



**MOUNTAIN ENTERPRISES 80**  
 400 East Main, Suite 201 A, Aspen, Colorado 81611 303/925 4931

**PROTECTIVE COVENANTS**

CHALET ADDITIONS 12 and 13  
 also known as  
 ELK RUN  
 August 1, 1979

This document contains the effective Protective Covenants for all of the lands in the Chalet Additions Numbers 12 and 13, to be known as the Elk Run Subdivision, Town of Mt. Crested Butte, County of Gunnison, State of Colorado, as of August 1, 1979.

ARTICLE I - PURPOSE OF COVENANTS

1. General Requirements. It is the intention of Mountain Enterprises-80, expressed by its execution of this instrument that the lands within the Elk Run Subdivision be developed and maintained as a highly desirable pastoral and forested mountain single family residential area. It is the purpose of these covenants that the present natural beauty, the natural growth, native setting and surroundings of the Elk Run Subdivision shall always be protected insofar as is possible in connection with the uses and structures permitted by this instrument.

It is of primary intent that the seclusion of each home site in the Elk Run Subdivision from neighboring home sites be protected insofar as possible. All of said residential lots will be developed with objectives designated to enhance the value of and to benefit all property within this residential area and to enhance the value of and benefit other real property within the Elk Run Subdivision.

2. Particular Purposes. This Declaration is executed to define and describe certain provisions, covenants, conditions, and restrictions which shall be applicable to all property within said residential subdivision; to provide for a homeowner's association to perform certain obligations with respect to some or all property within said residential subdivision and to further the common interests of all owners of property within said residential subdivision.

ARTICLE II - PROPERTY AFFECTED

1. Property Affected. These Protective Covenants shall apply to and be binding upon the following described real property situated in Gunnison County, Colorado:

Filed for record the 19 day of Oct. 1979 at 2:00 P.M. by P. Annon M. Redinger, Notary Public, Adams, Colorado. Registration No. 345570

CHALET VILLAGE ADDITIONS NO. 12 & 13, according to the plat thereof filed July 30, 1979 and bearing Reception No. 341231 of the records of Gunnison County, Colorado.

#### ARTICLE III - DEFINITIONS

1. Definitions. For the purpose of these Protective Covenants, certain words or phrases shall be defined as follows:

a. Joint Venture. Mountain Enterprises, Inc., a Colorado corporation, and Trenson Inc., an Oklahoma corporation, any successors or assigns thereof and to the extent of the interest of either or both venturers herein by an instrument specifically designating such successor or assign thereof. A successor or assign other than by merger or consolidation shall be deemed a successor or assign under this Declaration only to the extent and only as to the particular rights or interests specifically designated in a written instrument.

b. Subdivision. Chalet Village Addition No. 12 & 13, Gunnison County, Colorado which shall hereinafter be referred to as the Elk Run Subdivision.

c. Lot. The individual numbered lots as set forth on the plat of the subdivision.

d. Building Envelope. That real property contained within the construction set-back lines for each lot within the subdivision as evidenced by Exhibit "A" hereto and made a part hereof.

e. Person. Shall include any person, persons, and/or association to include but not to be limited to, any corporation, partnership, venture, fiduciary, or any other entity holding title to any lot under any form or format of fee estate recognized by the State of Colorado less and except for any form or format of time sharing estate which shall be prohibited within this subdivision.

f. Building. A structure having a roof supported by columns or walls to provide shelter, support, or enclosure for protection of persons or property.

g. Dwelling. A building used exclusively for single family residential occupancy.

h. Mobile Home. A detached dwelling designed and manufactured to be transported as a self-contained unit to its site of occupancy on wheels or upon a towed device, any and all of which shall be prohibited in this subdivision.

i. Association. Association shall mean Elk Run Homeowners Association, Inc., a Colorado corporation not for profit, formed and incorporated to be and constitute the Association to which reference is made in this Declaration and to further the common interests of all owners of any real property which may become subject to the provisions, covenants, conditions and restrictions contained in this Declaration.

#### ARTICLE IV - HOMEOWNERS ASSOCIATION

1. "Regular Membership" in Homeowners Association. All persons or associations (other than Elk Run Homeowners Association) who own or acquire the title in fee to any of the lands in Elk Run Subdivision (other than lands dedicated as public lands), by whatever means acquired, shall automatically become a regular member of ELK RUN HOMEOWNERS ASSOCIATION.

2. Associate Membership in Homeowners Association: All persons and/or associations (other than Elk Run Homeowners Association) being the then holder of any Use and Maintenance Agreement now or hereinafter executed and delivered by Mountain Enterprises-80.

3. General Purposes and Powers. Elk Run Homeowners Association, Inc., has been formed and incorporated as a Colorado corporation, to perform functions and hold and manage property as provided in this Declaration and to further the common interests of all owners of property or particular groups of owners of property subject to all of the provisions, covenants, conditions and restrictions contained in this Declaration. The Association shall be obligated to and shall assure and perform all functions and obligations imposed on it or contemplated for it under this Declaration and any similar functions or obligations imposed on it with respect to any property subject to this Declaration. The Association shall have all powers necessary or desirable to effectuate these purposes. It shall not, subject to these exceptions hereinafter specifically set forth, engage in commercial, profit-making activity.

