



**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOX HILLS SUBDIVISION**

**THIS DECLARATION** is made and entered into this 3rd day of Dec, 1999 by Colorado Dolphin Companies, Inc., a Colorado corporation hereinafter referred to as "Declarant".

**WITNESSETH:**

**WHEREAS**, The Declarant is the owner of certain real property shown and described on that certain Plat of Fox Hills Subdivision recorded on Dec. 14, 1999, at Reception No. 658522 in Book No. 13 at Page No. 466 in the office of the Clerk and Recorder of Montrose County, Colorado, hereinafter referred to as the "Property".

**WHEREAS**, the amount of any annual and special assessments, exclusive of optional user fees and insurance premiums paid by the Association, shall never exceed the sum of Four Hundred Dollars (\$400.00) per Lot per annum or such other amount as may be set forth in Section 38-33.3-116 of the Colorado Common Interest Ownership Act as the same may be amended from time to time and hence, this planned community is not subject to the Colorado Common Interest Ownership Act except as expressly set forth therein on the date this Declaration is recorded in Montrose County, Colorado.

**NOW THEREFORE**, The Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

**Section 1:** "Declarant" shall mean and refer to Colorado Dolphin Companies, Inc., a Colorado corporation, its successor and assigns if such successors and assigns shall first be designated by Colorado Dolphin as Declarant by a written instrument duly recorded in the records of Montrose County, Colorado.

**Section 2:** "Association" shall mean and refer to the Fox Hills Subdivision Property Owners Association, Inc., its successors and assigns.

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

**Section 4:** "Property" shall mean and refer to that certain property herein above described, plus such additional property as may hereafter be annexed to this Declaration.

**Section 8:** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and/or Association Maintenance Area. Lots Each Lot, and the improvements thereon, shall be maintained and repaired by the Owner of such Lot.

**Section 12:** "Common Area" shall mean and refer to those tracts of land, whether one or more, which the Association shall own and maintain, and designated as Parks or Open Space upon any recorded plat(s) of the Property or any portion thereof.

**Section 13:** "Association Maintenance Area" shall mean and refer to any part of the Property and improvements the Association is obligated or required to maintain. The Association Maintenance Area shall include without limitation the Common Area together with landscaping, outdoor lighting, ponds, fountains, fences and playground equipment located in the Common Area .

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

**Section 15:** "Member" shall mean and refer to each Owner of a Lot; membership in the Association shall be appurtenant to, and may not be separated from ownership of a Lot.

**Section 16:** "Additional Property" shall mean and refer to any and all real property and improvements as described on Exhibit A attached hereto which may hereafter be added to and made subject to this Declaration as provided in Article VI, Section 5.

**Section 17:** "Architectural Review Committee" shall mean and refer to a committee comprised of three Members of the Association and as many other persons that are not Members of the Association as the Board of Directors of the Association may determine desirable. The committee members shall serve a one year term and shall be appointed annually by the Board of Directors of the Association. At its option, Declarant may be one of the Architectural Review Committee members until such time as Declarant has sold and conveyed title to all lots owned by Declarant.

**Section 18:** "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust, or other security instrument encumbering a Lot and recorded in the records of Montrose County, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute.

**Section 19:** "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such person under any First Mortgage.

**ARTICLE II**  
**MEMBERSHIP and VOTING RIGHTS**  
**COMMON AREA and ASSOCIATION MAINTENANCE AREA**

**Section 1:** Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2:** Class of Membership and Voting Rights. The Association shall have one class of voting membership. All Owners, including Declarant, will be Members and shall be entitled to one vote for each Lot owned.

When one or more persons holds an interest in any Lot, all such persons will be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more votes per Lot be cast than stated above with respect to any Lot.

**Section 3:** Common Area. Each Owner of any Lot, and the Owners of Additional Property, shall have a non-exclusive right and easement of enjoyment in and to the Common Area subject to the following restrictions:

- (a) The right of the Association to promulgate and publish rules and regulations which each Member shall comply with.
- (b) The right of the Association, through its Board of Directors, to enter into, make, perform or enforce contracts, agreements, leases, licenses, easements and/or rights-of-way, for the use by Owners, their family members, guests and invitees and other persons , of real property and any facilities or improvements thereto and thereon, for access, ingress and egress on over and across any property for pedestrian and vehicular parking, or for recreational use and enjoyment. Any such contracts, agreements, and/or rights-of-

way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors of the Association, and any costs incident thereto shall be treated by the Association as common expenses pursuant to Article III hereof.

