

DECLARATION OF PROTECTIVE COVENANTS

FOR

TREASURY HILL, LOTS 1-8

This Declaration is made by Phillip Coombs, hereinafter termed the "Declarant", as of _____, 1991.

RECITALS

1. The Declarant is the Owner of approximately 2.778 acres more particularly described on attached Exhibit A, hereinafter called "the Land", situate in the Town of Crested Butte, Gunnison County, Colorado.

2. The Declarant intends that the Land shall be developed as a residential subdivision made up of residential lots which will achieve certain objects and purposes; namely, that the subdivision will be a residential community which is aesthetically pleasing, harmonious with the environment, and conducive to residential use for all concerned on a lasting basis and that such subdivision will preserve the natural beauty of the Land to the fullest extent possible during all seasons of the year.

3. The Declarant believes that such objects and purposes can be best achieved through the imposition of restrictions, covenants, easements, and reservations upon the Land and through the control of the location, composition and architecture of the improvements to be placed on the Land. He further believes that the objects and purposes may be implemented by continuing control either directly by the Declarant or through other entities to be created for such purposes, all as hereinafter set forth.

NOW, THEREFORE, in order to achieve the above described objects and purposes, the Declarant hereby imposes upon the Land the restrictions, covenants, easements, reservations, architectural control and other encumbrances set forth herein. All such restrictions, covenants, easements, reservations, architectural control and other encumbrances shall be appurtenant to and run with the Land and shall be considered to be a part of any and all conveyances, transfers, leases, and other documents affecting all or any part of the Land whether or not specifically set forth in such documents.

ARTICLE I

DEFINITIONS

1.1 "Association" shall mean the nonprofit corporation described in Article VI hereof.

1.2 "Buildings" means a structure designed for habitation, shelter, storage or the like constructed upon the Land in furtherance of the plan of development set forth in the preamble hereof, and shall include, without limitation, all water systems, sewerage systems, lighting systems, decks, patios, driveways, sidewalks and landscaping.

1.3 "Committee" shall mean the Architectural Control Committee described in Article VIII hereof.

1.4 "Common Expenses" shall mean the costs and expenses set forth in Section 6.7 hereof.

1.5 "Declarant" shall mean Phillip Coombs.

1.6 "Land" shall mean the real property described on Exhibit A which is attached hereto and incorporated herein by reference.

1.7 "Owner" shall mean the fee simple title holder of each respective Lot or of a subdivided portion thereof as permitted under Article IV hereof.

1.8 "Plat" shall mean the Plat heretofore filed as Reception No. _____ subdividing the Land and as filed in the county records of Gunnison County, Colorado. Subject to Town's reasonable approval and the requirements of paragraph 12.9, below, Declarant reserves the right to amend the Plat from time to time in the manner permitted by law to establish, vacate and relocate easements, access road easements and parking areas.

1.9 "Lot" shall mean each separately numbered and designated parcel of land as shown on the Plat, and the improvements thereon, subject, however to any modifications in Lot designation made under Section 4.1 hereof.

1.10 "Town" shall mean the Town of Crested Butte, a home rule municipal corporation of the State of Colorado.

ARTICLE II

EASEMENTS

2.1 Generally. Easements shall be as shown upon the Plat subject to any changes in easement location approved by

5.2 Shared Expenses. The Lodge Property Covenants shall provide for the equal sharing of expenses to insure, maintain, repair, replace and/or plow common facilities which serve the Land and the Lodge Property, such as, without limitation, roads.

ARTICLE VI

ASSOCIATION

6.1 Creation. The Declarant has caused a nonprofit corporation, Treasury Hill Homeowners Association, Inc., to be formed under the laws of the State of Colorado.

6.2 Membership. The Owner or Owners of each Lot shall be required to be a member of the Association and shall be entitled to one vote in the Association per Lot and such membership shall continue for the period of ownership.

6.3 Representative of Owners. The Owner of each Lot and, in the event that a Lot is owned by more than one person, then all such Owners or the governing body representing such Owners, as appropriate, shall designate in writing to the Association the person entitled to represent and to cast the vote for such Lot.

