

Filing 9  
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ARDIS W. SCHMITT  
EL PASO COUNTY CLERK & RECORDER

DECLARATION

of

Conditions, Covenants, Restrictions, Easements and Charges

Affecting the Real Property known as

Gleneagle Subdivision Filing No. 9, Except Lot 64

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THIS DECLARATION made by Bethesda Management Company, a Colorado corporation, hereinafter called Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the County of El Paso, as described in Exhibit A attached hereto and by this reference incorporated herein, except that certain Lot 64 in Gleneagle Filing No. 9 which is as shown on that certain plat of Gleneagle Filing No. 9 ("Lot 64") which street address is referenced on the plat thereof as 14815 Bermuda Dunes Way, Colorado Springs, Colorado (hereinafter the "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance of certain Subdivision amenities and for the convenience of its residents and to this end desires to subject the Subdivision to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A attached hereto, except Lot 64, is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth (referred to herein as the "Declaration" or these "Covenants").



COPY: FILING 9, ARTICLE VI

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Section 414. Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the By-Laws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

Section 415. Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 416. Exempt Property. The following Property subject to these Covenants shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

#### ARTICLE V MAINTENANCE

Section 501. Association Maintenance. The Association shall be responsible for the repair, replacement, improvements and maintenance of the Common Area and all improvements thereto.

#### ARTICLE VI

##### GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 801. Definitions. The following words and expressions as used in these Covenants have the meaning indicated below unless the context clearly requires another meaning:

- a. Accessory Building: Patios, decks, swimming pools, dressing rooms for swimming pools, separate guests house without kitchen, separate servants' quarters



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without kitchen and other buildings customarily used in connection with the single-family residence.

b. Agencies: "Agencies" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration of the Department of Housing and Urban Development ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA") or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.

c. Association: The Gleneagle North Homeowners Association, a Colorado nonprofit corporation formed in accordance with its Articles of Incorporation and Bylaws. Association shall also mean and include any association with which the Association merges and shall also include a Master Association if the rights of the Association hereunder are assigned or delegated to a Master Association.

d. Building Site: A Lot as established by the recorded plat.

e. Common Area: All real property owned by the Association, including improvements thereto, as well as any easements owned by the Association for the common use and enjoyment of the members of the Association, as well as any other property which the Association agrees to maintain for the common good of the Subdivision and the Owners. Common Area shall also include any areas maintained by a Master Association in which the Association is a member or an association with which the Association is merged. The responsibility of the Association to maintain Common Area shall commence at such time as the Common Area is conveyed to the Association or a document is duly executed and recorded by the Association in which the Association agrees to maintain such property as a Common Area even though title to such Common Area is not vested in the Association.

f. Cost of Collections: All expenses and charges incurred, including attorney's fees.



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g. This Declaration and These Covenants: This declaration and the provisions contained in it.

h. Declarant: Bethesda Management Company, a Colorado corporation as well as the successors and assigns of Declarant, whether by assignment by Declarant or merger of Declarant with another entity. After a transfer pursuant to Section 203(a), Declarant means the transferee.

i. Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is not such office, then Declarant's registered office for service of process, and if there is none then the location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.

j. First Mortgage: "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

k. First Mortgagee: "First Mortgagee" shall mean and refer to any person or entity named as a mortgagee or beneficiary under any First Mortgage.

l. Lot: Each area designated as a Lot in the recorded plat of the Subdivision.

m. Lot Lines: Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the County of El Paso in effect from time to time; in the absence of such a definition a front Lot line is each boundary line between the Lot and any public street which affords the principal access to the Lot; a side Lot line is any boundary line which meets and forms an angle with the front Lot line. Other Lot lines are rear Lot lines.

n. Master Association. Declarant may form a Master Association for other subdivisions within the vicinity of the Subdivision. The Association may become a



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member of the Master Association or may be merged with or into the Master Association. As long as there is a Class B membership in the Association, Declarant may take such action on behalf of the Association as is necessary to (i) make the Association a member of the Master Association, (ii) to cause the Association to be merged into or with the Master Association and (iii) to delegate or assign to the Master Association or to contract with the Master Association to exercise the rights, duties and obligations of the Association under these covenants.

o. Owner: Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

p. Recordation. Means recordation in the real property records of the Clerk and Recorder of El Paso County, Colorado.

q. Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, deck, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

r. The Subdivision: The Property as described in Exhibit A attached hereto.

s. Enumerations Inclusive: A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.



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1. Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

Section 602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

Section 603. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 604. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 605. These Covenants May Not be Waived. Except as these Covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the grounds of waiver, laches or estoppel.

Section 606. Right to Enforce the Covenants. These Covenants are for the benefit of the Owners jointly and severally, and Declarant, and may be enforced by an action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Declarant, the Architectural Control Committee, the Association or any combination of them. All costs, including



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reasonable attorney's fees, incurred by Declarant, the Association or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant, the Association or the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation of the Declarant to do such things.