**Section 4: Non-interference to Common Area.** No Owner or other person shall, by any act or omission, obstruct or impair the rights of access, ingress and egress through, on, over and across the Common Area.

**Section 5: Mortgaging Common Area.** The Common Area cannot be mortgaged or conveyed without the consent of at least 2/3 of the Owners, excluding Declarant.

**Section 6: Association Maintenance Area.** The Association shall have the obligation and responsibility to maintain the Common Area and any improvements thereon or made thereto and such other areas or improvements as the Association may be obligated to maintain.

### **ARTICLE III** **COVENANTS for MAINTENANCE ASSESSMENTS**

**Section 1: Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, except Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges and (2) special assessments for capital improvements, and (3) any default assessments, fines or other charges or fees which may be assessed by the Association pursuant to this Declaration, such assessments to be established and collected as hereinafter provided.

Each Lot shall be subject to a lien for unpaid assessments, including fines, late charges, interest, costs, attorney fees and all other amounts levied by the Association against the Owners. The Board of Directors of the Association may prepare a written notice, to be signed by one of the Board of Directors of the Association, setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot, and may record said notice in the office of the Clerk and Recorder of the County of Montrose, State of Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

Each assessment, together with interest, late charges, fines, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became due.

**Section 2: Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance and repair of the Association Maintenance Area and for insurance policies required or permitted hereunder, and the annual liability of the Association for the utility services such as electricity, landscape water and sewer provided in connection with the Association Maintenance Area and for all purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration, the Articles of Incorporation or Bylaws of the Association.

**Section 3: Maximum Annual Assessments.** The maximum annual assessment shall be Seventy-five and No/00 ... (\$75.00) ... Dollars per Lot for the first year the Association collects annual dues.

The Board of Directors of the Association shall establish a budget for the Association of income and expenses at least once a year.

The Board of Directors of the Association shall fix the annual assessment as provided in such budget. Notwithstanding the foregoing, however, the amount of any annual and special assessments, exclusive of optional user fees and insurance premiums paid by the Association, shall never exceed the sum of Three Hundred Dollars (\$300.00) per lot per annum or such greater amount as may be set forth in Section 38-33.3-116 of the Colorado Common Interest Ownership Act as the same may be amended from time to time.

**Section 4: Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement regarding any aspect of the Common Area, including fixtures and personal property related thereto, or for maintenance, repair or replacement of any damaged or destroyed improvements on the Association Maintenance Area, or for funding any operating or reserved deficit of the Association, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Association represented by the Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5: Rate of Assessment.** Both annual and special assessments will be assessed against each Lot equally.

**Section 6: Date of Commencement of Annual Assessments and Due Dates.** The first annual assessment will be due March 1, 2000 and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. Any Owner acquiring title to a Lot prior to March 1, 2000 shall pay the full assessment when due. Any Owner acquiring title to a Lot between assessment due dates shall, upon delivery of his deed, pay a pro rata share of the last assessment due. Notwithstanding any other provision which may be contained in this Declaration, annual assessments shall initially not be greater than the amount set forth in Section 3 of this Article. For each Association fiscal year after the first fiscal year, the Association shall adopt a budget at least annually, and the annual assessment based on such budgets shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but no less frequently than annually), as the Board of Directors of the Association may determine in its discretion from time to time.

**Section 7: Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum together with a late charge of \$35.00 per month for each month the assessment goes unpaid. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien as though it were a mortgage on real property. No Owner may waive or otherwise escape liability for the assessments provided for by non use of the Common Area or abandonment of his Lot.

**Section 8: Subordination of the Lien to Mortgages.** The lien for the assessments provided for herein shall be subordinate to the lien of any First Mortgage on the same Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer, or foreclosure or any proceeding in lieu thereof shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee. Failure to pay assessments does not constitute default under any First Mortgage.

#### **ARTICLE IV** **INSURANCE**

**Section 1: Insurance on the Common Area.** The Association will provide and pay for fidelity insurance coverage and for liability and property damage insurance coverage for the Common Area as required by law. In addition, the Association may obtain insurance against such other risks as it shall deem appropriate, including but not limited to personal liability insurance to protect directors and officers of the Association.

**Section 2: Insurance on Lots.** Each Owner shall be responsible for providing and paying for insurance on his Lot, including all improvements thereon. Such insurance shall include without limitation, property damage insurance and liability coverage.