6.4 Duties. The Association shall have the duty of insuring and providing maintenance, repair, replacement and/or plowing of any roads, common or other facilities serving the Land and providing architectural review and control as set forth herein, and of enforcing this Declaration of Protective Covenants. It shall further provide such insurance as may be necessary or desirable with respect to the activities of the Association. The Association may, but need not, assume additional responsibilities of providing common services to the Owners.

6.5 Assignment and Delegation by Declarant. It is contemplated that the Declarant may from time to time transfer, assign, and delegate those powers and rights reserved to him under this Declaration, together with the obligations attendant thereto, to the Association. Upon approval of the Association, it shall then be the responsibility of the Association to recognize and to exercise such powers, rights and obligations. On or before two years after the time that the Declarant shall have conveyed 75 percent of the Lots contained in all of the Land, it shall assign and delegate all of those powers and rights reserved to the Declarant under this Declaration, together with the obligations attendant thereto to the Association.

6.6 Costs of Association. The Association shall perform its duties and obligations prescribed by this

Declaration, or additional duties or obligations which may be assumed by the Association, upon a cost basis and shall have the right to establish appropriate cash reserves to insure the performance of its duties and obligations.

6.7 Assessments. The Common Expenses incurred by the Association in its operation shall be borne by the Owners upon an assessment basis. Each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association his respective assessments as herein provided. Such assessments shall be allocated equally between the Owners of all 8 Lots located on the Land. The assessments made shall be based upon the Association's cash requirements deemed to be such aggregate sum as the Board of Managers of the Association shall from time to time determine is to be paid by all of the Owners, including Declarant for unsold Lots, to provide for the payment of all estimated expenses incurred by the Association, which sum may include but is not limited to expenses of maintenance, repair and replacement of the common facilities, maintenance, repair, replacement of and snow removal from the pedestrian paths and/or roads accessing or serving the Land, insurance premiums, legal and accounting fees, management fees, expenses and liabilities incurred under or by reason of this Declaration, the payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund, as well as other costs and expenses properly undertaken by the Association or any other costs and expenses approved by the owners of five Lots. Assessments on an individual Lot shall also include the costs of exterior maintenance of such Owner's Lot if such maintenance is undertaken by the Association pursuant to Article X hereof. The omission or failure of the Board to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. The assessments for estimated Common Expenses shall be due at least annually in advance and the Board of Managers shall prepare and deliver or mail to each Owner an itemized statement showing the estimated or actual expenses for the assessment period and the proportionate amount due by such Owner. The Board of Managers may require regular assessments to be paid more often than annually and may levy special assessments as necessary or desirable.

6.8 Lien for Assessments. All sums assessed but unpaid for the share of Common Expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except for:

(a) Tax and special assessment liens on the Lot in favor of any governmental assessing unit.

(b) All sums unpaid on a first mortgage or first deed of trust of record for the benefit of any lender,

including all unpaid obligatory sums as may be provided by such encumbrance.

If any assessment shall remain unpaid after 15 days after the due date thereof, the Board of Managers may impose a penalty on such defaulting Owner in an amount equal to one percent of such assessment. Likewise, a penalty equal to two percent of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid.

To evidence the lien as above provided, the Board of Managers may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the record Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Managers or such Board's attorney and may be recorded in the office of the Clerk and Recorder of Gunnison County, Colorado. Such lien for assessment shall attach and be deemed perfected from the date of declaration of the assessment by the Board of Managers of the Association. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In the event of any such foreclosure the Owner shall be liable for the amount of unpaid assessments, assessments accruing during the period of foreclosure and redemption, any penalties thereon, the costs and expenses for filing the notice or claim of lien and, if applicable, a release thereof, and court costs and all reasonable attorneys' fees incurred in collecting its judgment and foreclosing its lien hereunder. The Association shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

6.9 Personal Obligation of Owner. The amount of the Common Expenses assessed against each Lot shall also be a personal obligation of the Owner thereof at the time the assessment is due. Suit to recover a money judgment for unpaid assessments and any penalties thereon shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall be entitled to recover its reasonable attorneys fee and costs and court costs therein.

