

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
HAMILTON CREEK

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A SUPERB MOUNTAIN RESIDENTIAL NEIGHBORHOOD

January 14, 1986

\* *For readability purposes and electronic distribution, this document has been transcribed from the original Declarations of Covenants, Conditions and Restrictions for Hamilton Creek recorded in the records of the Clerk and Recorder of Summit County, Colorado on January 24, 1986 at Reception No. 311335.*

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR HAMILTON CREEK

This Declaration is made this 14th day of January, 1986 by the undersigned Declarant.

A. Declarant is the owner of real property in Summit County, Colorado, and desires to create Hamilton Creek, a planned subdivision, consisting of residential Sites, roads, open spaces, and other related facilities for the benefit of the owners of Sites within Hamilton Creek; and

B. Declarant wishes to protect and maintain Hamilton Creek as a prime mountain residential area of the highest quality and value for its owners and residents; and

C. Declarant deems it necessary and desirable, for the welfare of the residents and owners of Hamilton Creek and the preservation of its values, to subject the Property to the covenants, restrictions, easements, and assessments set forth in this Declaration, which shall burden and benefit Declarant and the owners of Sites and their successors, heirs, grantees, and assigns; and

D. Declarant wishes to create an association to which will be assigned the powers and duties of administering the common elements, administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments created in this Declaration.

NOW THEREFORE, Declarant declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns.

ARTICLE I

DEFINITIONS

1.1 Definitions. These words, when used in this Declaration or in any supplemental Declaration (unless inconsistent with the context) shall have the following meanings:

A. "Architectural Control Committee" or "Committee" means the Architectural Control Committee as established in Article 11 of this Declaration.

B. "Association" means the Hamilton Creek Association, a Colorado nonstock, nonprofit membership corporation, its successors and assigns.

C. "Board of Directors" means the Board of Directors of the Association.

D. "Commons" means all real property and improvements thereon within the boundaries of the Plat, which on the Plat are referred to as "Common Open Space".

E. "Declarant" means the parties signing this Declaration, their successors and assigns. For the purpose of evidencing that Declarant's rights hereunder have been assigned and obligations assumed by any party, Declarant may record an assignment or deed in the records of Summit County, Colorado, and upon such recording Declarant's rights and obligations hereunder shall cease and terminate.

F. "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Hamilton Creek, as it may be amended from time to time.

G. "District" means the Hamilton Creek Metropolitan District.

H. "Home Occupation" shall mean an occupation or profession that is customarily carried on in a dwelling unit by members of the family residing in the dwelling unit. These activities must be clearly secondary to the use of the dwelling for residential purposes, and they may cause no material increase in traffic, noise, vibrations, smoke, odors, dust, heat, or glare. No Home occupation shall be carried on unless the Owner has received the prior written approval of the Board of Directors.

I. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Site, but shall not mean any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a mortgagee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title pursuant to foreclosure or other proceedings.

J. "Plat" means the plat for Hamilton Creek Filing No. I recorded January 14, 1986 under Reception No. 310679, of the Summit County, Colorado records, as it may be amended from time to time, and any additional plats recorded pursuant to Article Ten of this Declaration.

K. "Property" shall mean Hamilton Creek Filing No. 1, according to the Plat, and any additional property submitted to these covenants pursuant to Article Ten.

L. "Residential unit" shall mean a combination of rooms including one kitchen designed to provide living quarters for one or more persons.

M. "Roads" shall mean the public and private system of roads shown on the Plat, not including the driveways to the Sites.

N. "Single family residential unit" shall mean a detached, freestanding residential unit.

O. "Site" means any numbered lot or block shown on the Plat, including all improvements of permanent nature located on the Site.

## ARTICLE 11

### ARCHITECTURAL CONTROL

2.1 Approval Required. No building, house, out-building, shed, doghouse, basketball backboard, porch, patio, gazebo, excavation, landscaping, bridge, fence, wall, or any other structure of any kind shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or alteration to any existing structure be made until complete plans and specifications showing the nature, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures, topography, and natural surroundings. Approval by the Committee is in addition to and not in lieu of county and other building code requirements.