**ARTICLE V**  
**RESTRICTIONS**

**Section 1: Architectural Review:** No residence, garage, barn, outbuilding, fence or other structure of any kind shall be commenced, erected, placed or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the site plan, building plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, and topography and finish grade elevation by the Association Review Committee. Each building shall be judged on the basis of its fit and compatibility with the character of the subdivision, the harmony thereof with the surroundings and the effect of the building on neighboring property. The Architectural Review Committee shall not be arbitrary in its decisions but shall have broad discretion. The construction standards set forth below are deemed to be minimum requirements only. Should the Architectural Review Committee fail to approve the plans and specifications in writing, as submitted, within thirty (30) days after written request, such approval shall not be required.

**Section 2: Use.** Each Lot within the subdivision shall be used only in full compliance with all building and zoning laws and regulations.

**Section 3: Dwelling, Quality and Size.** Only stick built homes will be allowed. All dwellings must be of workmanlike quality using new materials of the same or better quality than those which can be produced on the date this Declaration is recorded. No H.U.D. or U.B.C. factory built homes or other non stick built homes not constructed on the Lot will be allowed.

Each single story residence structure on any Lot shall contain at least 1500 square feet of livable space on the ground floor excluding garages, basements, porches, patios and decks. Each two story residence structure on any Lot shall contain at least 2000 square feet of livable space excluding garages, basements, porches, patios and decks.

*See Amendment*  
**Section 4: Roofs.** Each residence on any Lot shall have a minimum roof pitch of 5:12. Eave overhangs must be a minimum of 16 inches. Roof designs may be either hip or gable or a combination. However, no roof design on any residence will be allowed that does not provide architectural relief from an unbroken ridge line as viewed from the street. Due to the common occurrence of expansive soils throughout Colorado each residence shall have rain gutter and down spouts.

**Section 5: Meters, Vents, Etc.** No residence on any Lot shall have electric or gas meters or exhaust vents or exhaust stacks or swamp coolers or air conditioning units placed on the front side of the residence. All vents, stacks and coolers are discouraged from being visible from the street and should be placed as low on the roof line as to meet the minimum city of Montrose Building code. All vent stacks are required to be painted so as to never show shiny metal. No window coolers, window air conditioning units or window fans may be placed on the front side of the residence. Water meters may be attached to the front of the house.

**Section 6: Exterior Materials.** A minimum of 30% of brick or stone is encouraged to be used as exterior sided on the street side of each residence on any Lot. Stucco, or a premium grade of color-lock or other maintenance free material is acceptable for the remainder of the home. Facia boards and soffits may be of wood if they are painted or sealed. Any building, other than a residence, placed on any Lot shall be painted or sealed. Wood decking must be sealed and not painted.

**Section 7: Completion Time for Construction.** The exterior of any improvement on any Lot shall be completed within a maximum period of six (6) months after commencement of construction, excepting however, any delays caused by reason of inclement weather, strikes, acts of God, or other causes beyond the control of the builder.

*See Amend ment*

**Section 8: Setbacks:** No permanent structure of any kind, except fences, shall be placed within thirty (30) feet of boundary lines adjacent to subdivision roadways and twenty (20) feet of side and back boundary lines.

The Architectural Review Committee shall have the responsibility of protecting the Lot Owners views when reviewing potential designs or plans within reasonable limits. A site plan is required to be submitted with the building plans to the Architectural Review Committee.

**Section 9: Garages and Driveways.** Each residence on any Lot shall have either an attached or detached garage for parking of a minimum of two automotive vehicles.

Each residence on any Lot shall have a finished driveway. *See Amend ment* Driveways must be concrete, asphalt, gravel or paving stones.

**Section 10: Storage and Utility Buildings.** No more than two outbuildings (barn, storage or utility building) shall be allowed, provided said storage or utility building is constructed of suitable material and be the same design and color so as to be aesthetically compatible with the principal dwelling and approved by the Architectural Review Committee.

**Section 11: Fireplace and Stoves.** Fireplaces and stoves that use a fuel other than gas or electricity are not allowed in any residence on any Lot.

**Section 12: Temporary Structures.** No structures of a temporary character, tent, shack, basement, trailer, garage or other out building shall be used on any part of any Lot as a residence, either temporarily or permanently.

**Section 13: Commercial Activity Prohibited.** No business or commercial uses may be made of the premises for manufacturing, heavy industry, or the fabrication of products by any sort of machines, provided however, permission to operate a home business may be granted upon request by the Association upon an express finding by the Architectural Review Committee that such home business activity will not interfere with the peace and quiet of the neighborhood. Home business that will be allowed are generally defined as "cottage industries". Examples are sewing goods, Tupperware sales, craft object, carvings, stained glass, photography, painting and woodworking as approved by the Architectural Review Committee. A Home business that generates pedestrian or vehicular traffic to that residence is specifically prohibited. Commercial use trucks and vehicles will not be allowed to be parked overnight on a regular basis at any residence.