6.10 Payment by Encumbrancer. Any encumbrancer holding a lien on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same priority as the lien of his encumbrance.

ARTICLE VII

LAND USE

7.1 Residential Use. The Land shall be restricted to such permitted and conditional uses as are set forth in the

Town zoning provisions applicable to the Land.

7.2 Building Restrictions and Requirements.

(a) General Description. All Buildings within the Land shall have a pleasing appearance in harmony with the natural features of the Land, surrounding environs and the Declarant's purposes herein stated. No bright colors or other construction techniques which would unnecessarily call attention to the residences shall be permitted. A-frames or geodesic domes shall not be permitted. Colors of principal Buildings shall be primarily natural and earth tones; provided, however, that accessory building colors shall be evaluated and permitted by the Committee on a case by case basis.

(b) Number. Only one primary residence house may be constructed upon a Lot.

(c) Size. The gross floor area of the primary residence upon a Lot shall not be less than a 1,500 square feet, exclusive of the square footage of an attached or integral garage.

(d) Mobile Homes. No mobile homes or trailers shall be permitted as residences within the Land, either affixed to the Land or on a temporary basis. No modular or prefabricated houses shall be permitted.

(e) Trees. Prior to the issuance of any temporary or permanent Certificate of Occupancy, there shall be transplanted onto each Lot, no less than six (6) aspen trees each with a height of at least ten (10) feet. The owner of such Lot shall maintain such trees and replace any tree which dies.

7.3 Restrictions. In addition to the foregoing, the following restrictions on use of the Land are imposed:

(a) Animals. No animals shall be kept or maintained on the Land, except usual domestic household pets. Such household pets shall be kept confined to the Owner's Lot or attached to a leash so as not to become a nuisance. No barking or vicious dogs shall be permitted.

(b) Drainage. Since the Land is situated in mountainous terrain, there will be a substantial amount of natural surface water drainage and runoff flowing over the area. No Owner or other persons shall interfere with or redirect the natural course of any such drainage and runoff so as to cause an unnatural flow onto or across the land of another.

(c) Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing:

(i) All unsightly structures, facilities, equipment, objects, and conditions shall be enclosed within an approved structure.

(ii) All utility equipment shall be designed and constructed in compliance with Article 13-2 and other provisions of the Town Code. All electric, telephone, cable television and other utility feeder lines shall be underground.

(iii) No exterior antennae or antenna dish shall be permitted unless enclosed within an approved structure and approved by the Committee.

(d) Signs. No signs or advertising devices of any nature shall be erected or maintained on any of the Land except as necessary to identify the name or ownership of the particular Lot and its address, as necessary or desirable to give directions, advise of rules and regulations, or caution or warn of danger, to advertise a Lot for sale, or as may otherwise be necessitated by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Land only with prior written approval by the Committee. Approval shall be given only if such signs are of attractive design and are as small in size as is reasonably possible. Signs shall be placed or located as directed and approved by the Committee.

(e) Maintenance. All Lots, including all improvements thereon, shall be kept and maintained by the Owner thereof in a clean, safe and attractive condition and in good repair. Failure to comply with this provision shall subject the Lot to the provisions of Article X wherein repairs and maintenance may be made for the Owner at his expense. An Owner shall do no act or work that will impair the structural soundness of the building or impair any easement.

(f) Light, Sounds and Odors. All exterior lighting shall be designed and directed as approved by the Committee. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. All exterior lights shall be shielded to reduce to the extent practicable visibility of such exterior lights from adjacent property and from the Town. No mercury vapor lights shall be permitted. Other outdoor lighting that creates a glare or glow causing visual discomfort to other Lot owners shall be permitted only for brief, limited periods. No sound shall be emitted on any Lot which is unreasonably loud or annoying, and no odor shall be emitted on any Lot which is noxious or offensive to others. No coal shall be burned on any Lot.

