay any assessment when due, the Board may prepare and file a certificate claiming such lien, which certificate shall state the name and address of the delinquent Owner, the legal description of the property subject to the lien, the amount claimed due, and that the claim of lien is being made pursuant to this Declaration. The lien created hereunder may be foreclosed in the manner provided by law for the judicial foreclosure of a mortgage lien upon real property under applicable Colorado law. In such foreclosure suit, the costs of suit, including reasonable attorneys' fees, shall be awarded to the Association.

D. Notwithstanding provisions of this Section, the lien for assessments provided herein shall be subordinate to the lien of any first Mortgage. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or the United States of America. The sale or transfer of any Lot shall not affect the assessment liens. However, the sale or transfer of any Lot pursuant to first Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien for such assessment as to payments which become due prior to such sale or transfer. However, no sale, transfer or foreclosure proceeding brought by any first Mortgage holder shall extinguish the personal obligation of the Owner for delinquent and unpaid assessments.

Section 7. Out of State Owners Who Are Not Occupants. In the event an Owner shall maintain his principal residence outside of the State of Colorado, the Board may, to secure payment of the assessments provided herein, require such Owner to:

A. Post a surety bond or other undertaking to the satisfaction of the Board with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein; or

B. Pay the entire regular assessment pursuant to Section 2 hereof in advance in a lump sum by the 10th day of the first month of the fiscal year; or

C. Either or both of the immediately preceding subsections of Section 7 hereof.

ARTICLE VIII
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhome upon the Property and placed on the boundary line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the Owners who have used the wall shall restore it, and they shall contribute to the cost of restoration thereof equally without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

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

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

Section 6. Easement for Siding Encroachment. Each Owner of a townhome shall have an easement upon the adjoining Lot having a common boundary line on which the party wall shall be located, such easement to be equal in width to any encroachment caused by exterior building siding.

ARTICLE IX
DAMAGE AND REPLACEMENT OF IMPROVEMENTS

Section 1. Owner's Insurance Coverage. Each Owner shall purchase and maintain fire and casualty insurance upon the Buildings and Improvements situate on his Lot, insuring the same against fire and casualty damage or destruction to the extent of the cost of replacement thereof. Each Owner shall file with the Association a certificate of insurance establishing coverage as is required hereunder, said certificate providing for twenty (20) days' advance written notice to the Association before surrender, cancellation or modification of coverage. The insurance purchased by the Owners hereunder shall name the Association as an additional insured.

Section 2. Loss, Damage or Destruction to Buildings or Improvements. In the event of any loss, damage or destruction to any Building or Improvement situate on any Owner's Lot, the Owner thereof shall cause the repair, restoration or rebuilding of such damaged Building or Improvement within one (1) year following the date of loss. The new Building or Improvement shall be rebuilt, repaired or restored in the same location, following the same floor plan and elevation, using the same exterior materials and stain as the Building or Improvement which has been lost, damaged or destroyed. It is the specific intent of this Section to

impose upon the Owner of each Lot the obligation to replace any Building or Improvement with a new Building or Improvement having identical appearance as that which is destroyed or damaged.

Section 3. Insurance Proceeds. All proceeds of insurance payable to the Owner and the Association pursuant to the policies required under Section 1 of this Article X shall constitute a fund for the purpose of paying the costs of repair, restoration or rebuilding of the lost, damaged or destroyed Buildings or Improvements. No funds shall be distributed from the insurance proceeds except for this purpose without the written consent of the Association. In the event the Owner shall fail to comply with Section 2 above, the Association shall be deemed the Owner's agent for the purpose of applying all insurance proceeds for the purpose of making the repairs, restoration or rebuilding. In the event the insurance proceeds are insufficient to pay the costs of repair, restoration or rebuilding, the Association shall have the power to levy an assessment to complete such repair, restoration or rebuilding under such terms, and in such manner, as the Association deems of most benefit to all Owners.