These covenants shall preclude use of the property as a base of operations for businesses that store inventories or goods or equipment outside of the residence or out buildings. These include, but are not limited to storing scaffolding, ladders, lumber, sheet rock, etc. and other goods which would create visual intrusion on the neighborhood or storing or parking commercial type heavy equipment or over the road commercial type vehicles.

**Section 14: Nuisances.** No obnoxious or offensive trade or activity shall be conducted upon any portion of the Property nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood or to an adjoining Lot or the residents thereof.

In an effort to minimize pollution from outdoor lights each Owner is requested to cooperate in limiting his or her use and need for outdoor lighting after dusk and throughout the evening hours.

No barn yard, security or large yard lights will be allowed to burn from 10:00 o'clock P.M. to 6:00 o'clock A.M. unless approved by the Architectural Review Committee.

Excessive noise from any activity shall not be allowed between 10:00 o'clock P.M. and 7:00 o'clock A.M.

**Section 15: Signs.** No signs, (except decorative home identification signs) advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon any Lot; provided, however, one sign of not more than four square feet for the sole purpose of advertising the sale, lease or rental of the Lot and improvements thereon may be erected. Notwithstanding anything contained herein to the contrary, the Declarant may, at its sole discretion, erect and maintain signs for sales and information purposes as it deems appropriate during the period of time Declarant has any Lots remaining for sale.

**Section 16: Livestock and Domestic Pets.** No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in the subdivision for business or commercial purposes. Common domestic pets, such as dogs and cats may be kept within the subdivision. Dogs must be on leashes and under control of the person or persons walking them at all times when not confined to the Owner's Lot. Each Owner keeping one or more dogs will be held responsible for cleaning up after their dog(s) and shall promptly remove any droppings from public areas. Other animals, which are Owner's pets may be kept within the subdivision providing such animal(s) is allowed by the City of Montrose, except however, no poultry, cows or hogs will be allowed upon any Lot. All animals must be confined to the Owner's Lot and maintained in a clean and sanitary condition and not allowed to constitute a nuisance or annoyance to any other Owner.

**Section 17: Antennas.** No exterior antennas, aerials or other apparatus for the reception or transmission of television, radio or other signals of any kind shall be placed or allowed or maintained on any Lot except, however, one satellite dish may be mounted near the eave or placed on the rear only of any Lot or improvement thereon. Notwithstanding the foregoing, neither restrictions nor requirements of this Section shall apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996, as amended from time to time.

**Section 18: Fences.** Fences shall be at the option of the Owner of each Lot; provided, however, that no fence shall be taller than six (6') feet as measured from the ground. Any fence erected on any Lot must first be approved by the Architectural Review Committee. Fences shall be constructed of new and appropriate materials. All wire fencing shall be kept tightly stretched, all steel and wooden posts for any type of fence shall be vertical and straight and perpendicular to the ground and shall not be allowed to lean.

Where fences cross irrigation easements, Lot Owners will be required to construct fences with removable panels or adequate gates in order to provide access for maintenance of irrigation lines within the subdivision.

Where fences have or might be installed by the Delcarant along perimeter boundaries of the Property, each Owner of a Lot bordering such fence will be responsible for the timely and prompt maintenance, repair and upkeep of that portion of the fence on his Lot. No Owner may construct an additional fence closer than forty (40') feet of the boundary fence.

**Section 19: Repairs.** Any building or improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed within three (3) months from the date of such casualty. All structures, buildings and improvements erected on lots within the subdivision shall at all times be attractive, well maintained and kept in good repair.

**Section 20: Abandoned Vehicles and Parking.** No abandoned or inoperative vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned if it remains non-operative for a period of fourteen (14) days. In such instance the Association shall deliver a written notice describing such vehicle to the owner of the vehicle (if such owner can be reasonably ascertained). If the vehicle is not removed within five business days after delivery or placing of such notice, then the Association may have the vehicle towed away at the violator's expense.

Vehicles such as recreational vehicles, motor homes, boats, horse trailers, snowmobiles, etc., may be kept on the Owner's Lot providing that they are generally screened from view of the street or neighbors' property, i.e., behind fences, shrubbery or trees.

Only guest parking shall be permitted upon the platted streets and roads of the subdivision.

**Section 21: Vehicle Repairs.** No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.

**Section 22: Off Road Vehicles Prohibited.** Only "street legal" vehicles may be operated within the subdivision and on the roads thereof; provided however, that other vehicles may be operated for purposes of loading

and unloading. Street legal shall be any vehicle which is licensed to operate on city, county or state roads and highways.