Section 607. Duration of Restrictions. These Covenants shall remain in force until twenty years after the date of the recordation of these Covenants in the El Paso County Records, and shall be automatically renewed for successive periods of ten (10) years unless before the expiration of the initial twenty (20) years or before the end of any ten-year extension there is filed for record with the County Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of at least two thirds (2/3) of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty year term or ten year extension, as applicable.

Section 608. Amendment.

a. Amendment by Owners. From time to time any Section of these Covenants may be amended or new Sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

b. Amendment by Declarant. During the ten years after the recordation of these Covenants in the El Paso County Records, Declarant reserves the right to amend these Covenants to include adding new Sections to these Covenants.

c. Agency Amendments. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the



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Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot within the Property owned by Declarant to the first Owner (other than Declarant), and each such amendment must contain thereon the written approval of the VA or FHA.

d. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Property has been conveyed by Declarant to the first Owner other than Declarant.

Section 609. Property Rights Remain. Section 110 concerns property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

Section 610. Severability. If any Section or Sections of these Covenants shall be held invalid or become unenforceable, the other Sections of these Covenants shall in no way be affected or impaired but shall remain in full force and effect.

Section 611. Action in Writing. Notices, approval, consents, extensions, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action. Permission, consent or approval of Declarant or the Architectural Control Committee under these Covenants is not effective unless in writing.



Section 612. Notices. Any writing described in Section 611, including but not limited to any communication from Declarant, the Association or the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situate on the Lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

Section 613. Interpretation of Covenants. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised Declarant's discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant has at all times exercised the discretion of the Declarant in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural and building standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious.



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In the event that the powers of the Declarant are transferred to an Architectural Control Committee in accordance with the provisions of Section 203(a) of these Covenants, then the provisions of this section shall be applicable to the Architectural Control Committee to the same extent as this section provides for the Declarant.

Section 614. FHA/VA Approval. Until the termination of Declarant's reserved rights under this Declaration, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Common Areas; or (b) annexation of any additional real property to the Property; or (c) material amendments of the Articles of Incorporation or the Bylaws of the Association.

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Section 615. Colorado Common Interest Ownership Act. Declarant hereby claims that this Declaration and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned committees from the provisions of CCIOA if the annual average common expense liability of each lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed three hundred dollars. Declarant has incorporated that limitation on annual average common expenses in Section 404 of this Declaration. If the amount of the permissible average annual common expense liability is amended in CCIOA to exceed \$300, then Section 404 shall be automatically amended to such higher amount. Notwithstanding this exemption, this Declaration and the Subdivision are subject to the provisions of C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107 of CCIOA.

IN WITNESS WHEREOF, Bethesda Management Company has executed this Declaration as of August 19, 1996.

BETHESDA MANAGEMENT COMPANY,  
a Colorado Corporation

ATTEST:

By: Robert A. Andrews  
\_\_\_\_\_  
Secretary/Treasurer

By: Lyle H. Arant  
\_\_\_\_\_  
President



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**EXHIBIT A**

To

Declaration of Conditions, Covenants, Restrictions, Easements and Charges  
Affecting the Real Property Known as Gleneagle Subdivision Filing No. 9, Except Lot 64

Lots 1 through 63, all in Gleneagle Subdivision  
Filing No. 9 and specifically excluding Lot 64,  
Gleneagle Subdivision Filing No. 9, pursuant to  
the records of El Paso County, Colorado



# COPY : FILING 3 , ARTICLE 6.

414. Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the By-Laws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

415. Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

416. Exempt Property. The following Property subject to these Covenants shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

## ARTICLE V

### MAINTENANCE

501. Association Maintenance. The Association shall be responsible for the repair, replacement, improvements and maintenance of the Common Area and all improvements thereto.

## ARTICLE VI

### GENERAL PROVISIONS FOR EFFECT OF THESE COVENANTS

601. Section. Definitions. The following words and expressions as used in these Covenants have the meaning indicated below unless the context clearly requires another meaning:

- a. Accessory Building: Swimming pools, dressing rooms for swimming pools, separate guests house without kitchen, separate servants' quarters without kitchen, sheds and other buildings customarily used in connection with the single-family residence.
- b. Agencies: "Agencies" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration of the Department of Housing and Urban Development ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA") or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.
- c. Association: The Gleneagle North Homeowners Association, a Colorado nonprofit corporation formed or to be formed in accordance with its Articles of Incorporation and Bylaws. Association shall also mean and include any association with which the Association merges and shall also include a Master Association if the rights of the Association hereunder are assigned or delegated to a Master Association.
- d. Building Site: A Lot as established by the recorded plat.
- e. Common Area: All real property owned by the Association, including improvements thereto, as well as any easements owned by the Association for the common use and enjoyment of the members of the Association, as well as any other property which the Association agrees to maintain for the common good of the Subdivision and the Owners. Common Area shall also include any areas maintained by a Master Association in which the Association is a member or an association with which the Association is merged. The responsibility of the Association to maintain Common Area shall commence at such time as the Common Area is conveyed to the Association or a document is duly executed and recorded by the Association in which the Association agrees to maintain such property as a Common Area even though title to such Common Area is not vested in the Association.
- f. Cost of Collections: All expenses and charges incurred, including attorney's fees.
- g. This Declaration and These Covenants: This declaration and the provisions contained in it.
- h. Declarant: Bethesda Management Company, a Colorado corporation as well as the



successors and assigns of Declarant, whether by assignment by Declarant or merger of Declarant with another entity. After a transfer pursuant to Section 203(a), Declarant means the transferee.

