

***DECLARATION OF CONDITIONS,  
COVENANTS, RESTRICTIONS AND  
EASEMENTS FOR ST. ANDREWS  
SUBDIVISION FILING NO.1 AND  
FILING NO.2***

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# DECLARATION

of

**Conditions, Covenants, Restrictions and Easements**

for

## **ST. ANDREWS SUBDIVISION FILING NO. 1 AND FILING NO. 2**

St. Andrews Development, Ltd., a Colorado Corporation is the owner of the property described as follows:

The real property located in Colorado Springs, Colorado and legally described on Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property has been subdivided and is now known as Lots 1-134, and Tracts A-C and E, inclusive, in St. Andrews Subdivision Filing No.1, according to the plat thereof recorded in El Paso County, Colorado and Lots 1-27, inclusive, and Tracts D, G and K in St. Andrews Subdivision Filing No.1, according to the plat thereof recorded in El Paso County, Colorado. This Property is called the "Subdivision" and individual lots designated by the recorded plats are called "Lot" or "Lots".

St Andrews Development, Ltd., a Colorado corporation, shall be the "Declarant" pursuant to this Declaration. Declarant desires to place protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value. Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part thereof, and shall inure to the benefit of each Owner thereof.

### **ARTICLE I**

#### **PROVISIONS TO MAINTAIN THE QUALITY OF LIFE**

The quality of life in the Subdivision is affected not only by the natural surroundings and preservation of existing vegetation, but also by the various uses of the land. This Article I contains provisions intended to protect the unique natural beauty and vegetation of the Subdivision and to regulate uses of the land in a harmonious and compatible manner.

**Section 101. Property Uses.** All Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family

dwelling. No business, commercial use or other activity conducted for gain, shall be carried on or within any Lot or Building Site except for home occupation businesses or activities that are allowed pursuant to the zoning ordinances of Colorado Springs, Colorado and except as provided in Section 108 hereof.

**Section 102. Structures.** No Structure shall be erected within the Subdivision except single-family dwellings and those Accessory Buildings and accessory Structures which have been approved by the Declarant. No Structure other than a dwelling, no Accessory Building, trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Structure may be placed on any Building Site before completion of the dwelling upon such Building Site except with the permission of the Declarant. All Accessory Buildings and Structures must be compatible and in harmony with the dwelling located upon the Lot.

**Section 103. Construction Type.** All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings.

**Section 104. Storage.** No building materials shall be stored on any Lot except temporarily during continuous construction or building or its alteration or improvement, unless enclosed within an approved Structure so as not to be visible from any neighboring property or adjacent streets.

**Section 105. Substantial Completion.** A Structure shall not be occupied in the course of original construction until substantially completed. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

**Section 106. Commencement of Construction.** Commencement of construction of a single-family dwelling upon a Lot shall be commenced within thirty-six (36) months of the Owner acquiring such Lot, unless such timeframe shall be extended with the written permission of the Declarant, which permission may be granted or withheld in the sole and absolute discretion of the Declarant. If commencement of construction of a single-family dwelling has not been commenced within the timeframe described herein, then the Declarant, at any time thereafter, shall have the right to purchase the Lot from the Owner at a purchase price equal to the original purchase price paid by Owner for such Lot, plus Owner's documented costs of Improvements to the Lot. Each and every Owner of a Lot shall be deemed to have accepted this Section 106 upon purchase of a Lot.

**Section 107. Construction Completion.** The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty days without permission of the Declarant, the Declarant will give the Owner thereof Due Notice of such fact, and if construction on such

Structure is not diligently commenced within thirty days after such notice, the unfinished Structure (or unfinished portion thereof) shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. If not so removed by Owner, the unfinished structure (or unfinished portion thereof) may forthwith be removed by the Declarant at the cost of the Owner.

**Section 108. Construction or Sales Offices.** Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

**Section 109. Construction Debris.** When construction is commenced upon a Lot, a trash container area will be provided, properly used and maintained. During the progress of construction, the owner of a Lot shall be responsible for insuring that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. No construction materials, debris or trash, shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly cleaned up.

**Section 110. Drilling Structures.** No derrick or other Structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphalt or other hydrocarbon substances be produced from any well located upon, in or under any Lot; provided, however, that such provision shall not be applicable to the three (3) existing well sites presently located within the Subdivision.

**Section 111. Easements.** There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant easements to others over, under, in and across each of the seven foot (7') strips along and adjoining each rear Lot Line of each Lot, and each of the five foot (5') strips along and adjoining each side Lot Line of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and drainage Improvements and for other similar or dissimilar facilities and purposes, and for anyone or more of such purposes. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance. Every Owner acquiring a Lot in the Subdivision acknowledges and agrees that any easement, use restriction, access restriction or other easement or restriction evidenced by or noted upon any recorded Plats of the Subdivision, the approved Development Plan applicable to the Subdivision or in any other document applicable to the Subdivision or the Lots is accepted by Owner and shall be binding and enforceable against the Lot or Lots owned by such Owner.

**Section 112. Underground Utilities.** All utilities that will be installed on, the Property after the date of execution of this Declaration, including, electrical, telephone and cable television service, except lighting standards and customary service devices for access, control or use of utilities shall be installed underground. The Declarant may grant

approval for temporary above ground utility lines as needed during construction. This Section 112 shall have no applicability to overhead utilities or aboveground utilities that are or were in place prior to the date of execution of this Declaration.

**Section 113. Access Restriction.** Some Lots may share common driveways with an adjoining Lot. Any such driveways will be shown on the recorded plat of the Lots involved. The Lots directly served by the common driveway, will have easements for use of the designated driveway. If one Lot installs the driveway before the other Lot is ready, the Owner of the second Lot shall pay to the Owner of the first Lot its fair share of the cost of the driveway (as determined by the Declarant), together with interest at the rate of twelve percent per annum, or such other rate as may be established by the Declarant. This payment will be in cash at the time a building permit for the second Lot is issued. The Declarant may approve alternative access to Lots with common driveways if it determines such alternative access is appropriate. Any such determination will be in writing and must be properly recorded in the real property records of El Paso County, Colorado by the Lot Owner prior to commencing construction activity on the Lot involved. Each Owner acknowledges and agrees that the Lots shall have no direct access onto or off of Templeton Gap Road, Colorado Springs, Colorado.