4. Property Maintenance Function. The Association shall be obligated to and shall accept title to any real property or interest therein, including improvements thereon, or to any personal property or equipment granted or furnished by the Joint Venture to the Association subject to such use and maintenance agreements as shall have been previously granted by Mountain Enterprises-80 and/or use and maintenance agreements reserved by Mountain Enterprises-80 and, with respect to any such property and to any other property acquired and held by the Association shall be obligated to and shall pay all taxes and assessments of whatever nature relating to any of said property; provide for the best and highest quality care, operation, management, maintenance, repair and replacement of the same; remove snow from the same as necessary for their customary use and enjoyment; maintain plants, trees and shrubs provided or existing thereon; and maintain lighting provided or existing thereon; and maintain roads, walks or drives provided or existing thereon.

5. Road and Easement Maintenance Function. The Association shall be obligated to and shall provide for the best and highest quality care, operation, management, maintenance, repair and replacement of all private facilities, roads, streets, lanes, avenues, courts, circles and places; of all public parks, equestrian or other easements (to include but not to be limited to, that certain right of way across Lot 28, CVA 11, Town of Mount Crested Butte, Colorado) established or provided for all owners of any property which may be made subject to this Declaration and/or platted within said Elk Run Subdivision. Maintenance shall include the removal of snow to the extent necessary to assure full use of any drives and all private roads, private circles and places, and public roads located within the subdivision having less than a sixty (60) foot right of way, if any. In this regard, the minimum extent of which said snow shall be removed, shall be equal to the width sufficient to allow the entrance and exit of emergency vehicles to include, but not be limited to fire equipment. These obligations shall be obligations to the Association without regard to whether or not the Association has any right, title or interest in any of the foregoing.

6. Insurance Function. The Association shall be obligated to and shall obtain and keep in full force and effect at all times at least the following insurance coverage. The Association shall obtain casualty insurance with respect to all insurable property of the Association, insuring the full replacement value thereof, including coverage for fire and extended coverage, vandalism and malicious mischief risk coverage, if available and if deemed appropriate by the Association. The Association shall obtain

broad form comprehensive liability coverage, covering both public liability and automobile liability coverage, with limits not less than \$1,000,000.00 for each person and not less than \$3,000,000.00 for each occurrence and with property damage limits not less than \$500,000.00 for each accident. Such additional insurance shall be acquired and maintained by the Association as it may deem fit and proper. All insurance may contain such deductible provisions as good business practice may dictate. All insurance shall name the Association to the extent reasonably possible, cover each owner of property now or hereafter subject to this Declaration without any such owner necessarily being specifically named. The Association shall provide Joint Venture, upon request, with certificates evidencing such insurance and copies of the insurance policies.

7. Right to Make Rules and Regulations. The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of any and all facilities and property of the Association to assure fullest enjoyment and use by the persons entitled to enjoy and use the same. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from property and facilities of the Association or otherwise. Each owner of any property which may be made subject to this Declaration, all holders of use and maintenance agreements, present and/or future, and such owner's guests and invitees thereof shall be obligated to comply with and abide by any such rules and regulations.

8. Reserved Rights with Respect to Property Furnished by Mountain Enterprises - 80. Any real property or interest in real property furnished by the Joint Venture to the Association may be and shall be deemed, conveyed, granted or furnished subject to then existing easements for utilities, including electricity, water, sewer, telephone, easements for drainage and drainage facilities; easements for public or private skiing and skiing facilities; easements for ingress, egress and access for the benefit of any property subject to this Declaration and shall be deemed subject to and deemed accepted by the Association subject to an exception and reservation by the Joint Venture, whether or not expressed at the time, of the right, power and authority to thereafter create and grant (a) the right of use, enjoyment and maintenance (partial) thereof by and through the execution and delivery of Use and Maintenance Agreements and to create and grant (b) any such easements and to enter upon and further, improve or develop any such property, at its own cost and expense, for the benefit of the Association, present and/or future, holders of use and maintenance agreements or any owners of property which may be subject to this Declaration.

9. No Sale or Abandonment of Property Furnished by Mountain Enterprises - 80. No real property or interest in real property conveyed, granted or furnished by the Joint Venture to the Association may be, and any such real property or interest therein shall be deemed, conveyed, granted or furnished, whether or not expressed in the deed or instrument of conveyance or grant, on and subject to the condition that it shall not be sold, conveyed, leased, transferred, abandoned or disposed of by the Association without the written consent of the Joint Venture. No improvements on real property granted or furnished by the Joint Venture to the Association may be destroyed, permitted to deteriorate or waste or disposed of by the Association without the written consent of the Joint Venture unless a suitable and adequate replacement or substitute is constructed, purchased or acquired by the Association which replacement or substitute shall be deemed to be property furnished by the Joint Venture.

10. No Commercial Enterprises on Property Furnished by Mountain Enterprises-80. No real property or interest in real property, including improvements thereon, and no personal property

or equipment granted or furnished by the Joint Venture to the Association shall be used or operated by the Association or by any other person or entity for commercial use, profit or gain without the prior written consent of the Joint Venture.