**Section 23: Maintenance of Public Street and Sidewalk.** Each Owner of a Lot, upon which is a residential dwelling, shall have the responsibility for keeping the street clean that borders his Lot at all times. No mud, dirt, gravel, stone or other foreign material shall be allowed to accumulate upon the street during excavation of a foundation or subsequent construction of improvements or landscaping on any Lot. Each Owner is encouraged to review this subject with his construction, maintenance or repair contractor and arrive at a plan of prevention.

**Section 24: Waste and Trash Disposal.** Trash or garbage shall not be permitted to accumulate upon any Lot except in properly covered, fly tight, rodent and scavenger proof containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefrom. Garbage and waste shall be disposed of in accordance with good sanitary practices as established by State, Federal and Local authorities.

**Section 25: Landscaping and Weed Control.** Each Owner occupying a residential dwelling constructed on any Lot between March 1 and September 30 of any calendar year shall seed or sod or landscape that portion of the Owner's Lot which is visible from the street within 45 days of occupancy. Owners occupying a residential dwelling constructed on any Lot between October 1 and February 28 of any calendar year are required to seed or sod or landscape that portion of the Owner's Lot which is visible from the street at the first seasonal opportunity. Planting of trees, shrubbery and grass is encouraged. Growing grass (either seed or sod) shall be a minimum of 1500 square feet in the front of any Lot as visible from the street. The percentage of live, growing landscaping shall be greater than the percentage of zeroscaping to the whole of the front of any Lot.

Weeds must be cut often enough so as to not permit any Lot within the subdivision to become unsightly due to the overgrowth of weeds. In the case of unoccupied lots, non-resident or out of state owners, if weed control is not exercised by said Lot Owner, the Association will have the right to hire the weeds mowed and bill the individual Lot Owner for the expense of same.

**Section 26: Outside Storage and Clothes Lines.** All equipment, garbage cans, lawn and garden implements when not in use, and all wood piles or storage piles shall be kept in an area screened by adequate planting or fencing so as to conceal them from view of neighboring properties and streets.

No clothes lines of any design shall be placed on any Lot. No laundry may be dried or aired outside of a residential dwelling.

**Section 27: Irrigation Water.** Underground irrigation lines shall be provided to each Lot in the subdivision by Declarant. A Lot Owner may tap the lines for their own purposes of running interior lines to sprinkle irrigate their respective lots. The cost and responsibility for interior lines, pump(s), sprinkler heads, etc. will be that of the individual Lot Owner. The irrigation system has been designed to provide that the Owners will be able to sprinkle their lots with private pumps. Good water conservation practices are encouraged and Lot Owners may use the irrigation system every other day. Lots which are designated on any recorded plat of the subdivision with an even number may irrigate on days of an even number date and Lots which are designated on any recorded plat of the subdivision with an odd number may irrigate on days with an odd number date. Any lines which are broken within the easements shown on the subdivision plat shall be repaired at the expense of the Lot Owner who causes, permits or suffers the break to occur.

**Section 28: Irrigation Practices.** Inasmuch as irrigation water drainage is not permitted to enter into road rights of way, it is required that the Lots in the subdivision shall not be irrigated by furrow irrigation methods

**Section 29: Common Area and Association Maintenance Area.** Common Areas will be established by the Declarant for the use and enjoyment of the owners and will be designated as Parks, Tracts or Open Space on any recorded plat(s) of the Property or any portion thereof. The Association Maintenance Area will include the Common Areas and any improvements thereon including without limitation landscaping, outdoor lighting, ponds, fountains, fences and playground equipment. Once each year, the Board of Directors of the Association shall



appoint a committee who shall serve for one year and whose function it will be to recommend to the Board of Directors of the Association the manner and maintenance for the Association Maintenance Area and to oversee and assure that maintenance is sufficient to keep the Association Maintenance Area neat, attractive and usable at all times. The Association is required to solicit bids and to award a contract or contracts to an established professional maintenance company to provide ongoing maintenance services. If the Association fails to so maintain the Association Maintenance Area the City of Montrose may do so and assess the costs to the affected lots, to be collected as a delinquent charge similarly to taxes or in any other lawful manner.

**Section 30: Easement for Maintenance and/or Repair of Utilities.** Declarant hereby grants and conveys to the Association and reserves unto itself, its heirs, successors and assigns, from and after the date of recordation of this Declaration, a non-exclusive easement through, on, over and across the Association Maintenance Area, including any fence situated thereon, for the purpose of providing access for ingress and egress to any utility company or municipal utility provider for the repair and/or maintenance of any utility service.