The plans submitted to the Committee shall include any request the owner may wish to make for temporary use of the Commons adjacent to the Site for storage of construction materials or use by construction equipment. This request

must specify the amount of surrounding Commons needed, the duration of the use, and the plans to restore the Commons upon completion. No such use of the Commons shall be permitted unless the Committee grants its prior written consent and then the approval shall be only for the area and duration so approved. The Committee shall have the authority to so authorize use of the commons so long as the use is necessary for the construction of improvements on a Site, and so long as the use does not unreasonably interfere with the use and enjoyment of any other Site by its Owner.

2.2 Committee. The Architectural Control Committee shall consist of three members who shall be designated by Declarant, unless Declarant shall in writing assign this power to the Board of Directors of the Association. The Board shall review, study, and then approve or reject proposed improvements subject to these covenants and restrictions and as further set forth in the rules, regulations, and guidelines of the Committee.

2.3 Rules. The Committee may make such rules, regulations, and guidelines as it may deem appropriate to govern its proceedings. These rules, regulations, and guidelines shall be subject to the approval of the Board of Directors.

2.4 Criteria. In passing upon plans and specifications, the Committee shall consider:

A. Architectural and Engineering Services. Each owner shall employ competent architectural and engineering advisors who will prepare the plans and specifications and provide on-site job observation for the construction of each structure, addition, or alteration. The plans and specifications shall provide a construction schedule with an estimated date of completion for each phase of construction. The Committee will reserve the right to require additional information in order to make decisions. In addition, the Committee shall be entitled to charge a reasonable review fee to reimburse its expenses and to require an Owner to pay for the cost of any consulting fees paid to an architect or engineer hired by the Committee to evaluate the Owner's plan.

B. Generally. It shall be an objective of the Committee to make certain that no improvements impair the aesthetic and monetary values of Hamilton Creek. The Committee shall consider the suitability of the improvements and the

materials of which they are to be constructed; the quality of materials to be utilized in any proposed improvement; the effect of any proposed improvement on adjacent or neighboring property; the location, character, and method of utilization of utility lines; and impact of any proposed improvements upon the natural surroundings; and the timely and orderly completion of all such improvements.

2.5 Contractor Suitability. The Committee shall have the right to disapprove the choice by an Owner of any contractor for the building of any improvement or any other structure of any kind on any Site. Grounds for such disapproval shall be only one or both of the following: (1) a reasonable belief that the contractor is not financially responsible to complete the improvements, or (2) nonconformance by the contractor with approved plans when previously undertaking construction work on the Property. This Declaration establishes no duty upon Declarant or the Committee to investigate the financial responsibility of construction contractors or the performance by the contractor of construction work, and this Declaration vests no rights in owners, any contractor, or any third party as against Declarant, the Committee, or the Association with respect to approval or disapproval of contractors.

2.6 Approval of Contractor and Inspection of Construction. No Owner shall build any building or any other structure of any kind on any Site until the Owner has obtained a building permit from Summit County and from any other governmental entity having jurisdiction over building permits in Hamilton Creek, and until the approved building permit and the construction contract shall have been submitted to the Committee for approval of contractor suitability as specified in Section 2.5.

2.7 Utilities. The Committee must approve all utility connections to Sites on and to improvements thereon prior to installation, subject to the same criteria set forth in this Article for other improvements.

2.8 Restoration of Sites. Upon completion of any construction on any Site, Owner shall to the greatest extent possible restore the Site to the condition which existed prior to the construction so that the Site and improvements shall be in harmony with the surrounding unimproved property. The plans submitted to the Committee shall include specifications and time schedule for restoration and landscaping of the Site.

## ARTICLE III

### OWNERS' ASSOCIATION

3.1 Membership. Every owner of a Site shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Site.

3.2 Compliance with Association Articles, Bylaws. Each Owner shall abide by each provision, covenant, condition, and restriction contained in this Declaration and with the Articles of Incorporation and Bylaws of the Association, and rule and regulation promulgated pursuant to the Articles. The obligations, burdens, and benefits of membership in the Association shall be covenants running with each owner's Site for the benefit of all the Sites.

3.3 Voting. The Owner or Owners of each Site shall be entitled to one vote for each Site owned. When more than one party holds an ownership interest in any Site, all such parties shall be members of the Association. The vote for each Site shall be exercised as the persons having an interest in such Site shall determine among themselves, but in no event shall a fractional vote or more than one vote be cast with respect to any Site. The Association may adopt bylaws governing procedures for voting and notice when multiple ownership of a single Site occurs.