11. Charges for Use and Facilities. With respect to property or facilities furnished by the Joint Venture to the Association, the Association may establish reasonable and uniformly applied charges for use of property and facilities of the Association to assist the Association in offsetting the costs and expenses of the Association attributable thereto.

12. Right to Dispose of Property. Subject to the provisions of this Declaration requiring the consent of the Joint Venture with respect to property furnished by the Joint Venture to the Association, the Association shall have full power and authority to sell, lease, grant rights in, transfer, abandon and dispose of any property or facilities owned or held by the Association.

13. Governmental Successor. Any property or facility owned or held by the Association and any function or activity required to be performed by the Association under the terms of this Declaration may be turned over to a governmental authority which is willing to accept and assume the same upon such terms and conditions as the Association shall deem appropriate with the written consent of Joint Venture.

14. Owner's Enjoyment of Functions and Facilities. Each owner of any property which may be subject to this Declaration as well as any present and/or future holder of a use and maintenance agreement granted by the Joint Venture and such owner's and/or holders guests and invitees shall be entitled to use and enjoyment of all property, property interests, and facilities owned or held by the Association and of all functions and activities undertaken by the Association subject to such reasonable and uniformly applied rules and regulations which the Association may adopt.

15. Implied Rights of Association. The Association shall have and may exercise any right or privilege given to it by the terms and provisions of this Declaration, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including, without limiting the generality of the foregoing, the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; and obtain and pay for legal, accounting or other professional services as may be necessary or desirable.

16. Indemnification. The Association shall be obligated to and shall indemnify the Joint Venture and hold it harmless from all liability, loss, cost, damage and expense, including attorney's fees, arising with respect to any operations of the Association or any property of the Association including property granted or furnished to the Association by the Joint Venture.

17. Regular Membership. There shall be one (1) Regular Membership to the Association of each lot. The owner or owners of the lot shall be deemed the owner or owners of the Regular Membership appurtenant to that property and title to and ownership of the Membership of that property shall automatically pass upon transfer of fee simple title to that property. Each owner or owners of a lot as aforesaid shall be at times entitled to the benefits and subject to the burdens relating to the Regular Membership of such property. If fee simple title to a lot, as aforesaid, is held by more than one (1) person or entity, the Regular Membership appurtenant to that property shall be shared by all such persons or entities in the same proportionate interest and by the same type ownership in which fee simple title to that property is held. Membership in the Association shall be limited to owners of lots.

18. Associate Member: Each holder of a use and maintenance agreement shall be an Associate Member of the Association with all rights and duties incident thereto as set forth within the Certificate of Incorporation and By-laws thereof. Said associate membership shall automatically pass upon transfer of fee simple title of that to which any use and maintenance agreement shall be applicable. Said Associate Membership shall be nonassignable less and except upon transfer of fee simple title and shall be irrevocable less and except upon terms and conditions applicable to a Regular Membership.

19. Certificate of Incorporation and Bylaws. The purposes and powers of the Association and the rights and obligations inherent in membership set forth in this Declaration may and shall be amplified by provisions of the Certificate of Incorporation and Bylaws of the Association, including any reasonable provisions with respect to establishing a record date for determination of Members entitled to notice or to vote, with respect to quorum required at meetings of Members and with respect to other corporate matters, but no such provisions may be, at any time, inconsistent with any provision of this Declaration.

20. Member's Obligation to Pay Assessments and Other Amounts. Each owner of any such property or any right, title or interest therein, whether or not it be so expressed at the time of acquisition of such right, title or interest, shall be deemed to covenant and agree with each other and with the Association to pay to the Association assessments as provided in this Declaration and such reasonable and uniformly applied charges for the use of facilities which may be established by the Association as provided in this Declaration and such reasonable and uniformly applied fines and penalties imposed for violation of rules and regulations adopted by the Association as provided in this Declaration.

21. Assessments. Each Member of the Association shall be obligated to pay and shall pay to the Association at least annually, an amount which shall be levied pro rata on the basis of the valuation for assessment by the County Assessor of Gunnison County, Colorado, for the preceding year of each lot. Each Associate Member shall be obligated to pay and shall pay to the Association at least annually an amount which shall be levied pro rata on the basis of the total square feet within any lot and/or lots owned by said Associate Member and being the subject of a Use and Maintenance Agreement executed by the Joint Venture divided by the total square feet of all lots owned by Regular Members and all Associate Members including, but not being limited to, the lot or lots of the Associate Member being then assessed. The total amount required to be raised by assessment shall be determined as provided in the section of this Declaration entitled Determination of Total Amount of Assessments.

