

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by THOMAS M. WILKINSON, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Mesa County, State of Colorado, which is more particularly described as:

Commencing at the southwest corner of said Southeast Quarter of the Northeast Quarter of Section 25, thence North 0°11'46" West, along the west line of said Southeast Quarter of the Northeast Quarter of Section 25, a distance of 50.00 feet to the north line of "B-1/2" Road and the POINT OF BEGINNING of this description; thence continue North 0°11'46" West, along said west line, 1269.79 feet to the northwest corner of said Southeast Quarter of the Northeast Quarter of Section 25; thence North 89°55'28" East, along the north line of said Southeast Quarter of the Northeast Quarter of Section 25, a distance of 1024.99 feet, thence South 0°09'02" East, 119.65 feet to a found iron pin; thence South 62°35'40" East, 50.84 feet to a found iron pin; thence South 0°04'32" East, 25.00 feet to a found iron pin; thence North 89°55'28" East, 20.00 feet to a found iron pin; thence South 0°12'01" East, 361.54 feet; thence North 89°55'28" East, 27.50 feet; thence South 0°12'01" East, 210.00 feet; thence South 89°55'28" West, 27.50 feet; thence South 0°12'01" East, 449.97 feet to a found iron pin; then North 89°51'32" East, 75.08 feet to a found iron pin; thence South 0°03'15" East, 79.71 feet to a found iron pin and the north line of aforesaid "B-1/2" Road, thence South 89°53'50" West, along said north line, 1164.86 feet, to the point of beginning, containing 31.82 acres, more or less. The basis of all bearings being the bearing of North 89°53'50" East for the East-West Quarter Section line in Section 25.

WHEREAS, such property is the replat of a portion of Village 9 Subdivision, Filing 3. Covenants, Conditions and Restrictions effecting such property have previously been recorded in Book 1255 at Page 981 and in Book 1198 at Page 82 of the records of the Mesa County Clerk and Recorder. The Covenants, Conditions and Restrictions contained herein replace and amend entirely such Covenants.

NOW, THEREFORE, 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 real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Village Nine Filing 3, Homeowners Association, Inc., its successors and assigns.

Section 2. "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 properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Thomas M. Wilkinson, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by two-thirds of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal to the total votes outstanding in the Class B membership, or
- (b) on July 1, 1985.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with

interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 Properties and for the improvements and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Thirty-Six Dollars (\$36.00) per Lot for all Lots except for Lots abutting Tracts A through O which shall be \$46.00 per year.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 upon the Common Area, including fixtures and personal property related therein, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots except that the assessments for maintenance of Tracts A through O which assessments shall be uniformly fixed for only those abutting Lots as listed in Article IV, Section 2 and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors 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

thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. 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 the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

"The lien of the assessments provided for herein shall be subject to the lien of any purchase money loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. The lien of such assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sale contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer or cancellation or forfeiture of executory land sales contract. No sale or transfer, or cancellation or forfeiture of executory land sales contract shall release such Lot from liability for any such charges thereafter becoming due or from the lien thereof."

ARTICLE V

RESTRICTION AND ARCHITECTURAL CONTROL

Section 1. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained

upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Fences. No fences, foliage, trees or hedges in the nature of a fence will be planted, maintained, constructed or erected closer to the street than the leading edge of the residential building constructed on such Lot.

Section 3. Vehicles. Vehicle parking in driveways and on the streets in front of houses shall be limited to temporary parking of guest or resident vehicles in current use and currently licensed. Storing automobiles, trucks, campers, recreational vehicles, boats, snowmobiles, motorcycles, motor bikes or any vehicle of any other description in the street, driveway, yards of residences, in front of the principal building set back lines is specifically prohibited. Such vehicles may be stored behind such set back lines within the boundaries of such Lot, provided such stored vehicles are fenced or screened to the satisfaction of the architectural committee. No such fence or screen shall be erected without the prior approval of the architectural committee. Vehicular maintenance or repair which renders the vehicle inoperable for more than twenty-four hours is prohibited on street, driveway or front yards of residences. This provision shall not permit the commercial repair of any type of vehicle, such activity being expressly prohibited.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by an 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 restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. 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, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 9th day of November, 1982.

Thomas M. Wilkinson
Thomas M. Wilkinson

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me
this 9th day of November, 1982, by Thomas M. Wilkinson.

WITNESS my hand and official seal.



My commission expires: My Commission Expires Sept 5 1984
My address is: 44015th Ave. Bldg 100, CO 81501

Patricia J. Shields
Notary Public