**Section 114. Garage and Driveway.** The Structures on each Lot or Building Site shall include an attached two-car or three-car fully enclosed garage or such equivalent garage arrangements as may be approved by the Declarant. Vehicles owned or operated by any residents of any Structure on a Lot shall at all times be parked within the garage attached to any Structure on such Lot. The site improvements on each Lot or Building Site shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles, which temporary parking shall only be utilized by the guests or invitees of the residents of any Structure on such Lot. All driveways shall be improved with asphalt, brick paver, or concrete paving unless otherwise approved by the Declarant.

**Section 115. Setbacks.** Except with the Declarant's approval no building, porch, eave, overhang, projection or other part of a building shall be located within twenty-five (25) feet of a front Lot line, or within five (5) feet of a side Lot line, or, where the side Lot adjoins a public street no building, porch, eave, overhang, projection or other part of a building shall be located within twenty-five (25) feet of a front Lot line, or within fifteen (15) feet of such side Lot line adjoining a public street. The approval of the Declarant to vary from the requirements of the immediately preceding sentence may be given

- (a) for fireplace projections integral to the building,
- (b) for eaves and overhangs, or
- (c) for construction which extends less than ten (10) feet into the setback areas adjoining public streets or less than five (5) feet into any other setback area and which the Declarant determines to be consistent with or required by the Lot terrain or Lot shape and consistent with superior design.



Any setback restrictions contained upon any recorded Plats of the Subdivision or upon the Development Plan applicable to the Subdivision which are more restrictive than the setback requirements of this Section 115 shall be enforceable against the Lots in question and the Owner of a Lot so affected.

**Section 116. Compliance with Building Codes.** All construction must also conform to the building codes, zoning codes and subdivision regulations of the City of Colorado Springs and/or County of El Paso, whichever is applicable, which regulations may vary from the provisions of these Covenants; provided however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

**Section 117. Minimum Floor Area.** No dwelling or Structure shall be erected upon a Lot located in St Andrews Subdivision Filing No.1 which has an Architectural Floor Area of less than 2,000 square feet. No dwelling or Structure shall be erected upon a Lot located in St Andrews Subdivision Filing No.2 which has an Architectural Floor Area of less than 3,200 square feet. Architectural Floor Area is the sum of the following percentages of gross square-foot areas:

Gross square feet on main living level	100%
Gross square feet on finished upper stories above main living level or garden level	75%
Gross square feet on finished garden level with direct walkout access to outside	50%
Gross square feet on finished basement level	25%
Gross square feet of balconies, raised decks, covered patios	25%
Gross square feet of attached garage area in excess of 400 square feet	50%

Gross square feet covers the exterior perimeter of the area being measured.

**Section 118. General Architectural Standards.** Architectural standards are established to the end that the Subdivision may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, Southwestern and Western styles typical of the Pikes Peak region are desirable. All buildings must be designed to fit the natural contours of the Lot without excessive grading. The Declarant shall have the

right and authority to establish and amend specific architectural standards from time to time.

**Section 119. Fences.** The intent of these Covenants is to encourage open spaces within the Subdivision. The only approved material for fences within the Subdivision is wrought iron, and fences may be constructed of different material within the Subdivision only with the prior written approval of the Declarant. The height and location of all fences within the Subdivision must be approved by the Declarant. The total fencing of front yards is not permitted. Notwithstanding anything to the contrary contained in these Covenants, the Owners of the Restricted Lots (as defined in Section 122 hereof) acknowledge and agree that the rear of such Lots are encumbered by the Access Agreements (as defined in Section 122 hereof) which restrict the Owners of such Lots from placing any improvements, landscaping or fencing within or upon such Lots in violation of the terms of such Access Agreements, or which would materially hinder the access to such Lots from the adjacent property to the rear of such Lots. Therefore, all Owners of any of the Restricted Lots acknowledge and agree that any fencing installed upon such Lots must be easily removable in twelve (12) foot sections to allow access to the Lots per the Access Agreements encumbering such Lots.

**Section 120. Height Restriction.** The height of any dwellings or other Structures or Accessory Buildings constructed or to be constructed upon any Lot in the Subdivision is hereby restricted and shall not exceed thirty (30) feet in height above finished grade; provided, however, that the height of any dwellings or other Structures or Accessory Buildings constructed or to be constructed on Lots 14 and 15 in St. Andrews Subdivision Filing No.2, according to the Plat thereof, shall not exceed twenty four (24) feet in height above finished grade. For purposes of these Covenants, such height shall be determined as follows:

By computing the height above finished grade as determined consistent with the height measurements utilized by Regional Building as of the date of recording these Covenants.

**Section 121. Golf Course Hazards.** Owners hereby recognize the dangers of living near the Golf Course and Owners shall take the necessary steps to maintain adequate hazard Insurance to protect against golf play. By accepting a deed for a Lot, each Owner assumes the risks of living near the Golf Course and forever waives and relinquishes any and all claims, suits and causes of action such Owner may have against the Declarant, the Association and the Architectural Committee arising from or related to the playing of golf on the Golf Course.

**Section 122. Further Restrictions.** Each Owner of a Lot within the Subdivision acknowledges and agrees that the following Lots are restricted and burdened by either or both of the Access Agreement executed by Declarant and the Colorado Springs Utilities Department of Gas and/or the Agreement executed by and between the Declarant, the City of Colorado Springs Department of Public Utilities and the First Interstate Bank of Denver, N.A. as Trustee of The Frank M. Houck Trust (collectively, the "Access

Agreements"): Lots 1-9, inclusive, Lots 93, Lot 96, and 114-134, inclusive, in St. Andrews Subdivision Filing No.1 and Lots 16-27, inclusive in St. Andrews Subdivision Filing No.2 (collectively, the "Restricted Lots"). Each Owner of any of the Restricted Lots acknowledges and agrees that such Owner shall not improve, landscape, fence or otherwise place any Structures or Improvements upon the Restricted Lots in violation of the terms of the Access Agreements pertaining to and affecting such Restricted Lot.