3.4 Quorum. The presence of 40% of the owners, in person or by proxy, entitled to vote on any matter whether actually voting or not, shall constitute a quorum; if a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration or the Bylaws, a majority of the votes cast on the matter or in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter. Voting by proxy shall be permitted pursuant to the Bylaws.

## ARTICLE IV

### BOARD OF DIRECTORS

- 4.1 Powers. The Board of Directors shall have the power to:
- A. Adopt and publish rules and regulations governing the use of the Commons, and to establish penalties for infractions;



B. Suspend the voting rights of a member during any period in which the member is in default in the payment of any assessment levied by the Association. These rights may also be suspended after notice and hearing before the Board, for a period not to exceed 60 days, for infraction of rules and regulations adopted by the Association;

C. Administer, manage, repair, and maintain the Commons, or contract and pay for, or otherwise provide for the maintenance of the Commons; provided, however, that in the event the Board of Directors shall not repair or maintain the Commons, the Declarant shall have the right, but not the obligation, to do so at the expense of the Association;

D. Exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the membership of the Association by other provisions of the Declaration, the Articles of Incorporation, or the Bylaws of the Association;

E. Appoint standing and ad hoc committees from among the owners as it deems necessary and desirable and delegate its duties to these committees;

F. Employ the services of a manager to manage the affairs of the Association and, to the extent not inconsistent with the laws of the State of Colorado and upon such conditions as are deemed advisable by the Board, the Board may delegate to the manager any of its powers under this Declaration;

G. Obtain and maintain in force policies of insurance to protect the Association.

4.2 Members of the Board. There shall be five members of the Board of Directors and they shall be elected pursuant to the bylaws and will serve a term of two years or until resignation, whichever is sooner.

4.3 First Election of Board of Directors. The election of a Board of Directors from among the owners' shall occur at the first meeting of the Association.

## ARTICLE V

### USES OF THE COMMONS

5.1 Dedication of the Commons. The Declarant shall convey the Commons to the Association within ten years of recording of this Declaration, at

which time the Association shall commence administration of the Commons according to this Declaration. The obligation to pay assessments, nevertheless, shall begin when an Owner acquires a Site. When the Association acquires title to the Commons from the Declarant, it shall be dedicated to the common use and enjoyment of the Owners, as more fully provided in this Article.

5.2 Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Commons, which shall be appurtenant to and shall pass with the title to every Site, subject to the following provisions:

A. The right of the Declarant or the Association any time and from time to time to grant easements for utilities access, and leach fields, and to build recreational facilities on the Commons;

B. The right of the Association to charge reasonable fees for the use of any recreational facility situated upon the Commons;

C. The right of the Declarant or the Association to suspend the voting rights and right to the use of the Commons by an Owner for any period during which any assessment against his Site remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations, except that such suspensions shall not, in any manner, interfere with the rights of the Owner, his family members, his guests, licensees, and invitees to access for purposes of ingress and egress along the private roads to and from the Owner's Site;

D. The right of the Declarant or the Association to dedicate, transfer, assign, or grant permission to use all or any part of the Commons by any governmental subdivision, public agency, authority, or public or private utility for purposes that are not inconsistent with the purposes of the Association.

E. The right of the Declarant and the Association to establish rules and regulations for the use of the Commons. Any such rules and regulations shall become effective fifteen days after written notice of the same is given to the Owners, unless the establishing party determines that a later effective date is in order, in which event the notice of the rule or regulation shall indicate the later effective date.

F. The right of the Association to administer programs for forestry management and insect control.

G. Use of the Commons for purposes other than those provided in this Declaration shall not be permitted.

H. Dogs shall not be allowed to roam at large in the Commons. Dogs will be allowed in the Commons only on leashes and in the presence of their owners.

5.3 Delegation of Use. Any Owner may delegate his right of enjoyment to the Commons to the members of his family, his tenants and guests, but only in accordance with, and subject to the limitations of the Bylaws of the Association and any rules and regulations promulgated in accordance herewith.

5.4 Declarant's Right to Use of the Commons. The Declarant shall have a nonexclusive easement to make such use of the Commons as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to show the Property to prospective purchasers and the right to construct and maintain in the Commons, maintenance and storage facilities for use by the Association, the District, or the Declarant. Declarant may construct and maintain recreational facilities for use by the Association.

## ARTICLE VI

### EASEMENTS AND LICENSES

6.1 Easements For Driveways. Declarant hereby reserves the right to grant an easement for ingress and egress across the Commons to a Site. To create such an easement the Declarant shall cause a survey to be filed with the Committee. Costs relating to the survey will be the responsibility of the Site Owner.