**Section 31: Electricity and Landscape Water.** The Association shall have the responsibility and obligation to maintain the electric lighting and landscaping contained in the Common Area. The municipal provider of such electricity and landscape water shall bill the Association for the electricity and landscape water serving the Common Area. The schedule for billing and the fees charged shall be at the discretion of the municipal provider as amended from time to time.

**Section 32: Subdivision of Lots:** No further division of any Lot shall be allowed.

**Section 33: Compliance with Regulations.** In addition to the limitations described herein, all construction upon and use of any Lot shall be in compliance with all zoning regulations and other laws, ordinances and regulations of the City of Montrose, County of Montrose, State of Colorado and any other governmental authority having jurisdiction.

**Section 34: Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots such facilities as Declarant deems reasonably necessary or incidental to the development, construction and sale of Lots, and development and construction of improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations as Declarant determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office or a model, shall be a Lot.

## **ARTICLE V** **GENERAL PROVISIONS**

**Section 1: Enforcement.** The Association, or any Owner, or the City of Montrose, Colorado, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and changes now or hereafter imposed by the provisions of this Declaration and shall recover reasonable attorney's fees and costs for doing so. Failure by the Association, the City of Montrose or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2: Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provisions which shall remain in full force and effect.

**Section 3: Conflict of Provisions.** In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

**Section 4: Duration, Revocation and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded. These covenants and restrictions shall continue thereafter for ten (10) year successive periods. This Declaration may be

amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by the Owners who own not less than two-thirds (2/3) of the Lots. Such amendment shall be effective when duly recorded in Montrose County, Colorado.

Declarant reserves and is granted the right and power to effect technical amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association at any time prior to conveyance of the last Lot by Colorado Dolphin, for the purposes of correcting spelling, grammar, dates or as may otherwise be necessary to clarify the meaning of the provisions of any such documents.

**Section 5: Additional Property.** All or any portion of the Additional Property as described on Exhibit A attached hereto and incorporated herein by reference may at any time, after recording of this Declaration, be added to and made subject to this Declaration and included in the Property, by the Declarant without the consent of any other person or entity. Such addition(s) may be accomplished, if at all, by Declarant recording in Montrose County, Colorado both a supplement to this Declaration and a plat of such property, both such documents must describe the property which shall thereupon become subject to all provisions of this Declaration. Without limitation, any supplement or plat may designate additional Lots and/or additional Common Area and/or Association Maintenance Area.

**Section 6: Special Improvement District.** In accordance with the notes on any recorded plat(s), of the Property or any portion thereof, the Lots shown on such plat may be assessed by the City of Montrose for the cost to construct improvements to the portions of 67.00 Road and East Oak Grove Road abutting Fox Park Addition as shown on the Official Annexation Map thereof, including curb, gutter, sidewalk, base, pavement and related improvements. If such an assessment is made, the Montrose City Clerk shall be irrevocably appointed as the attorney-in-fact of each of the Owners of said Lots for the purposes of executing improvement district petitions on their behalf, voting on their behalf in any election to approve the financial obligations for such improvement districts and for all other purposes related to the formation of such districts and construction of such improvements. These obligations shall run with the land and be binding upon all successors in interest to the said lots.

**Section 7: No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Property, or any improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

**Section 8: Disclaimer Regarding Safety.** Declarant and the Association hereby disclaim any obligation regarding the security of any persons or property within the Property. By accepting a deed to property within the Property, each Owner acknowledges that Declarant and the Association are only obligated to do those acts specifically enumerated herein, or in the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and are not obligated to do any other acts with respect to the safety or protection of persons or property on or within the Property.



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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunder set its hand and seal  
this 3 day of DECEMBER, 1999.

Attest:

COLORADO DOLPHIN COMPANIES, INC.,  
a Colorado Corporation

Anne L. McClelland  
Anne L. McClelland, secretary

by: David M. McClelland  
David M. McClelland, president

State of Colorado )  
County of Montrose )

The foregoing instrument was acknowledged before me this 3 day of DECEMBER 1999 by David M. McClelland, president and Anne L. McClelland, secretary of Colorado Dolphin Companies, Inc., a Colorado corporation.