(g) Refuse. No refuse, including without limitation trash, garbage, lumber, grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate

on any Lot. Each Owner shall provide suitable covered, noiseless, animal-proof receptacles for the collection of such refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in an approved structure so as to be screened from public view and protected from disturbance. No refuse may be thrown or dumped on any of the Land. The burning of refuse out of doors shall not be permitted. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed, or used by any person.

(h) Parking and Storage. Parking of vehicles on any Lot is permitted only within parking spaces constructed pursuant to approval by the Committee, except that vehicles may be parked in other areas while loading and unloading. Except for automobiles, station-wagons, jeep-type vehicles, pickup trucks and bicycles, all other vehicles and all implements, including without limitation, trailers of all types, non-pickup trucks, boats, tractors, campers not mounted on pickup trucks, snow removal equipment, motorcycles, all-terrain vehicles motor homes or other recreational vehicles, inoperable vehicles and maintenance equipment shall be parked or stored on the Land only in an approved enclosed structure. No more than two motor vehicles shall be stored outside on any Lot.

(i) Hazardous Activities. No activities shall be conducted on any Lot, and no improvements shall be constructed on any Lot, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms, or archery equipment, or fireworks shall be discharged upon the Land. No open fires shall be lighted or permitted on the Land except in a contained pit or other barbecue unit while attended and in use for cooking purposes or except in a safe and well-designed interior fireplace or stove.

(j) Occupancy. No portion of any Lot shall be used for residence, living, or sleeping purposes other than rooms designed for such purposes in a completed structure, provided, however, that one tent, motorhome, pickup camper, camper trailer or other recreational vehicle may be so used for no more than one week per calendar month.

(k) Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring, exploring for, or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.1 Establishment of Committee. In order to achieve the objects and purposes of the Declarant as set forth in the preamble of this Declaration, the construction of any and all Buildings and other improvements of whatever type within the Land, including alteration, modification, repainting or addition to any existing Buildings or other improvements, shall be forbidden, unless prior written approval by the Committee has been obtained with respect to such alteration, modification, repainting or addition. Specifically and without limitation, the Committee shall approve the exact location of all Buildings and other improvements and the construction design thereof, including exterior building materials, the color of the exterior thereof, the ground floor area, the height, and the number of, and the arrangement of, parking spaces as well as the design of vehicular access thereto. The Committee, shall have the power to impose requirements in addition to those imposed by the Town which requirements shall not be inconsistent with those imposed by Town.

8.2 Membership. The Committee shall consist of the Board of Managers of the Association.

8.3 Rules of and Procedures. The Committee may in its discretion set forth guidelines for the assistance of Owners regarding particular aspects of the architectural control to be exercised under this Article. Further, the Committee may in its discretion adopt and reduce to writing a uniform set of rules and procedures for processing the materials submitted to it for approval. It may also list the items which will be required to be submitted by the Owner for any proposed improvements and the time(s) for such submissions. Such guidelines, rules, procedures, and lists shall be made available to all Owners and prospective Owners through the secretary of the Committee. No rule or procedure of the Committee shall conflict with the requirements of this Declaration.

8.4 Submissions to Committee. Prior to filing any application with the Town for permission to construct a building or other improvements, the Owner of a Lot shall first apply for and receive from the Committee permission to construct such building or other improvements. The Committee may require any Owner or prospective Owner to submit 3 copies of any or all of the following material. This list shall not be deemed to limit the Committee in requiring any other materials:

(a) A preliminary report indicating the general nature of the proposed project.

(b) Preliminary plans and specifications for the proposed Buildings and other improvements.

(c) A detailed survey with contour intervals of not less than five feet, showing the location of proposed Buildings and other improvements, including without limitation, all structures, drives, and parking.

(d) Detailed working drawings to such scale as requested by the Committee and with such elevations as the Committee may deem necessary prepared or certified by a licensed architect or professional engineer.

(e) A list of exterior materials to be used and the proposed exterior colors.

(f) Certified copies of all approvals of state or local governments, or their agencies which may be required by law, rule or regulation with respect to the proposed improvement.