ARTICLE X
CONSTRUCTION BY DECLARANT

Section 1. Construction in Phases. The Fairway Townhomes project is planned for construction in phases to be determined at Declarant's discretion. The first phase shall consist of the Property (Block 1 of The Replat) and include six (6) townhome units situate thereon. Subsequent phases may include Blocks 2, 3 and 4 of The Replat of The Fairway and up to twelve (12) additional townhome Lots. Declarant shall have the right to add such additional phases under the terms and provisions of this Declaration upon completion of the requirements set forth in Section 3 below.

Section 2. Exemptions During Construction.

A. Use Restrictions. During the period of construction, nothing contained in this Declaration, nor shall any action taken by the Association, limit the right of Declarant to complete the construction of Buildings and other Improvements to additional phases of development undertaken by Declarant. Declarant shall be exempt from any restrictions set forth in this Declaration limiting Declarant's right to the storage and handling of material, supplies and equipment; operation of construction vehicles, equipment and machinery; employment of construction personnel; erecting, keeping and maintaining such structures, displays, signage or other improvements reasonable or necessary in the process of development, including the completion of construction and the disposition of completed Lots and Buildings by sale, lease or otherwise.

B. Assessments. Prior to the completion of any additional phase of construction, the Association shall have no power, right or obligation to assess, maintain or perform any other obligation of the Association under this Declaration as to the Lots, Buildings, Improvements or Common Area within such additional phase.

C. Grant or Modification of Easements. During the course of construction, Declarant shall have the right of reasonable easements for the ingress and egress of machinery, equipment and personnel; for the storage and handling of materials, supplies and equipment; and for utility companies.

Section 3. Incorporating Additional Phases. Upon completion of any additional phase of construction, Declarant may incorporate such phase into this Declaration by preparing and filing a supplement to the Replat of The Fairway establishing the new Lots situate thereon and Common Area. Declarant shall also have prepared and recorded a Supplemental Declaration incorporating the additional phase of development into this Declaration and subjecting it to all of the powers of the Association. Declarant shall also deed any Common Area of the completed phase to the Association and execute and deliver such other documents as are reasonable or necessary to effectuate the incorporation of such completed phase into the Fairway Townhomes.

ARTICLE XI
AMENDMENT TO DECLARATION

Declarant reserves the right to make modifications, additions or deletions in or to this Declaration as may be required by Mortgage lender or insurer, or as may be necessary to comply with building codes, county regulations, or rules, laws or ordinances of applicable governmental authorities, provided that no such modifications, additions or deletions shall result in the physical modification of any Building or Improvement or decrease the financial obligation of Declarant as a Lot Owner. Except for the rights reserved to Declarant, this Declaration shall not be revoked or modified except upon the affirmative written approval of not less than eighty percent (80%) of the Lot Owners as reflected on the real estate records of Mesa County, Colorado including the consent of any recorded first Mortgages affecting the Lots.

ARTICLE XII
GENERAL PROVISIONS AND MISCELLANEOUS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 4. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular numbers shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Declarant sets its hand and seal this 8th day of FEBRUARY, 1984.

THE FAIRWAY,
a Colorado limited partnership

By F. Lee Miller
F. Lee Miller, General Partner

By Richard D. Weber
Richard D. Weber, General Partner

DECLARANT

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 8 day of February, 1984, by F. Lee Miller, General Partner of The Fairway, a Colorado limited partnership. Witness my hand and official seal.
My commission expires: October 2, 1986.



Jayne Bailey
Notary Public
Address: 2384 Hwy 6 # 50
Grand Junction, Colo 81505

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 8 day of February, 1984, by Richard D. Weber, General Partner of The Fairway, a Colorado limited partnership. Witness my hand and official seal.
My commission expires: October 2, 1986.



Jayne Bailey
Notary Public
Address: 2384 Hwy 6 # 50
Grand Junction, Colo 81505