22. Determination of Total Amount of Assessments. The total amount required to be raised by assessments for the Association shall be determined at least annually in accordance with the following procedure. The total amount to be raised by assessment shall be that amount necessary to cover the costs and expenses of functions required to be undertaken or performed by the Association under this Declaration and to fulfill any and all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget, plus such additional amount, if any, determined or approved by the majority of the Members either at or after such meeting. The Board of Directors of Association shall prepare a budget, covering at least a one (1) year period, showing, in reasonable detail, the various functions and matters proposed to be covered by the budget, showing the estimated costs and expenses of such functions or matters, showing the estimated income and other funds which may be received by the Association, and showing the estimated total amount of assessments required to cover costs and expenses and to provide a reasonable reserve. Any and all



surplus, if any, from previous budgets shall be credited to the budgeted item from which said surplus was generated. From such items of cost and expense, the Board of Directors shall identify so much thereof as shall be the subject of contribution under the terms of then existing Use and Maintenance Agreements. The total of such identified costs and expenses shall then be and constitute the "Total Amount of Assessments for Associate Members." After determining the gross sum of assessment income due from all Associate Members pursuant to Article IV, paragraph twenty-one (21) above and the pro rata formula set forth therein, said gross contribution of money derived from Associate Members shall be deducted from the estimated total assessments required. The resulting sum shall equal the "Regular Member Assessment Amount" which shall be the gross sum of assessment income due from Regular Members under that pro rata formula set forth within Article IV, paragraph twenty-one (21) above. Subsequent to the above, the Board of Directors shall call a meeting of the Members and give thirty (30) days notice prior to such meeting. At the time of such meeting, said budget shall be approved or disapproved by the Regular Members. In this regard, said budget shall be disapproved only upon an affirmative vote to disapprove the same by two-thirds of all Regular Members with all abstentions and/or non-voting members being deemed to have voted in favor of accepting said budget. Upon the disapproval of any proposed budget, the Board of Directors shall continue to amend, modify and/or change in order to reduce the amount of said budget and present the revised budget to the Regular Members during the two (2) next succeeding regular and/or special meetings. Upon the failure of three proposed budgets, the budget last presented shall be reduced in amount by five percent (5%) and shall then constitute the budget of the Association without further vote or approval. The Association shall, except as emergencies may require, make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

23. Lien for Assessments and Other Amounts. The Association shall have a lien against each parcel of property which may be subject to this Declaration to secure payment of any assessment, charge, fine, penalty or other amount due to the Association from the owner of that property which is not paid, plus interest from the date of demand for payment at the rate of twelve percent (12%) per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

24. Personal Liability of Member. The amount of any assessment, charge, fine or penalty payable by a Member and/or Associate Member shall be a joint and several personal obligation to the Association of the persons or entities who constitute the Member and/or Associate Member at the time the amount was payable, their heirs, personal representatives, successors and assigns and may be recovered by a suit for a money judgment by the Association either with or without foreclosing or waiving any lien securing the same.

25. Liability of Purchasers and Incumbrances. A purchaser of any property subject to this Declaration shall be jointly and severally liable with the seller of the property for all unpaid assessments, charges, fines or penalties with respect to the owner of the property, or the Membership appurtenant thereto which has accrued or were payable at the time of the grant or conveyance of the property to such purchaser, without prejudice to such purchaser's right to recover any of said amounts paid by the purchaser from the seller. No holder of a lien or encumbrance on any property shall be personally liable for any such assessment, charge, fine or penalty and the lien for such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on any property taken or acquired in good faith and for value without notice and perfected by recording prior to the time

a notice of failure to pay any such amount is recorded in the office of the County Clerk and Recorder of Gunnison County, Colorado, against the property.

26. Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$15.00 upon written request of any person with an interest in any property subject to this Declaration or intending to acquire an interest in such property, the Association shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines or penalties, if any, with respect to the owner of the property or the Membership appurtenant thereto and the amount of the current yearly assessments payable with respect to the property, which statement shall be conclusive upon the Association.

#### ARTICLE V - ARCHITECTURAL COMMITTEE

1. Architectural Committee. The Committee, the name being hereinafter referred to as "Committee" shall mean a committee of three (3) appointed by the Board of Directors of ELK RUN HOMEOWNERS ASSOCIATION, as said Board of Directors shall be constituted from time to time in the future. Said Committee shall have and exercise all of the powers, duties, and responsibilities set out in this instrument.

2. Approval by Architectural Committee. No improvements of any kind, including but not limited to dwelling houses, barns, stables, outbuildings, swimming pools, tennis courts, ponds, parking areas, fences, walls, garages, drives, antennae, flag poles, curbs, and side walks, shall ever be constructed or altered on any lands within Elk Run Subdivision, nor may any vegetation be altered or destroyed nor any landscaping performed on any tract, unless the complete architectural plans for such construction or alteration or landscaping are approved in writing by the Committee prior to the commencement of such work. In the event that the Committee fails to take any action within sixty (60) days after complete architectural plans for such work have been submitted to it, then all of such submitted architectural plans shall be deemed approved. In the event the Committee shall disapprove any architectural plans the applicant may appeal the matter to the next annual or special meeting of the members of ELK RUN HOMEOWNERS ASSOCIATION, where a vote of at least two-thirds (2/3) of the votes entitled to be cast at said meeting shall be required to change the decision of the Committee.

3. Variances. Where circumstances, such as topography, location of property lines, location of trees and brush, location of other buildings or other matters require, the Committee may, by a two-thirds (2/3) vote, allow reasonable variances as to any of the covenants contained in this instrument, on such terms and conditions as it shall require, provided that no such variance shall be finally allowed until thirty (30) days after the Committee shall have mailed a notice of such variance to each member of ELK RUN HOMEOWNERS ASSOCIATION. In the event any three (3) members shall notify the Committee in writing of their objection to such variance within said thirty (30) day period, the variance shall not be allowed until such time as it shall have been approved by a vote of at least two-thirds (2/3) of the votes entitled to be cast at an annual or special meeting of the members of ELK RUN HOMEOWNERS ASSOCIATION.