(g) A landscaping plan identifying all trees and shrubs to be removed and all trees and shrubs to be added.

8.5 Committee's Decision. The Committee shall have a period of 15 days, from the receipt by the Committee members of the last material which it may request within which to approve or disapprove the proposed Buildings or other improvements, whether in part or in whole. The Owner or proposed Owner, his architects, engineers, and/or contractors, shall meet with the Committee upon reasonable notice of such meeting in order to facilitate the processing and approval of plans. The failure of the Committee to approve or disapprove plans within the period described in this paragraph shall constitute evidence of Committee approval. Except for the immediately foregoing provision, any approval or disapproval by the Committee shall be in writing.

8.6 Majority Approval. Committee approval shall be by a majority of the Committee.

8.7 No Construction Without Approval; Title Documents. No work with respect to the construction of improvements shall be commenced unless and until written approval of the Committee has been given or through the lapse of time following submission of material as above provided. No such work shall be undertaken except in strict compliance with the written conditions contained in the Committee's approval, and in strict conformity to the plans and specifications submitted by the Owner or proposed Owner. The Committee shall have the further right to enforce compliance with its rules and procedures by the filing of documents affecting title to any particular Lot; by requesting that the appropriate governmental authorities not grant building

or other required permits or licenses; by court action for a prohibitive or mandatory injunction; or by such means as it may deem necessary or advisable.

8.8 Variance. The Committee, for good cause, may permit variances from the requirements of paragraphs 7.2(c), 7.3(c)(iii), 7.3(h) and 7.3(j) of this Declaration.

8.9 Liability. The Committee and its members shall not be liable for any action taken by it in good faith and shall be held harmless by all persons dealing with it, by the Declarant, and by the Association for any actions, except gross negligence or willful misfeasance or malfeasance.

ARTICLE IX

CONSTRUCTION OF IMPROVEMENTS

9.1 Period of Construction. All improvements constructed upon the Land shall be completed within twelve months from the date of Lot preparation or excavation unless written permission granting an extension of time is obtained from the Committee or unless construction is delayed by strikes, war, riot, or acts of God.

9.2 Waiver. During the period of construction of improvements, the restrictive provisions of this Declaration will be waived only to the extent necessary to permit completion of construction and only upon the assurance that there will be no continuing violation of any provision of this Declaration following completion of construction.

ARTICLE X

ENFORCEMENT

10.1 By Whom. The provisions of this Declaration may be enforced by the Declarant, by the Association, by the Town or by an Owner by an action for injunction, damages or otherwise. An Owner shall have the right to enforce the provisions of this Declaration only after giving the Association notice of an alleged violation of the provisions hereof and upon failure of the Declarant or Association to initiate remedial action as hereinafter provided within 30 days after receipt of such notice. The right of enforcement conferred upon an Owner shall not be effective as to any waiver granted by the Declarant, the Association, or the Committee under the provisions of this Declaration.

10.2 Enforcement by Correction. The Declarant or

the Association shall have the right to enforce all of the conditions of this Declaration or correct any violation of this Declaration. Any such action shall be taken in the following manner:

(a) Upon receiving notice of any violation, the Declarant or Association shall use reasonable effort to verify the existence of such violation.

(b) Upon verification of a violation, notice in writing shall be given to the Owner(s) of such Lot, which notice shall identify the Lot and the Owner thereof and shall describe the violation and shall require correction of such violation within 30 days following such notice.

(c) Upon Owner's failure to correct any violation or to assure the Declarant or Association that such violation will be corrected within the 30-day period, the Declarant or Association may cause the violation to be corrected. Such correction may include, but shall not be limited to, paying insurance premiums or any other expense, decorating or repairing improvements, removing unsightly objects, landscaping and removing any vehicle or object violating the parking or storage restrictions under Section 7.3 hereof.

(d) The correction of any violation made by the Declarant or Association in accordance with these provisions shall be at the expense of the Owner. The expense shall be deemed to include not only costs actually expended, but also a reasonable percentage for overhead and any and all other costs of management, including reasonable attorneys' fees and costs.