6.2 Reservation of Easements, Exceptions, and Exclusions. Declarant reserves unto itself and also grants to the Association the right to establish easements from time to time across the Commons for purposes necessary or convenient for the use, sales, and occupancy of the Property, including but not limited to driveways, roads, utilities, drainage, and irrigation consistent with the best interests of the Owners.

6.3 Further Reservation. Declarant further reserves the right to establish on the Commons from time to time by dedication or otherwise, utility, areas, and other easements convenient or necessary for the use and operation of any additional property submitted to the Declaration.

## ARTICLE VII

### INCIDENTS OF SITE OWNERSHIP

7.1 Title. Title to a Site may be held by any persons or persons and any entity or entities and in any manner in which title to real property may be held pursuant to the laws of the State of Colorado.

7.2 Inseparability. Every gift, devise, transfer, encumbrance, or other disposition of a Site shall be presumed to be a gift, devise, transfer, or encumbrance of the entire Site, including each easement, and all other appurtenant rights created by law or by this Declaration.

7.3 No Partition. The Commons shall be owned by the Association, and neither Owner, group of Owners, nor the Association shall maintain any action for partition or subdivision of such areas.

7.4 Access to Sites for Maintenance, Forestry Management, Repair, and Emergencies. The Association or their delegated representatives, or the Declarant if the Board of Directors fails to act, shall have the irrevocable right to have access to each dwelling and each Site from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any Site, any structure thereon, or any Commons accessible therefrom. This right of access shall extend to forestry management activities and pest control. All maintenance, repairs, and replacement of any Site or structure thereon shall be the expense of the owner thereof. Such right of access shall be immediate for the making of emergency repairs in order to prevent property damage or personal injury. All damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. All maintenance, repairs, and replacements of the Commons shall be the common expense of all the Owners, provided, however, if such damage is caused by a negligent or tortious act of any Owner, member of his family, his agent, employee, invitee, licensee, or tenant, then that owner shall be responsible and liable for all the damages. This Declaration establishes no duty upon the Board of Directors of the Association or the Declarant to maintain,

repair, or replace any Site or any structure thereon, and this Section 7.4 vests no rights in Owners or any other person as against the Board of Directors of the Association, the Association, or the Declarant.

7.5 Parking and Storage. Automobiles may be parked on a temporary basis (not exceeding 12 hours in duration) on the shoulder of the private Roads described in the Plat, but only if the parking does not constitute an obstruction to traffic, road maintenance, or snow plowing. There shall be at least three permanent parking spaces continuously maintained, including garage spaces, on each improved Site with a single family residential unit.

## ARTICLE VIII

### ASSESSMENTS

8.1 Obligation. All Owners shall be obligated to pay assessments imposed by the Association to meet the estimated common expenses of maintenance, operation, and management of the Commons. The Board of Directors may establish any reasonable system for periodic collection of common expenses, in advance or arrears, as deemed desirable and as are consistent with its Articles of Incorporation and its By-laws. Common expenses include, but are not limited to: maintenance and operation of the Commons; taxes and special governmental assessments pertaining to the Commons unless separately assessed to each Site; insurance premiums for policies deemed desirable or necessary by the Association; landscaping, and care of the Commons; common lighting; common water and utility charges; legal and accounting fees; expenses and liabilities incurred by the Association by reason of this Declaration; payment of any deficit remaining from a previous assessment period; the creation of a reasonable contingency or other reserve or surplus fund; and any other expense determined by the Board of Directors reasonably necessary to carry out the purposes of the Association. The failure of the Association to fix the assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners' of their obligation to pay the same. The Association shall have the right,

but not the obligation, to make pro rata refunds of any assessment in excess of the actual expenses incurred prior to the end of any fiscal year.

8.2 Apportionments. As of April 1st of every year during the existence of the Association, the Board of Directors shall compute the apportionment of assessments for each Site in Hamilton Creek, which apportionment shall be used by the Board of Directors for determining the allocation of common expenses among the Sites during the ensuing one-year period. The Board of Directors shall determine the number of Sites on the Property. Each Site shall be apportioned an equal share of the total assessments for Hamilton Creek.