- i. Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is not such office, then Declarant's registered office for service of process, and if there is none then the location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.
- j. First Mortgage: "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).
- k. First Mortgagee: "First Mortgagee" shall mean and refer to any person or entity named as a mortgagee or beneficiary under any First Mortgage.
- l. Lot: Each area designated as a Lot in the recorded plat of the Subdivision.
- m. Lot Lines: Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the County of El Paso in effect from time to time; in the absence of such a definition a front Lot line is each boundary line between the Lot and any public street which affords the principal access to the Lot; a side Lot line is any boundary line which meets and forms an angle with the front Lot line. Other Lot lines are rear Lot lines.
- n. Master Association. Declarant may form a Master Association for other subdivisions within the vicinity of the Subdivision. The Association may become a member of the Master Association or may be merged with or into the Master Association. As long as there is a Class B membership in the Association, Declarant may take such action on behalf of the Association as is necessary to (i) make the Association a member of the Master Association, (ii) to cause the Association to be merged into or with the Master Association and (iii) to delegate or assign to the Master Association or to contract with the Master Association to exercise the rights, duties and obligations of the Association under these covenants.
- o. Owner: Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.
- p. Recordation. Means recordation in the real property records of the Clerk and Recorder of El Paso County, Colorado.
- q. Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, deck, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.
- r. The Subdivision: The Property as described in Exhibit A attached hereto.
- s. Enumerations Inclusive: A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.
- t. Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

603. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

604. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

605. These Covenants May Not be Waived. Except as these Covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or



terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the grounds of waiver, laches or estoppel.

606. Right to Enforce the Covenants. These Covenants are for the benefit of the Owners jointly and severally, and Declarant, and may be enforced by an action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Declarant, the Architectural Control Committee, the Association or any combination of them. All costs, including reasonable attorney's fees, incurred by Declarant, the Association or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant, the Association or the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation of the Declarant to do such things.

607. Duration of Restrictions. These Covenants shall remain in force until twenty years after the date of the recordation of these Covenants in the El Paso County Records, and shall be automatically renewed for successive periods of ten (10) years unless before the expiration of the initial twenty (20) years or before the end of any ten year extension there is filed for record with the County Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of at least two thirds (2/3) of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty year term or ten year extension, as applicable.

608. Amendment.

- a. Amendment by Owners. From time to time any Section of these Covenants may be amended or new Sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.
- b. Amendment by Declarant. During the ten years after the recordation of these Covenants in the El Paso County Records, Declarant reserves the right to amend these Covenants to include adding new Sections to these Covenants.
- c. Agency Amendments. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot within the Property owned by Declarant to the first Owner (other than Declarant), and each such amendment must contain thereon the written approval of the VA or FHA.
- d. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Property has been conveyed by Declarant to the first Owner other than Declarant.

609. Property Rights Remain. Section 110 concerns property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

610. Severability. If any Section or Sections of these Covenants shall be held invalid or become unenforceable, the other Sections of these Covenants shall in no way be affected or impaired but shall remain in full force and effect.

611. Action in Writing. Notices, approval, consents, extensions, applications and



other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action. Permission, consent or approval of Declarant or the Architectural Control Committee under these Covenants is not effective unless in writing.

612. Notices. Any writing described in Section 61 1, including but not limited to any communication from Declarant, the Association or the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situate on the Lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

613. Interpretation of Covenants. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised Declarant's discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant has at all times exercised the discretion of the Declarant in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural and building standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious. In the event that the powers of the Declarant are transferred to an Architectural Control Committee in accordance with the provisions of Section 203(a) of these Covenants, then the provisions of this section shall be applicable to the Architectural Control Committee to the same extent as this section provides for the Declarant.

614. FHA/VA Approval. Until the termination of Declarant's reserved rights under this Declaration, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Common Areas; or (b) annexation of any additional real property to the Property; or (c) material amendments of the Articles of Incorporation or the Bylaws of the Association.

615. Colorado Common Interest Ownership Act. Declarant hereby claims that this Declaration and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned communities from the provisions of CCIOA if the annual average common expense liability of each lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed three hundred dollars. Declarant has incorporated that limitation on annual average common expenses in Section 404 of this Declaration. If the amount of the permissible average annual common expense liability is amended in CCIOA to exceed \$300, then Section 404 shall be automatically amended to such higher amount. Notwithstanding this exemption, this Declaration and the Subdivision are subject to the provisions of C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107 of CCIOA.