**Section 123. Obligations Concerning Restricted Lots.** Each owner, builder, contractor or other person or entity hereafter constructing a dwelling or other Structure upon a Restricted Lot acknowledges and agrees that they will be responsible for and insure that any buffer trees required to be located upon such Restricted Lot pursuant to the Development Plan are installed and located upon the Restricted Lot prior to any final inspection of such dwelling or Structure, and that such trees and the other landscaping located upon the Restricted Lot in question are in compliance with the Development Plan upon the completion of construction of the dwelling or Structure.

## **ARTICLE II**

### **DENSITY AND QUALITY STANDARDS**

**Section 201. Re-subdivision.** No more than one dwelling shall be erected or maintained within any Lot or the combination of two or more Lots or portions thereof unless approved by the Declarant.

**Section 202. Antennas.** No aerial, antenna, satellite dish or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any Structure, nor shall they be maintained at any other exterior location unless screened in a manner approved by the Declarant. Plans for such structures must be submitted to and approved by the Declarant prior to installation. If the Declarant disapproves, the party requesting approval may modify its plans to eliminate the Declarant's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Declarant, Declarant shall have the right, but not the obligation, to enter upon the Lot in question and remove the aerial, antenna, satellite dish or other such device. Declarant shall not be liable for any losses, costs or damages to any Owner of the Lot on account of such removal of the offending device, except for any such loss, cost or damage caused by Declarant's gross negligence or willful misconduct. Declarant may delegate its entry and removal rights hereunder to agents and independent contractors. In the event Declarant elects to remove a device pursuant to this Section, Declarant will submit to the Owner of the Lot from which the device was removed a written statement of the costs incurred by Declarant in removing such device. These costs shall be paid to Declarant within 20 days after receipt of such notice. If the costs of Declarant have not been paid after expiration of this 20 day period, Declarant may thereafter record a lien against the Lot involved for all costs (including reasonable attorneys fees) incurred by Declarant in removing the device and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded. This lien

may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant in foreclosing the lien and collecting the amounts due Declarant (including reasonable attorneys fees) shall be additional indebtedness secured by the lien.

**Section 203. Owner Maintenance.** In order to keep the Subdivision an attractive, quality environment, each Owner shall maintain the exterior of any Improvements, including buildings, other Structures, landscaping, walks, driveways and parking areas on his Lot in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surface becomes worn-off or weather beaten. Any dead or diseased landscaping will promptly be replaced, all lawns will be properly mowed and maintained, and weeds and other noxious plants will be controlled. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawn, shrubs, trees, other landscaping material, fences, signage, mailboxes and outdoor lighting.

**Section 204. Rebuilding or Restoration.** Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to an acceptable condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

**Section 205. Design Standards.** Declarant may, from time to time, adopt Design Standards further defining the architectural and development criteria for the Subdivision, the approval processes and other related matters. All Improvements in the Subdivision must also comply with these Design Standards.

### **ARTICLE III**

#### **LIVING ENVIRONMENT STANDARDS**

**Section 301. Building and Grounds Conditions.** Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on his Lot which tends to decrease the beauty of the neighborhood or the Subdivision as a whole or in the specific area.

**Section 302. Garage Doors.** Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

**Section 303. Maintenance Equipment.** All maintenance equipment, including yard and garden equipment, shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

**Section 304. Clotheslines.** No outdoor clotheslines will be permitted.

**Section 305. Refuse.** No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections.

**Section 306. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit or Structure. No annoying lights, sounds or odors shall be permitted to emanate from any living units or Structure.

**Section 307. Sound Devices.** No exterior speakers, horns, whistles, bells or other sound devices which will create a nuisance within the Subdivision or will otherwise tend to interfere with any adjacent Owner's use and enjoyment of his lot, except security devices used exclusively for security purposes, shall be located, used or placed on any Structure or within any Building Site.

**Section 308. Landscaping.** Within six months after substantial completion of a dwelling or within any extension of that period granted by the Declarant, all landscaping shown in any approved landscaping plans must be properly installed. Unless otherwise approved by the Declarant, at least fifty percent of the front yard area shall be covered with bluegrass lawn or its equivalent. For purposes of this section, the front yard is defined as the area of the Lot between the paved surface of any street adjacent to the Lot and the building setback line on the lot except as specifically provided for in this section. The Owner of any Lot having a strip of land between the curb and the sidewalk shall cover such strip of land with bluegrass lawn or its equivalent only unless otherwise approved by the Declarant, and such Owner shall be responsible for maintaining such strip of land. Notwithstanding the foregoing, the landscaping of this area between the curb and the sidewalk shall be in addition to the requirement to maintain at least fifty percent of the front yard with lawn. Additionally, the City often provides the first homebuyer within a newly developed subdivision with a tree. Each Owner receiving such a tree from the City shall be required to plant that tree within the strip of land between the curb and the sidewalk, provided such area exists on that Lot or, upon the request of Declarant, at a location upon such Lot as determined by Declarant. Maintenance is required on all rear yards which are adjacent to the Golf Course where natural growth may exist between manicured landscaping and rear Lot lines. Each Owner agrees to preserve existing trees, scrub oak and other natural vegetation upon his Lot and no existing trees, surface boulders, or scrub oak shall be removed from any Lot unless required by construction activity and then only with the approval of the Declarant. The Owners of the Restricted Lots located in St. Andrews Subdivision Filing No.1 and the Owner of Lot 27 in St. Andrews Subdivision Filing No.2 will have fencing installed by Declarant adjacent to Templeton Gap Road located in the back yard of such Lots. Additionally, such Owners shall have buffer trees placed upon and located within the above identified Restricted Lots. The buffer trees shall be of the type identified by the landscape plan within the Development Plan and shall be located as specified and required pursuant to the landscape plan within the Development Plan. The