4. General Requirements. The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the land within Elk Run Subdivision conform and harmonize the natural surroundings and with existing structures as to external designs, materials, color, setting, height, topography, grade, and finished ground elevation. The Committee shall protect the seclusion of each homestead from other homes insofar as possible.



## 5. Design Control.

a. Preliminary Approvals. Persons or associations who anticipate constructing improvements on lands within Elk Run Subdivision, whether they already own lands in Elk Run Subdivision or are contemplating the purchase of such lands, shall submit preliminary sketches of such improvements to the Committee for informal and preliminary approval or disapproval based upon the general criteria set forth herein, but the Committee shall never be finally committed or bound by any preliminary approval or disapproval until such time as complete architectural plans are submitted and approved or disapproved.

b. Final Plans. Subsequent to preliminary approval set forth within subparagraph 5(a) above, the plans of the proposed building or structure shall be submitted to the Committee for approval. The request for approval by the Committee shall have attached to such request the following documents:

(1) A plot plan showing the location of any building, structure, access drives, ways, and parking areas, and all trees having a diameter four (4) feet above ground level of three (3) inches or more with the type, location and size of each tree indicated. All other terrain and structure features, such as large rocks, ponds, patios, fences, utility lines, storage areas, ravines, outcroppings, and usual terrain features should be indicated.

(2) Complete architectural plans and specifications for such building or structure. Such plans shall include a sketch plan of the building on the lot and exterior presentations of the building on all sides.

(3) Samples of all exterior materials and color schemes to be used in identifying how and where such materials and colors will be used on the building.

(4) Landscape plans showing all landscaping of the lots including both the natural landscaping of the lot as it now exists and any proposed changes or additions of such landscaping.

(5) The Committee shall consider the suitability of the proposed building, the harmony thereof with the environment, the effect of such building on the utilization and view of the lot upon which the same will be built and the interferences, impairment and/or restriction of view, if any, of adjacent property and the placement of the building with respect to topography, ground elevations and existing natural and terrain features. In this regard, all best efforts will be made to minimize the restriction, impairment and/or interference of view that any one building shall have upon that of all other such existing buildings.

(6) The Committee shall within thirty (30) days after receipt of plans for a proposed building and structure, and upon determination that all accompanying data is sufficient, conduct a hearing thereon and shall, in writing, approve, disapprove, or approve with conditions, the construction of the proposed building or structure or any additions or alterations to an existing structure. In the event that the Committee fails to take such action within sixty (60) days after the submission of a complete request for approval, the application shall be deemed to have been approved; provided, however, in no event shall such failure to act in a timely fashion, constitute direct or indirect approval or any violation of the present covenants, or any governmental (federal, state, county or township) laws, ordinance, enactments, code and/or regulatory requirement.

(7) The Committee shall give the applicant notice in writing of the hearing date at least ten (10) days prior to such hearing. All meetings shall be public.

(8) The Committee shall make such rules and regulations and adopt such bylaws and procedures as are appropriate to govern its proceedings and written minutes of all meetings shall be maintained by the Committee.

(9) All applications for approval to the Committee shall be accompanied by a minimum application fee of \$50.00. The Committee may further charge a reasonable fee to cover any actual expense incurred in receiving any application submitted to it.

(10) All hearings by the Committee shall be open to the public.

(11) No plans shall be finally approved by the Committee until the same have been approved in writing or the required building permit issued therefore by the Town of Mt. Crested Butte, Colorado.

(12) Each member of the Committee shall serve a term of three (3) years and may serve successive terms. The initial members of the Committee shall be appointed by The ELK RUN HOMEOWNERS ASSOCIATION. The Association, its successors, and assigns shall continue to appoint the members of the Committee until such time as the Association, its successors or assigns, no longer continues to appoint members, at which time the members of the Committee shall be appointed by the governing body of the Town of Mt. Crested Butte, Colorado.

6. Architectural Plans. The Committee shall disapprove any architectural plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

7. Architectural Committee Not Liable. The Committee shall not be liable for any damages to any person or association submitting any architectural plans for approval, or to any owner or owners of land within Elk Run Subdivision, by any person or any action, failure or act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Any person or association acquiring the title to any property in Elk Run Subdivision, or any person or association submitting plans to the Committee for approval, by so doing does agree and covenant that he or it will not bring any action or suit to recover damages against the Committee, its members as individuals, or its advisors, employees, or agents.

8. Written Records. The Committee shall keep and safeguard for at least five (5) years complete permanent written records of all applications for approval submitted to it (including one (1) set of all architectural plans so submitted) and all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument.

#### ARTICLE VI - GENERAL RESTRICTIONS ON ALL LOTS

1. Zoning Regulations. No lands within Elk Run shall ever be occupied or used by or for any structure or purpose in any manner which is contrary to the zoning regulations of Town of Mt. Crested Butte, Colorado nor the building code validly in force from time to time, except as the same may be allowed under said regulations, as a nonconforming structure or use.