8.3 Special Assessments for Capital Improvements. In addition to the periodic assessments authorized by this Article, the Association may levy in any assessment year a special assessment, for the purpose of deferring, in whole or in part, the cost of any construction or reconstruction, repair, or replacement of the Commons or improvements thereon, or for any other capital expenditure of the Association.

8.4 Time for Payment Of Assessments. Assessments shall be due and payable within 30 days after written notice of the amount shall have been given to the Owner of a Site. Each assessment shall bear interest at the rate of 18% per annum from the date it becomes due and payable if not paid within 30 days of such date. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Site for the Assessment, but the date when the payment shall become due in such case shall be deferred to a date 30 days after the notice shall have been given. The Association may elect to have the assessments paid annually, quarterly, or monthly. The interest rate specified in this section may be altered by the Association's Board of Directors.

8.5 Assessment Lien. All sums assessed pursuant to this Declaration and chargeable to any Site shall constitute a lien on such Site and the improvements thereon superior to all other liens and encumbrances except (a) taxes and special governmental assessment liens levied by any governmental authority, and (b) all sums unpaid on a first mortgage or deed of trust, including all unpaid obligatory advances as may be provided by such encumbrance. To evidence the lien, the Association may, but shall not be required to, prepare a written statement setting forth the amount of the unpaid indebtedness, the amount

of accrued penalty, the name of the Owner of the Site and a description of the Site, and record the same in 'the Office of the Clerk and Recorder of Summit County, Colorado. This lien shall attach from the date of the assessment notice whether a statement is subsequently recorded or not. The lien may be enforced by the Association in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties and interest, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and the lien, and all reasonable attorney fees-incurred by the Association in connection therewith. The Association shall have the power to bid on the Site at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

8.6 Personal Obligation. The amount of any assessment chargeable against any Site shall be a personal and individual debt of each Owner of that Site. No Owner may exempt himself from liability for the assessment by abandonment of a Site or by waiver of the use or enjoyment of any of the commons. Suit to recover a judgment for unpaid assessments any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith, shall be maintainable without foreclosing or waiving the assessment lien provided herein.

8.7 Waiver of Homestead Exemption. By accepting a deed to a Site, each owner shall thereby waive and release all rights the Owner may have in the Site pursuant to any homestead exemption.

8.8 Statement of Status of Assessment Payment. Upon payment of a reasonable fee to be set by the Board of Directors and upon the written request of any Owner, mortgagee, prospective mortgagee, or prospective purchaser of a Site, the Board of Directors of the Association shall issue a written statement setting for the amount of the unpaid assessments, if any, with respect to such Site. Unless such statement shall be issued within 20 days, all unpaid assessments which become due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement.

8.9 Personal Liability of Purchaser for Assessments. The purchaser or the grantee of a Site shall be jointly and severally liable with the seller or grantor for all unpaid assessments against the Site up to the time of conveyance purchaser,

without prejudice to purchaser's right to recover from the seller the amount paid by the purchaser for these assessments.

8.10 Assessment Reserves. Each Owner, other than the Declarant, may at the discretion of the Board of Directors, be required to deposit and maintain with the Association an amount equal to one quarter of the estimated annual assessments for each Site, to be held without interest, which sum shall be used by the Association as a reserve for paying such Owner's assessments, for purchase of equipment and supplies, and for working capital of the Association. Payment of this reserve shall not relieve an owner from making the regular payments of assessments as they become due. Upon the sale of a Site, an Owner shall be entitled to credit from his grantee for any unused portion thereof.

## ARTICLE IX

### PROTECTIVE COVENANTS

9.1 Improvements Prohibited. No used or secondhand structure, no building of a temporary character, no mobile home, camper unit, house trailer, tent, or shack shall be placed or used on the Property, either temporarily or permanently. During construction of improvements on a Site, temporary buildings or trailers may be used (but not for habitation) to the extent the Committee has given prior approval.

9.2 Signs. No signs or advertising structure of any kind shall be erected or maintained on the Property for any purpose whatsoever except such things as have been approved by the Committee. Approval shall be given only if such signs shall be of attractive design and shall be as small a size as possible and shall be placed or located as directed by the Committee. Declarant shall have the right to erect signs showing the identity and location of roads, Sites, and other features of the Property, and the availability of Sites for sale. These spaces shall be shown on initial construction plans. Passenger automobiles, and pickup trucks may be parked on a Site outside of an enclosed structure on any exterior parking areas or spaces which have been provided by an Owner for said purposes. No abandoned or unused vehicles in the parking areas or spaces.