Witness my hand and seal.  
My commission expires: 10-25-2004



Janice Hudson

FIRST AMENDMENT  
TO  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOX HILLS SUBDIVISION

WHEREAS, Colorado Dolphin Companies, Inc., a Colorado corporation ("Declarant") has heretofore executed and caused to be recorded that certain document known as the Declaration of Covenants, Conditions and Restrictions for Fox Hills Subdivision dated December 3, 1999 and recorded December 14, 1999 in Book 1018 at Page 406 at Reception No. 658521 Montrose County Records, Colorado (the "Declaration") (terms which are defined in the Declaration shall have the same meanings herein unless other wise defined); and,

WHEREAS, Article V, Section 4 of the Declaration permits amendment thereof by the Owners who own not less than two-thirds (2/3) of the Lots; and,

WHEREAS, the Declarant is the sole Owner of two-thirds (2/3) of the Lots, and the Declarant desires hereby to amend certain provisions of the Declaration as Amended, as more fully herein set forth,

NOW THEREFORE, the Declarant hereby states, declares and amends the Declaration as follows:

1. Article V, Section 3: Dwelling, Quality and Size. second paragraph, first sentence is changed as follows:

"Each single story residence structure on any Lot shall contain at least 1750 square feet of livable space on the ground floor excluding garages, basements, porches, patios and decks."

2. Article V, Section 4: Roofs. The first sentence is deleted in its entirety and the following shall be in its place:

"Lot Numbers 5, 6, 15, 16, 18, 21 and 22 shall have a minimum of 6:12 roof pitch. All other lots in Fox Hills Subdivision Filing 1 shall have at least a minimum roof pitch of 5:12."

3. Article V, Section 6: Exterior Materials: This paragraph is changed as follows:

"A minimum of 50% of brick, stone or stucco is encouraged to be used as exterior siding on the street side of each residence of any Lot. Stucco or a premium grade of color-lock or other maintenance free material is acceptable for the remainder of the home. 100% vinyl siding on any home is specifically prohibited. All color-lock siding for the front elevation may be acceptable as determined by the review committee whose determination will be governed by other design features of the front elevation. Fascia boards and soffits may be of wood if they are painted or sealed. Any building, other than a residence, placed on any Lot shall be the same material and color as the body of the residence. Wood decking must be sealed and not painted. All windows, on any residence, which are visible from the street should have some form of accent such as shutters, boxed out molding or other form of trim."

4. Article V, Section 8 Setbacks. The first sentence of this paragraph is changed as follows:

"The front boundary set back for any residence on any Lot is changed from thirty (30') feet to thirty-five (35') feet of boundary lines adjacent to the subdivision roadways and twenty (20') feet of side and back boundary lines."

5. Article V, Section 18: Fences. The last sentence of the last paragraph of this section is changed as follows:

"No Owner may construct an additional fence closer than forty (40') feet of the boundary fence unless that Owner's fence matches the boundary fence."

And this sentence is added to this paragraph: "No solid, wood fence may extend forward of the residence."

6. Article V, Section 25: Landscape and Weed Control. First paragraph, next to last sentence is deleted and in its place is the following:

"The front of every Lot, net of driveway and/or sidewalk, will be fully landscaped with not less than 60% planted to grass with seed or sod."

The following is added after the last sentence in the first paragraph:

"Every Lot must be fully landscaped so as not to allow weed growth on any part of the Lot."



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7. Article V, Section 26: Outside Storage and Clothes Lines. The period is removed from the last sentence of the last paragraph of this section and the following is added:

“unless concealed from view of neighboring Lots and streets.”

8. Article V, Section 27: Irrigation Water. The following is added after the last sentence of this paragraph:

“On behalf of other Owners who are dependent upon the timely delivery of irrigation water, the Association may order the immediate repair of any broken main line and bill the respective Owner causing the break. If the bill is not timely paid it may become a lien against the Lot of the Owner who is at fault.”

IN WITNESS WHEREOF, the undersigned have hereunto set their hand(s) and seal(s) this 12 day of October, 2000.

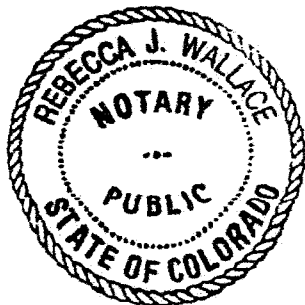
DECLARANT  
 COLORADO DOLPHIN COMPANIES, INC.,  
 a Colorado corporation

by David M. McClelland  
 David M. McClelland, president

State of Colorado            )  
   ) ss.  
 County of Montrose        )

The foregoing instrument was acknowledged before me this 12 day of October, 2000 by David M. McClelland, president of Colorado Dolphin Companies, Inc., a Colorado corporation.