Owners of such Restricted Lots acknowledge and agree that each such Owner is responsible to locate, maintain and replace, as needed, such buffer trees as specified by the Development Plan and the Owners of all of the Restricted Lots acknowledge and agree that any landscaping of the Restricted Lots shall be done and performed in a manner consistent with the Access Agreements. In the event that such Owner fails to locate, maintain and replace, as needed, the buffer trees upon the Restricted Lot or in the event that any Owner of a Restricted Lot fails to landscape in a manner consistent with the Access Agreements, then the Declarant shall have the right to enter upon the Restricted Lot in question and to perform any maintenance or replacement of such buffer trees required by the Development Plan or to otherwise take the steps necessary to place the landscaping on the Restricted Lots in compliance with the Access Agreements. Declarant shall not be liable for any losses, costs or damages on account of performing such actions, except for any such loss, cost or damage caused by Declarant's gross negligence or willful misconduct. Any costs incurred by Declarant in taking any such action shall be paid to the Declarant by the Owner of the Restricted Lot in question within twenty (20) days of receipt of an invoice therefore. Declarant shall have the right to collect such costs from the Owner by any method allowable under these Covenants, including without limitation, Section 710 hereof.

**Section 309. Weeds.** All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious Insects or plant diseases and from weeds which, in the reasonable opinion of the Declarant, are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Declarant, causes undue danger of fire.

**Section 310. Mowing and Pruning.** In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot shall mow, cut, prune, clear and remove from the Lot diseased trees, unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. The Declarant has the right (but not the duty) to enter upon any Lot and perform this work after Due Notice to the Owner in which case the reasonable costs incurred by the Declarant in performing such work will be an additional assessment against the Lot involved.

**Section 311. Transmitters.** No electronic or radio transmitter of any kind which tends to interfere with or create a nuisance with respect to any other Lots or the Owners thereof, other than garage door openers or cordless telephones, shall be operated in or on any Structure or within any Building Site.

**Section 312. Animals.** Domesticated bird or fish and other small animals permanently confined indoors will be allowed. No other animals, except an aggregate of not more than three domesticated dogs or cats (which must be fenced or restrained at all times within the Lot) will be permitted within the Subdivision. No animal of any kind shall be permitted which in the opinion of the Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

**Section 313. Parking.** No overnight parking will be allowed on any public or private streets within the Subdivision. In addition, no parking of any kind will be permitted in any designated "no parking" areas shown on the recorded Plats of the Subdivision.

**Section 314. Trailers, Campers, etc.** No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit or truck, excepting only pickups solely for the private use of the residents of a dwelling shall be parked within any Lot or Building Site except in a completely enclosed Structure, or fully screened in a manner approved by the Declarant.

**Section 315. Inoperative Vehicles.** No stripped down, partially wrecked or inoperative motor vehicle, or any part thereof, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible from any neighboring property or street.

**Section 316. Vehicle Repairs.** No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

**Section 317. Signs.** The only signs permitted on any Lot or Structure shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent
- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale, administration and directional purposes installed by or with the permission of Declarant during development;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) Such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the Design Standards, the Declarant may, upon Due Notice, require it to be modified or removed.

**Section 318. Construction Activities.** During construction, all construction debris will be stored in a manner which will prevent its being blown away or otherwise dislodged by storms or high winds and will be removed from the construction site at least once per week. If these requirements are not complied with during construction, the Declarant may

notify the Owner or contractor involved, and, if the deficiencies have not been remedied within the next two days, the Declarant may then remove the trash and debris. The Owner and Contractor involved will have no claim for damages or otherwise on account of such removal, and all costs incurred by the Declarant will be an assessment against the lot involved and will be paid by the lot Owner within 30 days after receipt of a bill from the Declarant. If this assessment is not timely paid, it will become a lien against the lot involved as provided in Section 504 below.

**Section 319. Natural Ground Cover.** The natural ground cover of a lot shall not be disturbed and there will be no grading or other soil or earthwork performed on a lot until plans for placing Improvements on the lot have been properly approved by the Declarant as provided in these Covenants. After excavation and completion of the improvements on a Lot, the ground will be restored to as near its original contours and appearance as possible. Changes of more than one foot from existing grades require the approval of the Declarant.

**Section 320. Drainage.** All changes from existing drainage channels or patterns on any lot must not cause any harm or damage to other property, whether within or outside the Subdivision. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from any Structures on the Lot and so as to protect foundations and footings from excess moisture. Special attention shall be paid to the re-vegetation of approved grades and cuts to eliminate erosion.

**Section 321. Hazardous Materials.** No materials shall be transported to, from or within the Subdivision in such a way as to create a nuisance or hazard. Storage, use or disposal of hazardous or radioactive material within the Subdivision is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

**Section 322. Solar Devices.** The utilization of passive or active solar energy devices is encouraged. However, all solar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in a manner satisfactory to the Declarant.

**Section 323. Foundations: Soils Reports.** Each Owner of a Lot acknowledges and agrees that the Owner has received and reviewed or has had the opportunity to receive and review the following soils reports:

- (a) Palmer Bluffs Subsidence Hazard Study dated August 7, 1992,
- (b) Geotechnical Engineering Study dated August 7 J 1992, and
- (c) Phase II Coal Mine Subsidence Hazard Study Palmer Bluffs (St. Andrews) subdivision, Colorado Springs, Colorado, dated April 9, 1993 (collectively, the Soils Reports.). Each Owner of a Lot and any person or entity constructing any Improvement or Structure upon a Lot acknowledges and agrees that all Structures and Improvements are



required to have engineered foundations in conformity with site specific geo-technical concerns applicable to each Lot.

## **ARTICLE IV**

### **RESERVED RIGHTS OF DECLARANT**

**Section 401. Building Approval.** No Improvement shall be permitted, except in accordance with plans, specifications and other information submitted to the Declarant and approved by the Declarant no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Declarant include but are not limited to: the exterior appearance, material, color, height and location of each Structure, drive, walk, fence, mailbox, grading of site, site lighting, and location, size and type of any landscaping material including grass, ground cover, ornamental rock, shrubs and trees.