2. Building Site. Subject to the provisions of subparagraph eight (8) of this Article, all buildings shall be located within the building envelope of and for each applicable lot.

3. No Mining, Drilling or Quarrying. No mining, quarrying, tunnelling, excavating, 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 Elk Run Subdivision.

4. No Business Uses. No lands within Elk Run shall ever be occupied or used for any commercial or business purpose nor for any noxious activity and nothing shall be done or permitted to be done on any of said lands which is a nuisance or might become a nuisance to the owner or owners of any of said lands. No store, office, or other place of commercial or professional business of any kind; nor any hospital, sanitarium, or other place for the care or treatment of the sick or disabled, physically or mentally; nor any public theater, bar, restaurant, or other public place of entertainment; nor any church; nor any residential building housing more than one family, shall ever be constructed, altered or permitted to remain within Elk Run Subdivision; provided, however, that notwithstanding the above and foregoing shall in no way restrict or prohibit the ELK RUN HOMEOWNERS ASSOCIATION from owning occupying, and/or using any and all land now or hereinafter for the enjoyment of its membership.

5. Signs. With the exception of one "For Sale" sign (which shall not be larger than 20 x 26 inches) and except for one entrance gate sign of a style and design approved by the Committee, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, altered, or permitted to remain on any tract in Elk Run Subdivision.

6. Animals. No animals or poultry shall be kept on any lands in Elk Run except ordinary household pets (not to exceed two (2) in number) belonging to the household. Other animals or poultry may be kept only with the prior permission of the Committee. The Committee may require any owner or lessee of lands within Elk Run Subdivision to remove any animals or poultry, except ordinary household pets, from the premises if in the sole and exclusive opinion of the Committee animals or poultry are inconsistent with the character of Elk Run Subdivision or constitute an annoyance to the owners of neighboring tracts. No horses or cows will be permitted to be kept on any residential tract or pasture tract not having sufficient pasture to maintain them properly. Animals and poultry, other than ordinary household pets, must be kept within an enclosed area which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times.

7. No Subdivision. No tract described on the recorded plat of the Elk Run Subdivision shall ever be subdivided into smaller tracts or lots not conveyed or encumbered in any less than the full original dimensions as shown on said recorded plans; provided that conveyances or dedications of easements for utilities or private roads may be made for less than all of one tract.

8. Combining Tracts. If two (2) or more contiguous residential lots are owned by the same owner or owners, they may be combined into one or more larger residential lot or lots 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 Larimer County, Colorado. At the time such a merger and upon approval of the Committee, the common lot line as well as the building envelope lines running parallel (more or less), shall set aside with all remaining applicable lot and building envelope lines being made to join upon Exhibit "A" hereto. Thereafter, the now and larger property shall each be considered as one lot for the purposes of these covenants.

9. Open Air Space. All lots shall have a minimum of fifty percent (50%) of the total lot area devoted to open air space and without a building or structure being constructed thereon.

10. Service Yards and Trash. All trash containers, exercise pens, etc., shall be kept screened by adequate planting or fencing

so as to conceal them from the view of neighboring tracts and streets and access roads. All rubbish and trash shall be removed from all tracts in Elk Run Subdivision and shall not be allowed to accumulate and shall not be burned thereon except in burners approved by the Committee as to location, design, materials, and construction, and except at such hours of the day as shall be established by the Committee.

11. Underground Utility Lines. All water, gas, electric, and telephone pipes and lines and all other utility lines within the limits of Elk Run Subdivision must be buried underground and may not be carried on overhead poles nor above the surface of the ground.

12. Maintenance of Property. All property, including Common Areas, and all improvements on any property shall be kept and maintained by the owner thereof in clean, safe, attractive and slightly condition and in good repair. Common areas shall be so maintained by the Association notwithstanding the fact that the Common Area may not have been conveyed to the Association.

13. No Hazardous Activities. No activities shall be conducted on any property and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property, and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfires or picnic fires in portions of Common Areas designated for such use by the Joint Venture or by the Association or except such controlled and attended fires required for clearing or maintenance of land.

14. Fences. No fences, walls or barriers of any nature shall be constructed, erected or maintained on any lot, except in compliance with all applicable regulations enacted by the Town of Mt. Crested Butte, Colorado, and as approved by the Committee.

15. Recreational Equipment. No large recreational equipment, such as boats, campers, travel trailers, or other such devices, shall be parked, stored or maintained on any lot.

16. Repairs. All structures shall at all times be kept in good and proper repair and in an attractive appearance by the owner thereof.

17. Prefabricated, Log or Log-Type Buildings. No natural log, prefabricated or artificial log resembling a natural log-type of construction shall be allowed on any building or structure within the subdivision.

#### ARTICLE VII RESTRICTIONS ON RESIDENTIAL LOTS

1. Number and Location of Building. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential tract other than:

- (1) One detached single-family dwelling house; and
- (2) One guest or servant house; and
- (3) One attached or detached garage; and

No building or other structure shall be constructed or allowed to remain on any open meadow land or any residential lot. No dwelling house shall be placed, erected, altered, or permitted to remain on any residential tract at any site or location other than indicated on the recorded plat of the Elk Run Subdivision, except as otherwise specifically permitted by the Committee.