9.3 Water and Sewer. Each dwelling Unit in Hamilton Creek shall connect with water and sewage facilities as the Committee may approve. No private well shall be used as a private source of water for human consumption or irrigation, nor shall any facility other than those provided as set out above be used for disposal of sewage.

9.4 Trash and Sewage. No trash, ashes, other refuse, or debris may be dumped on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed, or used by any person except as approved by the Committee. Waste materials, garbage, and trash shall be kept in sanitary containers and shall be screened from public view, protected from disturbance, and be disposed of with reasonable promptness.

9.5 Animals. No more than two dogs may be kept in or around any Site. No pet may be kept which interferes with the comfort or convenience of other Owners. All dogs must be kept on a leash when off its owner's Site. No horses or other large animals may be kept anywhere on the Property.

9.6 Landscaping. All surface areas disturbed by construction shall be returned promptly to their natural condition. All landscaping, other than returning surface areas to their natural condition, must be approved in writing by the Committee.

9.7 Continuity of Construction. All structures shall be completed within one year after commencement of construction, and all construction shall proceed continuously and diligently in the meantime.

9.8 Noxious or Offensive Activity. No noxious or offensive activity shall be conducted upon any Site, nor shall anything be done or placed on the Property which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

9.9 Maintenance of Property. Every Site, including its improvements, shall be maintained by the Owner in a clean, safe, and attractive, condition and in good repair; no lumber, plant waste, metals, bulk materials, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any Site.

9.10 Annoying Lights, Sounds, or Odors. No lights shall be emitted from any site which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Site which is unreasonably loud or annoying; and no odor shall be emitted from any Site which is noxious or offensive to others.

9.11 Fences. No fence, walls, or other barrier shall be permitted except with the prior written consent of the Committee.

9.12 No Hunting. No hunting, target practice, or discharge of firearms is allowed anywhere on the Property. No Owner shall permit the use of the Property, Commons, or Roads for access to the adjacent national forest for hunting.

9.13 Natural State. Removal of living trees, plants, shrubs, bushes, sagebrush, grass, or topsoil, is not permitted without the prior written consent of the Committee.

9.14 Uses. The Sites may be used only for residential purposes and not for commercial purposes, except that Declarant may maintain an office on one or more Sites for the purpose of selling Sites. In addition, an Owner may, upon the prior written approval of the Board of Directors, conduct a Home Occupation in his home on a Site in accordance with the definition in Article I.

9.15 No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of the Property.

9.16 Setbacks. For Sites with boundaries which are contiguous to other Sites, no building shall be built within ten feet of the common boundary, unless the Owner first submits to the Committee a written consent from the Owner sharing the common boundary.

9.17 Service Yards. All equipment, service yards, woodpiles, and storage piles on any Site shall be kept screened by planting or fencing so as to conceal them from the view of neighboring Sites and roads. No trailer, automobile, other vehicle, or boat shall be constructed, reconstructed, or repaired upon any Site in such a manner that such construction, reconstruction, or repair is visible from neighboring Sites or roads.

9.18 Underground Utility Lines. All utility lines, within the limits of the subdivision except temporary utility lines, must be buried underground and may not be carried on overhead poles nor above the surface of the ground. Such utilities include, but are not limited to water, gas, electric, telephone, intercoms, and television cable.

9.19 Certain Recreational Vehicles. No motorized trail bikes or snowmobiles shall be operated anywhere within the Property.

9.20 Towers and Antennas. No towers or radio or television antennas higher than the roof line of the dwelling house shall be erected on any Site, and all such towers or antennas must be submitted for approval by the Committee pursuant to Article II of this Declaration. Microwave dishes may be erected within any Site only upon prior approval of the Committee.

9.21 Tanks. No elevated tanks of any kind shall be erected, placed, or permitted upon any Site. Any tank used in connection with any dwelling unit or other structure on any Site, including tanks for storage of gas, fuel oil, gasoline, oil, or water, shall be buried or if located above ground the location and screening shall be as determined by the Committee.

9.22 Vehicles. No motor home, trailer, camper, or boat shall be parked or stored or operated upon the Property, except as provided in this Declaration. No vehicle of any kind may be stored on the Property for longer than seven days unless they are in an enclosed structure built with the prior approval of the Committee

## ARTICLE X

### CHANGES TO SITE BOUNDARIES

10.1 Combining Lots. Two or more contiguous Sites may be combined into one larger residential Site by means of a written document executed and acknowledged by all of the owners thereof, approved by the Committee, and recorded in the real property records of Summit County. Any such vacation of lot lines is subject to approval by the Summit County Board of County Commissioners pursuant to applicable county regulations.