(a) In granting or withholding approval, the Declarant shall adhere to any standards specified In these Covenants and shall consider among other things: the requirement of the Design Standards, the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings and surrounding use the proper relation of the Structure to the environment and to surrounding uses, the degree of disturbance to the natural terrain and vegetation, and the degree, if any, to which the proposed Structure or covering will cause intrusions of sound. light or other effect on neighboring sites beyond those reasonably to be expected in a quality urban residential area from considerate neighbors.

(b) All plans, samples, and other materials to be submitted to the Declarant shall be submitted in duplicate. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan in said minimum scale shall show the location of all buildings, drives, walks, fences, and any other Structures. Proposed new contours throughout the Lot and abutting street elevations on all sides shall also be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the lot not covered by Structures. The size and type of all new plant materials shall be indicated, and all landscaping plans shall be in conformity with the Development Plan.

(c) In discharging its rights and obligations hereunder, the Declarant makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Structures on the lot, and the Declarant shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Structure to be constructed by an Owner upon a Lot is suitable for that Lot and each Owner further acknowledges and agrees that each Owner, and such Owner's contractors

or representatives are ultimately' and fully responsible for any construction techniques, measures and means utilized in the construction of a Structure upon a Lot.

**Section 402. Charges.** The Declarant may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration. The Declarant shall be entitled to retain one copy of all approved plans as part of its files and records.

**Section 403. Variances.** The Declarant shall have the authority to grant for a lot or Building Site a variance from the terms of one or more of the Sections of Articles II or III of these Covenants, or the Design Standards, subject to terms and conditions which may be fixed by the Declarant and will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of those sections could result in unnecessary hardship. Following an application for a variance:

(a) The Declarant shall, within 30 days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Declarant fails to act on the request for the variance within this 30 days, the variance shall be deemed not to be granted.

(b) A variance granted hereunder shall run with the Lot or Building Site for which granted.

(c) A variance shall not be granted unless the Declarant shall find that all of the following conditions exist:

(1) the variance will not authorize the operation of a use other than private, single-family residential use;

(2) owing to the exceptional and extraordinary circumstances. literal enforcement of the sections above enumerated will result in unnecessary hardship;

(3) the variances will not substantially or permanently injure the use of other property in the Subdivision;

(4) the variance will not alter the essential character of the Subdivision;

(5) the variance will not weaken the general purposes of these Covenants;

(6) the variance will be in harmony with the spirit and purpose of these Covenants; and

(7) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

(d) If a variance is denied. another application for substantially the same variance for the Lot involved may not be made for period of one year after submittal of the original request.

## **ARTICLE V**

### **DECLARANT, ARCHITECTURAL COMMITTEE**

#### **Section 501. Declarant Rights; Composition of the Architectural Committee.**

Ten years after the Declarant first conveys a Lot in the Subdivision to an Owner who is not the Declarant, or at such earlier time as the Declarant may so elect in Declarant's sole discretion, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other responsibilities, functions, rights and powers under these Covenants to an Architectural Committee, as described hereafter. The Architectural Committee shall consist of no less than three individuals and no more than five individuals, each of whom shall be an Owner of a Lot within the Subdivision, or a member of the Association. After the Declarant has transferred its rights, powers and responsibilities pursuant to this Section 501, anyone or more members of the Architectural Committee may from time to time be removed and their successors designated by the Association or if there is no Association by an instrument signed and acknowledged by the Owners of at least fifty percent (50%) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County. Vacancies in the Architectural Committee may be filled by action of the remaining members of the Committee, subject always to the power of the Owners to remove and designate members of the Committee as provided above.

**Section 502. Delivery of Items and Approval Process.** Any item required or permitted to be delivered to the Declarant shall be deemed properly delivered when actually received by the Declarant at the Declarant's principal office, which initially shall be the office of the Declarant at 5525 N. Union Blvd., Suite 203, Colorado Springs, Colorado. Subsequent to the date of formation of the Architectural Committee, as provided in Section 501 hereof, the Architectural Committee shall designate a new address for the delivery of any such items. All action required or permitted to be taken by Declarant or subsequently by the Architectural Committee shall be in writing and any such written statement shall protect any person relying on the statement. If the Declarant or the Architectural Committee does not execute and acknowledge such a statement within thirty days after delivery of all the required materials to the Declarant or the Architectural Committee, as applicable, the materials so delivered shall be deemed approved for the purpose of these Covenants (except in the case of a request for variance). Any required plans and specifications must be submitted in duplicate. One set of these plans and specifications and details with the approval or disapproval endorsed thereon shall be returned to the

person submitting them and the other copy thereof shall be retained by the Declarant or Architectural Committee, as applicable, for its permanent files. Upon formation the Architectural Committee may take action without a meeting by a written Instrument signed by all of the members of the Committee and the Committee may delegate to one or more members of the Committee any or all functions and powers of the Committee and until each delegation is revoked or modified the action of the member to whom such delegation is made shall constitute the action of the Committee for the purposes of these Covenants.

**Section 503. Liability.** The Declarant, the officers, directors, shareholders and agents of the Declarant, and the members of the Architectural Committee shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud. Neither the Declarant, the officers, directors, shareholders, or agents of the Declarant, the Architectural Committee or any architect, engineer, or agent acting on behalf of the Architectural Committee or Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans and specifications.

**Section 504. Violation: Remedy.** Until the time for establishment of the Architectural Committee as provided in Section 501 hereof Declarant may and after the establishment of the Architectural Committee, the Architectural Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Committee or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than five (5) days, unless a shorter period of time is otherwise provided for In these Covenants), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Committee or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a lot hereby grants a license to the Declarant and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Architectural Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and costs of collection (including reasonable attorney's fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. The Architectural Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection and the judgment in any such action shall include interest as above provided and the costs of

collection. The foregoing specified rights and remedies shall not limit the right of any lot Owner to enforce these Covenants pursuant to Section 907 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant and the Architectural Committee shall have the right to proceed under this Section 504. In the event that the Declarant or Architectural Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or Improvements thereon that is unrelated to the mediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or the Architectural Committee. In no event shall there be any liability for damage to a Structure that is in violation of these Covenants.