(e) The Declarant or Association shall have a lien for any amounts expended hereunder, which lien may be filed and enforced in a manner similar to the lien of the Association for unpaid assessments as provided in Section 6.8 hereof.

10.3 Enforcement at Law or in Equity. In addition to the foregoing, the enforcement of the provisions of this Declaration may also be by an action for specific performance, damages or other relief. A judgment in any action at law or in equity shall include all costs and expenses, including reasonable attorneys' fees and costs.

10.4 Effect of Violation. No violation of or failure to comply with any provision of this Declaration nor any action to enforce such provision shall affect, defeat, render invalid, or impair any mortgage, deed of trust, or other lien on any portion of the Land which was taken in good faith and for value and perfected by recording with the Clerk and Recorder of Gunnison County, Colorado, prior to the time of recording of a notice of violation which shall identify such portion of the Land

and the Owner(s) thereof and shall describe the nature of such violation or failure to comply. No such violation, failure to comply, nor action to enforce shall affect, defeat, render invalid, or impair the title or interest of the holder of, or the purchaser upon foreclosure under, any such mortgage, deed of trust, or other lien or result in any liability, personal or otherwise, to any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration. Nothing contained in this Section 10.4 shall be deemed to relieve any Owner of personal liability for assessments, costs, expenses, and fees accruing or owed under this Declaration and pertaining to his ownership of a portion of the Land. The Declarant, Association, Town or Owner of any Lot shall have the right to obtain personal judgment against any such Owner for such liability through any court of competent jurisdiction.

10.5 Cure by Town. In addition to the foregoing, Town shall have the right to take curative action to remedy any failure of Association to perform under the terms of this Declaration. Such right shall accrue only after Town has given written notice to Association and Association has failed within a reasonable time thereafter to initiate remedial action. Association shall reimburse Town for its reasonable costs incurred in taking such curative action plus interest thereon at the rate of eighteen percent (18%) per annum on amounts which are not paid within thirty (30) days of invoicing.

10.6 Town Lien. Town shall further have the right, upon thirty (30) days written notice to Association, to file a Notice of Lien encumbering Treasury Hill Lots 1-8 to secure payment of any unpaid amounts past due to Town for maintaining and/or plowing the Access Road from Kebler Pass to the Land.

ARTICLE XI

MAINTENANCE AND REPAIR OF IMPROVEMENTS

11.1 By Owner. An Owner shall maintain and keep in good repair all that part of the Land and improvements thereon contained on such Owner's Lot not required to be maintained and kept in good repair by the Association. It is the responsibility of each Owner to keep adequate fire, casualty and public liability insurance coverage on his Lot.

ARTICLE XII

MISCELLANEOUS

12.1 Effect and Duration of Covenants. The provisions of this Declaration shall be for the benefit of and binding upon the Land, each Lot, each Owner, and his successors, heirs, representatives, and assigns. Such provisions shall continue in full force and effect until January 1, 2020, at which time they shall be automatically extended for five successive terms of ten years each unless the Owners of 75% of the Lots shall, at a meeting duly called for such purpose, vote for the termination of the provisions of this Declaration. At any such meeting, each Lot shall have one vote.

12.2 Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any person with any right, title, or interest in a Lot, or intending to acquire any right, title, or interest in a Lot, the Declarant or Association shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines, or penalties, if any, due or accrued under this Declaration with respect to any Lot. Such statement shall, with respect to the party to whom it is issued be conclusive against the Declarant or Association that no greater or other unpaid amounts were then due or accrued.

12.3 Limited Liability. Neither the Declarant nor the Association, nor any agent or employee thereof shall be liable to any party for any action or for any failure to act with respect to any matter under this Declaration if the action taken or failure to act was in good faith, provided, however, that the provisions of this paragraph 12.3 shall not limit any liability of the Declarant to Town or its citizens, Association or agent or employee thereof.

12.4 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability or any other provision or any valid and enforceable part of any provision.

12.5 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision nor of any other provision hereof.