10.2 Changes to Site Boundary. Each owner, by accepting title to a Site, and each mortgagee or holder of a deed of trust encumbering a Site, by extending credit on the security of a Site, shall be deemed to have appointed the Declarant as his attorney-in-fact to act for all Owners and holders of deeds of trust to change the boundaries of one or more Sites. This authority is conferred only for the purposes and in compliance with the terms stated in this section.

The intent of this section is to allow the Declarant to change the boundary lines of a Site, at the request of the owner, when the Declarant, in its own discretion, agrees that the change will better facilitate residential construction by the Owner.

This authority may be exercised only when all of the following conditions exist:

A. The size of the changed Site is not changed, and the location of the Site is not changed materially.

B. The boundaries of the changed Site do not come within twenty feet of any other Site, unless a portion of the existing Site boundary is already within twenty feet of another Site, in which case the portion of the boundary may not be moved any closer to the other Site.

C. The Owner (all of them, if there are multiple Owners) and all mortgagees and holders of deeds of trust on the Site to be changed have given their written consent to such a change.

D. The Owner has agreed in writing to pay the Declarant for all the reasonable costs incurred by the Declarant occasioned by the boundary-changing process, including, but not limited to, fees for surveyors, recording, and attorneys.

E. Any approval required by the applicable governmental regulation has been obtained.

An Owner wishing to change the boundary of his Site shall apply in writing to the Declarant and shall submit a boundary survey certified by a registered Colorado surveyor showing the proposed boundary superimposed on the existing Site boundary, and certifying the area of the changed Site. The changed boundary shall be effective for all purposes when a survey of the changed Site has been duly approved by Declarant and recorded in the Summit County records.

Declarant may assign its rights and authority granted in this section to the Association, which shall thereafter leave the full authority of Declarant for the purposes of this section.

10.3 Resubdivision. No Site described on the Property Plat shall ever be resubdivided into smaller tracts or lots nor conveyed nor encumbered in any less than the full original dimensions as shown on the recorded plat; provided, however, that Sites allowing more than one unit may be resubdivided and conveyed pursuant to a resubdivision plat (subject to approval by the Summit County Board of County Commissioners). No such resubdivision plat shall be recorded until it has been approved in writing by the Committee.

10.4 Additional Property. Declarant, or any one or more of them, may submit additional property to the rules of this declaration by the recording of a document with the Summit County Clerk and Recorder describing the property and expressly submitting it to all of the provisions of this document, as it may have been amended prior to that date. The document must be executed by all of the owners and mortgagees of the additional property. The property must be situated in the North One-Half of Section 36, Township 4 South, Range 78 West of the 6th P.M., Summit County, Colorado.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Enforcement. Except as otherwise provided herein, the Board of Directors of the Association, the Declarant, or any Owner shall have the right to enforce, by a 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 Board of Directors of the Association, the Declarant, or by any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

11.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions.

11.3 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for

successive periods of time 10 years. This Declaration may be amended during the first 20-year period by an instrument signed by all of the first mortgagees and holders of first deeds of trust and signed by the Owners of not less than 90% of the Sites and thereafter by an instrument signed by all the first mortgagees and holders of first deeds of trust and signed by the Owners of not less than 75% of the Sites. Any amendment must be recorded in the office of the County Clerk before it will be binding on the Owners.

11.4 Management Agreement. The Board of Directors is authorized to enter into a Management Agreement on behalf of the Association with the Declarant or any other person it may select to manage, maintain, and operate the Commons. The Management Agreement shall not bind the Association for more than one year at a time, and shall provide that it may be terminated by the Association upon 60 days written notice.

11.5 Rights of Declarant. Any rights reserved by Declarant, except those rights it may have as an Owner, shall automatically be assigned to the Association on December 31, 1999, unless assigned sooner.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 22nd day of January, 1986.

BLACKMUN & COMPANY, a Colorado corporation, Declarant

[Signed]  
By Larry M. Blackmun, President

[Signed]  
Craig Robillard

[Signed]  
Elizabeth A. Robillard

[Signed]  
J. Albert Bauer

[Signed]  
Lynn A. Bauer