**Section 505. Declarant's Rights to Complete Development of the Property.** No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Property or nearby areas and to subdivide, re-subdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements 001 any property owned by Declarant within the Property: to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property; or to post signs incidental to development, construction, promotion, marketing, sales, or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill, or grade any property owned by Declarant: to change any landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any Structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Property, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Committee or of the Association for any such activity of Improvement to property by Declarant on any property owned by Declarant or by the Association. Nothing in this Section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration or in the Association documents, which rights are incorporated in this section by this reference.

## **ARTICLE VI**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 601. Formation.** The Association may be formed at any time, either before or after the recordation of these Covenants. The liability of Owners for the payment of assessments shall only accrue from the later to occur of the (i) incorporation of the Association or (ii) the recordation of these Covenants.

**Section 602. Membership.** The following shall be members of the Association: The Declarant and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification: for membership.

**Section 603. Classes of Membership.** The Association shall have two classes of voting membership

**Class A.** Class A Members shall be all Owners, with the exception of the Declarant until there ceases to be a Class B Member, and each membership shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

**Class B.** The Class B Member shall be the Declarant or its assigns, who shall be entitled to three (3) votes for each Lot which it owns. The Class B membership shall cease and be converted to Class A membership ten (10) years after the recordation of these Covenants or at such earlier time as the Declarant, in the Declarant's sole discretion, may elect.

Any corporation, partnership or other legal entity who is an Owner designate a person to act in its behalf to exercise all rights of a Member or Owner, including without limitation, the right to serve as a member of the Board of Directors of the Association, or to serve as a member of the Architectural Committee.

**Section 604. Non-liability of Association and Others.** The Board of Directors, the officers and committees of the Association and the Declarant, including without limitation, the officers, directors, employees, agents, and representatives of the Declarant, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf 'of the Association, except for willful misconduct done in bad faith or gross negligence and shall be indemnified from all such liability as provided in the Association's Bylaws.

**Section 605. Management of Association, Bylaws, Rules, and Regulations.** The affairs of the Association shall be managed by its Board of Directors who shall be elected in accordance with the Bylaws of the Association. The Association shall have the authority to adopt and amend its Bylaws, but such Bylaws may not be in conflict with this Declaration. In the event of a conflict among the documents pertaining to the Association, the following priority shall apply: (i) the Declaration, (ii) the Association Articles of Incorporation and then (iii) the Bylaws. The Association shall also have the authority to adopt and amend Rules and Regulations pertaining to the use of the Common Areas.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS

**Section 701. Creation of the Obligation for Assessments.** Each Owner, for each Lot owned by acceptance of a deed therefor, or interest therein, whether or not it shall be so expressed in such deed or instrument creating the: interest in the Lot, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines, and other sums which are described in these Covenants and which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to him and/or his Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by nonuse of the Common Areas or any facilities contained therein, by abandonment or leasing of his Lot, or claims the Declarant or any other person or entity.

**SECTION 702. Purpose of Assessments.** The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the Common Areas, including any capital improvements made thereto, as more specifically provided herein.

**Section 703. Annual Assessments.** The annual assessment shall specifically include, but shall not be limited to the following common expenses:

- (a) expenses of management;
- (b) taxes and assessments the Common Areas
- (c) premiums for all insurance which the Association maintains as required or permitted under these Covenants;
- (d) common lighting, water and other common utility and sewer service charges;
- (e) repair, replacement, improvements and maintenance which is the responsibility of the Association as provided in Article VIII, Section 801 hereof;
- (f) wages for Association employees;
- (g) legal and accounting fees;
- (h) any deficit remaining from a previous assessment year;

- (l) a working capital fund;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds;
- (k) trash removal;
- (l) security services; and
- (m) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of these Covenants.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof.

**Section 704. Fixing Assessments.** For the calendar year 1993, the annual assessment shall be Three Hundred Dollars (\$300.00) per Lot in the Subdivision. Each year thereafter the Association's Board of Directors may fix the annual assessment at an amount deemed sufficient to meet the needs of the Association; provided, however, that notwithstanding anything in this Section 704 to the contrary, the annual assessment shall never exceed \$300.00, exclusive of optional user fees and an insurance premiums paid by the Association.

**Section 705. Social Assessments.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto.

**Section 706. Procedure for Assessment Under Section 705.** Any assessment under Section 705 of this Article shall be made pursuant to the procedures for special assessments set forth in the Bylaws of the Association.

**Section 707. Rate of Assessment: Declarant Credit.** Annual and special assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association, provided however, notwithstanding any provision herein to the contrary, the Declarant and all Lots owned by Declarant shall be subject to assessment or other charge under these Covenants only as provided as follows: all Lots owned by the Declarant shall be assessed or charged at a rate equal to twenty five percent (25%) of the annual and special assessment or other charge rate for the Lots and further provided that Declarant shall receive as a credit against any special or annual assessment due upon any Lot or Lots owned by Declarant an amount equal to any and all costs or expenditures



incurred by Declarant for the initial installation, maintenance or repair of any Common Areas or Improvements affecting the Common Areas, whether incurred prior to or subsequent to the formation of the Association, including without limitation, any costs or expenditures incurred by Declarant for the initial installation, maintenance and repair of

- (a) any Declarant installed fencing within the Subdivision,
- (b) the entryway into the Subdivision,
- (c) any landscaping installed or placed within the Subdivision by Declarant and
- (d) any other expenses or costs incurred by the Declarant for the common use and benefit of the Owners of any Lot within the Subdivision (the "Declarant Credit").

The Declarant Credit shall be calculated by the Declarant upon completion by Declarant of the work giving rise to such Declarant Credit. Any annual or special assessments coming due from Declarant to the Association shall be applied against the Declarant Credit and shall reduce the amount of the Declarant Credit. The remaining balance of the Declarant Credit, if any, may be transferred, assigned or sold by the Declarant to any other person or entity at any time hereafter and such person or entity acquiring the Declarant Credit is authorized to use the Declarant Credit so acquired as an offset against any annual or special assessments due with respect to any Lot or Lots owned by such person or entity.

#### **Section 708. Assessment Procedure.**

(a) **Annual Assessments.** No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the case requirements needed by it to provide for the administration and performance of its duties during the following assessment year. The annual assessment shall be payable, in the sole discretion of the Association, either in one (1) payment due from each Lot Owner within fifteen (15) days of receipt of the annual assessment notice from the Association or in monthly installments (the "monthly assessment") on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual and/or monthly assessment.