Witness my hand and official seal  
 My commission expires: 5-1-2003



Rebecca J. Wallace  
 Notary Public



SECOND AMENDMENT  
TO  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOX HILLS SUBDIVISION

THAT CERTAIN DOCUMENT known as the Declaration of Covenants, Conditions and Restrictions for Fox Hills Subdivision dated December 3, 1999 and recorded December 14, 1999 in Book 1018 at Page 406 at Reception No. 658521 Montrose County Records, Colorado (the "Declaration") is hereby amended as follows:

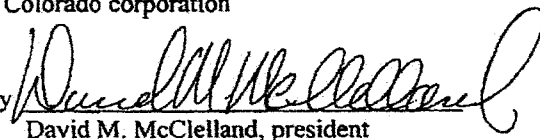
ARTICLE V  
RESTRICTIONS

**SECTION 9: Garages and Driveways.** Is hereby amended as follows: the word "gravel" is deleted.

Except as amended herein, the Declaration shall be and remain in full force and effect without modification.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand(s) and seal(s) this 4th day of April, 2001.

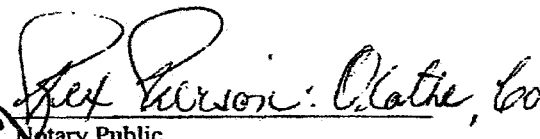

DECLARANT  
COLORADO DOLPHIN COMPANIES, INC.,  
a Colorado corporation

by   
David M. McClelland, president

State of Colorado                    )  
  ) ss.  
County of                                )

The foregoing instrument was acknowledged before me this 4th day of April, 2001 by David M. McClelland, president of Colorado Dolphin Companies, Inc., a Colorado corporation.

Witness my hand and official seal  
My commission expires: Feb. 1, 2004

  
Rex Pierson, Notary Public  


THIRD AMENDMENT  
TO  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FOX HILLS SUBDIVISION

THAT CERTAIN DOCUMENT known as the Declaration of Covenants, Conditions and Restrictions for the Fox Hills Subdivision dated December 3, 1999, and recorded December 14, 1999 in book 1018 at page 406 at Reception No. 658521 Montrose County Records, Colorado (the Declaration), and WHEREAS on October 12, 2000 an Amendment to the Declaration of Covenants, Conditions and Restrictions for the Fox Hills Subdivision (the "First Amendment")(hereinafter the "Original Covenants and the "First Amendment" shall be called the "Covenants"); and on April 4, 2001 an Amendment to the Declaration of Covenants, Conditions and Restrictions for the Fox Hills Subdivision (the "Second Amendment")(hereinafter the "Original Covenants and the "Second Amendment" shall be called the "Covenants"); is hereby amended as follows:

1. In January 2025, the Association conducted a vote of its members to amend the Covenants. NOW THEREFORE, the following shall be adopted and incorporated into and supplement the Covenants:
2. Article III Section 7, 15% is hereby amended to 'the maximum interest rate allowed in (Colo. Rev. Stat. § 38-33.3-315(2)).
3. Article V General Provisions amend new section 9 to read, The Association shall comply with all requirements set forth in Colo. Rev. Stat. § 38-33.3-123 regarding Consistent Debt Collection Policy. Any provision in these CC&R that conflicts with Colo. Rev. Stat. § 38-33.3-123 shall be deemed modified to conform to the statutory requirements." Except as amended herein, the Declaration shall be and remain in full force and effect without modification.

IN WITNESS WHEREOF, the undersigned certifies that the Association has complied with C.R.S. § 38-33.3-217(l)(a) and the Amended and Restated Declaration of Covenants, Conditions and Restrictions, by obtaining the approval of Members representing sixty seven percent (67%) of the voting rights in the Association after the Association meeting held on the 25 day of January, by an open email vote that began on Saturday, February 22, 2025 and ended on Friday, February 28, 2025

In favor 23, Against 0, No votes 9

Electronic Approval Signatures:



Amanda Benkert

Dianne Ruthman

Amanda Benkert  
Fox Hills, Board President

Dianne Ruthman  
Fox Hills, Board Secretary

IN WITNESS WHEREOF, the undersigned have hereunto set their hand(s) and seal(s) this 13 day of March, 2025

DECLARANT

Fox Hills Homeowners Association

BY: William B. McClelland, HOA Manager

William B. McClelland

State of Colorado County of Montrose

Signed before me on March 13, 2025

by William B. McClelland (name of individual)

Shannon James

(Notary's official signature)

Notary Public

(Title of Office)

20254002279

Notary ID

01-17-2029

(Commission Expiration Date)

SHANNON JAMES  
Notary Public  
State of Colorado  
Notary ID # 20254002279  
My Commission Expires 01-17-2029