12.6 Mechanic's Lien Rights and Indemnification. Subsequent to the completion of any improvements, no labor performed or materials furnished and incorporated on a Lot with the consent or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against any other Lot not expressly consenting to or requesting the same. Each Owner (indemnitor) shall indemnify and

hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Land of any other Owner for construction performed or for labor, materials, services or other products.

12.7 Right to Mortgage. Any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage or encumbrance shall be one which has first and paramount priority under applicable law. The Owner of a Lot may create junior mortgages on the following conditions:

(a) That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses, and other obligations created by this Declaration and by the bylaws of the Association;

(b) That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon the said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association and, if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

12.8 Assignment. The Declarant may from time to time transfer, assign, and/or delegate his powers, rights, and obligations under this Declaration to the Association, except as otherwise specifically provided herein. The Declarant shall be deemed to have assigned such powers, rights, and obligations to the Association upon his insolvency, bankruptcy, death or dissolution. Except upon the death of the Declarant, such transfer, assignment, and/or delegation shall be effected by the recording with the Clerk and Recorder of Gunnison County a notice identifying this Declaration and specifically describing the provisions thereof affecting by such transfer.

12.9 Amendment.

(a) Subject to Town's reasonable written approval, the Declarant shall have the right to amend, delete, or supplement any provision of this Declaration and/or the Plat at any time prior to the sale of the Lots contemplated to be included within the Land.

(b) Subject to Town's reasonable written approval, following the sale of one or more Lots, the Owners shall have the right to amend, delete, or supplement any

provision of this Declaration and/or the Plat by means of any affirmative vote given by the Owners of 75% of the Lots, provided that any such amendment, deletion or supplement shall not have a materially adverse effect upon any vested right of an Owner under this Declaration. Such vote shall be taken at a meeting called for such purpose. At any such meeting, each Lot shall have one vote.

(c) Notwithstanding the provisions of subparagraph 12.9(b), above, the Declarant reserves the sole right and power to modify and amend this Declaration of Protective Covenants and/or the Plat by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in the Declaration of Protective Covenants and/or Plats, (2) subject to Town's reasonable approval, any corrections required to comply with the applicable laws, rules and regulations of or any agreement with any governmental entity having jurisdiction over the Property, (3) subject to Town's reasonable written approval, any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a residence upon any Lot, which are not contrary to the terms of the Agreement, and (4) subject to Town's reasonable approval, any changes necessary to conform the Plat to facilities as actually constructed upon the Land. This right and power of the Declarant to modify or amend this Declaration of Protective Covenants and the Plats, in whole or in part, as set forth in this subparagraph 12.9(c), shall be effective only until five years after the date of construction of the first improvements on the Property.

12.10 Notice. Any notice required or permitted herein shall be effective if sent to the Owner(s) or to the Owner's representative designated pursuant to Section 6.3.

IN WITNESS WHEREOF, this Declaration of Protective Covenants has been executed this ____ day of _____, 1991.

Phillip Coombs

STATE OF GUNNISON)
) ss.
COUNTY OF COLORADO)

The foregoing Declaration of Protective Covenants was
acknowledged before me this ___ day of _____, 1991, by
Phillip Coombs.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A

A parcel of land situated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 14 South, Range 86 West of the 6th Principal Meridian, Gunnison County, Colorado; being more particularly described as follows:

Commencing at the N $\frac{1}{4}$ corner of said Section 3; thence S00°00'00"E, being the Basis of Bearing, along the east line of the NW $\frac{1}{4}$ of said Section 3 a distance of 468.00 feet; thence N90°00'00"W a distance of 181.50 feet to the Point of Beginning;

thence N90°00'00"W a distance of 285.00 feet;

thence S00°00'00"W a distance of 320.00 feet;

thence S90°00'00"E a distance of 385.00 feet;

thence N00°00'00"E a distance of 298.00 feet;

thence N90°00'00"W a distance of 100.00 feet;

thence N00°00'00"E a distance of 22.00 feet to the Point of Beginning.

Said parcel contains 2.778 acres more or less.