(b) **Special Assessments and Other Sums:** Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of these Covenants, the Association's Bylaws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against

such Owner and his Lot and shall be enforceable provided herein, except that such assessment shall not require any vote of the Members. Any other sum imposed by the Board as provided hereunder shall also be deemed a special assessment but shall not require a vote of the Members.

(c) **Notice.** Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the owner of his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice given.

**Section 709. Certificate of Payment.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 710. Effect of Nonpayment of Assessments-Remedies of the Association.**

(a) **General.** Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee for each delinquent annual or monthly assessment. The amount of the late charge shall be as set forth in the bylaws of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use the Common Areas. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided. and a reasonable attorneys' fee to be fixed by the court, together with the expenses, late charges and costs of the action.

(b) Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge per unpaid annual or monthly assessment or other sum, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the interest of the Owner in that Lot and shall be a continuing lien, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charges. any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot and the Owners interest therein, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot, at the address of

the lot or at such other address as the Association may have in its records for the Owner of the lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest, has been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for in the foreclosure of mortgages in the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due.

(c) **Authority.** Each such Owner, by his acceptance of a deed to a lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot Owners. The Association, acting on behalf of the lot Owners shall have the power to bid at foreclosure sale and to acquire and hold lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

**Section 711. Working Capital.** The Association shall require an Owner who purchases a lot from Declarant to pay to the Association an amount equal to One Hundred Dollars (\$100.00), which sum shall be held by the Association as and for working capital. Such sums shall not be refundable to such Owner but, if the Association decides that such sums are not required for working capital, shall be placed in the general revenues. Furthermore, such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

**Section 712. Subordination of the lien to Mortgagees.** The lien of the assessments provided for herein shall be subordinate to the lien of any bona fide purchase money loan evidenced by a First Mortgage of record (including deed of trust). Sale or transfer of any lot shall not affect the lien for said assessment charges except that transfer of title to any lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve any lot from liability for any assessment charges thereafter becoming due, nor for the lien thereof; provided however, that in the event of a foreclosure of a First Mortgage or the taking of a deed in lieu thereof, the holder of the First Mortgage shall not be liable for the unpaid charges and assessments that accrue prior to acquisition of title, except as otherwise provided by the Colorado Common Interest Ownership Act, as the same may be hereafter

amended.

**Section 713. Notice to Mortgagees and Inspection of Books.** Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

**Section 714. Homestead.** The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

**Section 715. Exempt Property.** The following Property subject to these Covenants shall be exempt from the assessments created herein:

- (a) all Property dedicated to and accepted by local public authority; and
- (b) the Common Areas, except to the extent that any of the Common Areas are located within the boundary of a Lot.

## **ARTICLE VIII**

### **MAINTENANCE**

**Section 801. Association Maintenance.** The Association shall be responsible for the repair, replacement, improvements and maintenance of the Common Areas and all improvements thereto.

## **ARTICLE IX**

### **GENERAL PROVISIONS FOR EFFECT OF THE COVENANT**

**Section 901. Definitions.** The following words and expressions as used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

- (a) **Accessory Building.** Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities, separate guest houses without kitchens, separate servants quarters without kitchens and other buildings

customarily used in connection with the single-family residence.

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

(c) **Association**. The St Andrews Homeowners Association, a Colorado nonprofit corporation formed or to be formed in accordance with its Articles of Incorporation and Bylaws.

(d) **Building Site**. A Lot as established by the recorded Plat or the combination of two or more Lots or portions thereof as approved by the Declarant.

(e) **Common Area or Common Areas**. Common Area or Common Areas shall include (i) Tracts A-C and E in St. Andrews Subdivision Filing No.1, Tracts D and K in St. Andrews Subdivision Filing No.2 and all other real property owned by the Association, including any Improvements thereon, as well as any easements owned by the Association for the common use and enjoyment of the Members of the Association or real property or easements maintained by the Association for the benefit, use and enjoyment of the Members of the Association and (ii) the fencing, trees and right-of-way landscaping which constitute the City of Colorado Springs approved landscape buffer along Templeton Gap Road and the retaining wall along Muirfield Drive, south of the park.

(f) **Architectural Committee**. A committee established to maintain architectural control, as provided in Article V.

(g) **Covenants**. This Declaration and the provisions contained in it.

(h) **Declarant**. St. Andrews Development, Ltd., a Colorado Corporation, or its specific replacement or substitution pursuant to Section 915 below.

(i) **Design Standards**. The guidelines for uses and architectural approvals which Declarant or the Architectural Committee may, from time to time, adopt pursuant to Section 205 of these Covenants.

(j) **Development Plan**. The Development Plan approved by the City of Colorado Springs applicable to the Subdivision on March 15, 1993.

(k) **Due Notice**. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least 10 days prior to the action required by the notice.

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

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

(n) **Golf Course.** The eighteen-hole golf course presently known as Colorado Springs Country Club and Golf Course, portions of which are adjacent to some of the Lots within the Subdivision.

(o) **Improvement.** Any Structure. object or activity on a Lot which alters the previous exterior appearance of the Lot or any Structures located on it. Grading activity, removal of natural vegetation. construction of any Structures or additions to remodeling, repainting and material changes to any previously approved building, Structure or landscaping plans all fall within the definition of an "Improvement".

(p) **Lot.** Each area designated as a lot in any recorded Plat applicable to the Subdivision.

(q) **Lot Lines.** Front side and rear Lot Lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A side Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.

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

(s) **Plat or Plats.** The final approved Plats applicable to St. Andrews Subdivision Filing No.1 and Filing No.2, as such Plat as such Plats are recorded in the real property records of El Paso County, Colorado.

(t) **Structure.** Any thing or device, other than trees and landscaping, the placement of which upon any Building Site might affect its architectural appearance. including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, lawn ornamentation, driveway, walk patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting or play equipment. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of

surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(u) **The Subdivision.** The area subdivided as St. Andrews Subdivision Filing No.1 and Filing No.2 according to the Plats recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.