2. Dwelling House to be Constructed First. No guest house, servant house or garage, shall be constructed on any residential tract until after commencement of construction of the dwelling house on the same residential lot. All construction and alteration work shall be prosecuted diligently, and each building, structure, or improvement which is commenced on any residential tract shall be entirely completed within eighteen (18) months after commencement of construction.
3. Towers and Antennae. No exterior towers or radio or television antennae shall be erected on any residential dwelling or lot. All such towers and antennae must be attached to the dwelling house and contained within the interior structure thereof.
4. Trees and Landscaping. No trees or brush growing on any residential lot shall be felled or trimmed nor shall any natural areas be cleared, or formal lawn areas constructed, or landscaping performed on any residential tract without the prior written permission of the Committee. Any and all removal and/or loss of trees or brush on any residential lot caused by construction of any dwelling unit shall if so required by the Committee, be replaced upon the remaining area of the applicable lot subsequent to construction. Said replacement of trees and/or brush shall be landscaped with flowers, plants, grasses, shrubs and trees that are indigenous to the mountain valley in which Elk Run Subdivision is situated. All cuts, fills or surface areas disturbed during construction shall be promptly revegetated to their natural condition and the lot owner shall immediately reestablish and replant appropriate vegetation on such disturbed surface area.
5. Tanks. No elevated tanks of any kind shall be erected, placed, or permitted upon any residential tract. Any tank used in connection with any dwelling house or other structure on any residential lot, including tanks for storage of gas, fuel oil, gasoline, oil, or water, shall be buried.
6. Used or Temporary Structures. No used or previously erected or temporary house, structure, mobile home, house trailer, or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any residential tract, except during construction periods, and no dwelling house shall be occupied in any manner prior to its completion.
7. Exterior Lighting. All exterior lights and light standards on residential tracts shall be approved by the Committee for harmonious development and the prevention of lighting nuisances of other lands in Elk Run Subdivision.
8. Off-Street Parking. No dwelling house shall be constructed on any residential lot unless there is concurrently constructed on the same tract adequate off-street parking area for at least one (1) automobile per each bedroom within said dwelling; provided, however, that in no event shall more than four (4) off-street parking areas be required for any dwelling.
9. Garbage Disposal and Sanitary Systems. Each dwelling house or other structure containing a kitchen constructed on any residential tract in Elk Run Subdivision shall be equipped with a garbage grinder or garbage disposal unit of a type approved by the Committee. No sewerage disposal system, sanitary system, cesspool, or septic tank shall be constructed.

ARTICLE VIII - DETAILING LOCATION AND CONSTRUCTION:

1. Building Code. The construction of any building or

structure shall be in accordance with the building code then in effect in the Town of Mt. Crested Butte, Colorado. The quality of workmanship and materials in any building or structure shall be equal to or exceed comparable buildings of the same type in the same general area.

2. Building Envelope. No buildings or structures shall be located outside of any building envelope evidenced and established upon the plat of and for the Elk Run Subdivision and/or evidenced within Exhibit "A" hereto nor in violation of the Subdivision Regulations of and for the Town in Mt. Crested Butte, State of Colorado.

3. Architectural Standards. The following exterior architectural standards shall apply within this subdivision:

a. Exterior building materials should be predominately natural, such as wood siding, shingles and native stone. No exterior paneling shall be used. No more than fifty percent (50%) of any structure shall be constructed of native stone.

b. Roofs shall have a design and be constructed of materials that are harmonious with the surrounding area and are not of reflective type materials.

c. Any accessory building must conform to the architectural style of the principal building on the lot.

d. Earth colors shall predominate.

e. Service or utility areas or yards and garbage cans and trash storage areas shall be screened from view on all sides.

4. Maximum Height. The maximum height of a building or a structure as measured vertically from the average finished grade of a structure to highest point of the structure shall be:

a. Not greater than the maximum height limitation imposed by the Town of Mt. Crested Butte, Colorado.

b. A height that by the placement of the building or structure upon a lot shall not unduly restrict the view of a building on any surrounding or adjacent lots.

c. The Committee, upon application, hearing and written approval, may grant a variance of the height restrictions above set forth upon a determination that such restriction would work an undue hardship upon the owner of a lot and that such variance would not impair, hinder or detract from the sightline of any adjoining property.

5. Construction. The construction of any structure shall be in accordance with the applicable regulations enacted by the Town of Mt. Crested Butte, Colorado.

6. Square Footage. Any dwelling constructed on a lot shall comply with the following standards:

a. Each dwelling shall have a minimum of one thousand two hundred (1,200) square feet of usable living area on a single floor elevation.

b. Each dwelling shall contain a total living area of a minimum of one thousand eight hundred (1,800) square feet, exclusive of garages, porches, patios and accessory buildings.



1. Improvements. No improvements of any kind or nature shall be constructed, erected, or allowed to remain on any common tract except meadows, clubhouses (with or without employee housing units), swimming pools, jacuzzi, tennis courts, lakes and ponds, recreational facilities, bridle paths, or similar improvements for the benefit of or use of all of the Members of ELK RUN HOMEOWNERS ASSOCIATION, and private roads giving access to other lots in Elk Run Subdivision. All such improvements shall be approved by the Committee as elsewhere herein provided, and shall conform and harmonize in appearance, setting, and cost with existing structures on the overall development plans for Elk Run Subdivision.