**Section 902. Captions.** Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account In construing the section.

**Section 903. Declarant Resolves Questions of Construction.** These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning' the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised its discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant at all times exercised its discretion in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant or the Architectural Committee under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious. In the event that the rights and powers of the Declarant are transferred to an Architectural Committee pursuant to the terms of these Covenants, then the provisions of this Section 903 shall be applicable to the Architectural Committee to the same extent as this Section provides for the Declarant.

**Section 904. Covenants Run With the Land.** These Covenants shall run with the land and shall Inure to the benefit of and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and Interest in any Lot in the Subdivision.

**Section 905. Covenants are Cumulative.** Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

**Section 906. Waivers.** Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these covenants to require constant, harsh, or literal enforcement of them as a requisite of their continuing validity and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

**Section 907. Enforcement.** These Covenants are for the benefit of the Owners jointly and severally, the Declarant, the Architectural Committee and the Association and may be enforced by an action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy instituted by one or more Owners, the Declarant, the Association, the Architectural Committee, or any combination of these. The First Interstate Bank of Denver, N.A. as Trustee under an Agreement with Frank M. Houck, or its successors in such capacity, is hereby empowered to enforce the terms of these Covenants if the Declarant, the Architectural Committee, the Association and/or the Owners have failed to take adequate enforcement action in any case. All costs, including reasonable attorneys' fees, incurred by Declarant, the Association, or the Architectural Committee in connection with any successful enforcement proceeding initiated by them (along or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation, of the Declarant to do such things.

**Section 908. Duration of Restrictions.** Unless sooner terminated as provided in Section 909, the restrictions and other provisions set forth in these Covenants shall remain in force until twenty (20) years after the date of recordation of these Covenants in the El Paso County records, and shall be automatically renewed for successive periods of ten years unless before the expiration of the initial twenty (2) years, or before the end of any ten-year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed, and acknowledged by the Owners of a majority of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty (20) year term or ten (10) year extension, as applicable.

**Section 909. Amendment and Termination.** All sections of these Covenants (except Section 111) may be terminated at any time, and from time to time anyone or more



sections of these Covenants (except Section 111) may be amended or one or more new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County and provided that any other requirements set forth in this Section 909 are satisfied. Notwithstanding, the immediately preceding sentence, until ten (10) years after the recordation of these Covenants, Declarant reserves the right to unilaterally amend these Covenants, including addition of new sections hereto without having to obtain the approval of the percentage of Owners specified in the first sentence of this Section 909. Notwithstanding anything contained in this Section 909 to the contrary, any proposed amendment or repeal of any provision of this Declaration, whether proposed by Declarant or the Owners, shall not be effective unless Declarant and The First Interstate Bank of Denver, N.A. as Trustee under an Agreement with Frank M. Houck have given their prior written consent to any such amendment or repeal, which consent must be evidenced by execution by Declarant and The First Interstate Bank of Denver, N.A. as Trustee of any certificate of amendment or repeal. The foregoing requirement to obtain the consent of Declarant to any amendment or repeal shall automatically terminate at such time as the last lot within the Subdivision has been conveyed by Declarant to the first Owner other than Declarant.

**Section 910. Partial Amendments.** These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant, the First Interstate Bank of Denver, N.A. as Trustee under an Agreement with Frank M. Houck, and one hundred percent (100%) of the then Owners of such portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendment contains at least twenty contiguous lots;
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonably determines that the amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots.

**Section 911. Liability of Employees.** No member of the Association, the Architectural Committee, officer or director of Declarant, or any of their employees or agents will be liable to any party whatsoever for any act or omission taken pursuant to these Covenants unless the act or omission amounts to fraud or willful misconduct.

**Section 912. Severability.** If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

**Section 913. Action in Writing.** Notices, approvals, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application

**Section 914. Notices.** Any writing described in Section 913, including but not limited to any communication from Declarant, the Association or the Architectural Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise:

(a) to the dwelling situate on the Lot owned by that Owner; or

(b) if there is no dwelling, then to the address furnished by the Owner to the Architectural Committee and if the Owner has not furnished an address, then to the most recent address of which the Architectural Committee has a record.

**Section 915. Substitution of Declarant.** The Declarant may, at its option, replace Declarant by substituting another person or entity for Declarant to fulfill the functions assigned to Declarant by these Covenants. Such a substitution must be accomplished by written instrument specifically referring to Section 915 of these Covenants. Any such replacement or substitution will become effective upon the appropriate written instrument being properly recorded in El Paso County, Colorado.

**Section 916. VA/FHA Approvals.** Until the termination of Declarant's reserved rights under this Declaration, and provided further that the FHA, the VA, or any other Agencies are insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the appropriate Agencies, in accordance with the procedure set forth herein:

(a) transfer of ownership of any of the Common Areas owned by the Association; or

(b) annexation of any additional real property to the Property; or

(c) material amendments to the Articles of Incorporation or the Bylaws of the Association.

**Section 917. Colorado Common Interest Ownership Act.** Declarant hereby claims that this Declaration and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned communities from the provisions of CCIOA if the annual average common expense liability of each lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed three hundred dollars. Declarant has incorporated that limitation on annual average common expenses in Section 704 of this Declaration. If the amount of the permissible average annual common expense liability is amended in CCIOA to exceed \$300, then Section 704 shall be automatically amended to such higher amount. Notwithstanding this exemption, this Declaration and the Subdivision are subject to the provisions of C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107 of CCIOA.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 22 day  
of May, 1997. 3

DECLARANT:

ST. ANDREWS DEVELOPMENT, LTD., a Colorado corporation

Attest:

By: 

Its: Secretary, Abst.

By: 

Its: LeRoy Landhuis  
President

STATE OF COLORADO )  
  ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 21 day of  
May, 1997, by LeRoy Landhuis, as President and by  
Douglas M. Simons as Secretary of St. Andrews Development, Ltd., a Colorado  
corporation, Declarant.

My Commission Expires: 3/3/95

Witness my hand and official seal.



C. M. Arbuckle  
Notary Public