#### ARTICLE X - EASEMENTS RESERVED

1. Utility Easement Reserved. Mountain Enterprises - 80, a Joint Venture, hereby reserves to itself, its successors and assigns, perpetual easements equal in width to the distance between the outer perimeter of each lot and the building envelope line being approximately parallel thereto as established in Exhibit "A" hereto on each side of the boundary line along the entire perimeter of each lot described on the recorded plats of the Elk Run Subdivision, except any portion of said perimeter which abuts on a dedicated county road, for the purpose of constructing, maintaining, operating, enlarging, and repairing electric, telephone, water, irrigation, sewer, gas, and similar lines, pipes, wires, ditches, and conduits, and walking and riding trails.

2. Easement for Private Roads. Mountain Enterprises - 80, a Joint Venture hereby reserves to itself, its successors, and assigns, perpetual easements across all common tracts and utility easements in the Elk Run Subdivision for private roads giving access to the residential lots in Elk Run provided that no such private road shall ever be constructed or used without the prior written permission of the Committee.

#### ARTICLE XI - ENFORCEMENT

1. Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration with respect to the subdivision or property of the Association shall be enforceable by the Association or by any owner of property subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration with respect to a person or entity or property of a person or entity other than the Association or the Joint Venture shall be enforceable by the Joint Venture or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit of action to recover damages or to recover any amount due or unpaid or, in the discretion of the Association of Joint Venture, for so long as any person or entity fails to comply with any such obligation, provision, covenant, restriction or condition, by exclusion or by any person or entity and such person's or entity's guests or invitees from use of any property or facility owned or held by the Association and from enjoyment of any function undertaken by the Association.

In addition to the remedies stated above, if, with respect to any property subject to this Declaration, conveyed to the Association or to any other person or entity by the Joint Venture, there is a violation or breach of or failure to comply with, any of the covenants, restrictions or conditions contained in this Declaration, then the Joint Venture shall be deemed to have and shall have a power of termination and the right immediately or at any time

during the continuation of any such violation, breach of or failure to re-enter and take possession of the real property and, upon exercise of this right or re-entry, title to the property shall thereupon vest in the Joint Venture. The right of re-entry and for re-vesting of title shall be subject to the provisions of the Section hereof entitled Protection of Encumbrances. If court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

2. Protection of Encumbrances. No violation or breach of any provision, restriction, covenant or condition contained in this Declaration and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, or the title or interest of the holder thereof or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take subject to this Declaration except only those violations or breaches which occur prior to such foreclosure shall not be deemed breaches or violations hereof with respect to such purchaser, his heirs, personal representatives, successors and assigns.

3. Limited Liability. Neither the Joint Venture or Association, the Board of Directors of the Association, the Committee or any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

4. Successors and Assigns of Association. This Declaration shall be binding upon assigns of the Association whether voluntary or involuntary by declaration of law otherwise, except to the extent provided in any written assignment which has the approval of the Joint Venture. The successors of the Association shall be bound by this Declaration and any Supplemental Declaration.

#### ARTICLE XII - GENERAL PROVISIONS

1. Covenants to Run. All of the covenants contained in this instrument shall be a burden on the title to all of the land in Elk Run Subdivision, and the benefits therefrom shall inure to the owners of all of the lands in Elk Run, and the benefits and burdens of all said covenants shall run with the title to all of the lands in Elk Run Subdivision.

2. Termination of Covenants. The covenants contained in this instrument shall terminate July 3, 2019, or at the time of final dissolution of the Colorado corporation not for profit, known as ELK RUN HOMEOWNERS ASSOCIATION, effective on July 3, 1994. These covenants may be amended by a vote of three fourths of the votes entitled to be cast by the members of ELK RUN HOMEOWNERS ASSOCIATION, said vote to be cast at a meeting of the members duly held not more than six (6) months after said date, provided a properly certified copy of the resolution of the amendment be placed of record in Gunnison County, not more than six (6) months after said date. If these covenants are amended on July 3, 1994, then they shall continue in effect, as amended, for as long thereafter as may be stated in said amendment. Notwithstanding the above and foregoing no provision herein regarding membership (regular and/or special) shall be subject to any amendment absent the express written consent of all members affected thereby.

3. Severability. Should any part or parts of these

covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not effect the validity of the remaining covenants.

4. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the covenants contained herein.



Secretary

(Corporate Seal)

Mountain Enterprises - 20  
By: Mountain Enterprises, Inc.

James A. Bagley  
James A. Bagley, President



Secretary

(Corporate Seal)

Trenson, Inc.

Larry Parman  
Larry Parman

STATE OF COLORADO

COUNTY OF PITKIN

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of October, 1977, by James A. Bagley, President of Mountain Enterprises, Inc.

Witness my hand and official seal.

My commission expires June 29, 1980.



Gail Sessions  
Notary Public

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of October, 1977, by Larry W. Parman, of Trenson, Inc.

Witness my hand and official seal.

My commission expires 2-10-81



Delores M. White  
Notary Public