

DECLARATION OF COVENANTS  
OF  
EBY CREEK MESA

Declaration of Covenants, conditions and restrictions  
of Eby Creek Mesa.

THIS DECLARATION, made this 28<sup>th</sup> day of  
OCTOBER, 1981, by Hunter Antonides and Loren Chambers, having  
their office and principal place of business in the County of Eagle,  
State of Colorado (hereinafter referred to as the "Subdivider," or  
"Declarant"), their successors and assigns:

WITNESSETH:

WHEREAS, Subdivider is the owner of real property located  
in Eagle County, Colorado, more particularly entitled Eby Creek  
Mesa, and has caused said property to be surveyed, subdivided and  
platted (at one time or in Filings) into tracts as shown on the plat  
of Eby Creek Mesa, (hereinafter referred to as the "Subdivision"  
or "Property") which plat or first Filing thereof has been filed for  
record in the real property records of Eagle County, Colorado, on  
the \_\_\_\_\_ day of OCTOBER, 1981.

WHEREAS, Subdivider desires to provide for the preservation  
of the values and amenities in said community, for the maintenance  
of common facilities, and to this end desires to subject the real  
property described, together with such additions as may hereafter  
be made thereto, to the covenants, restrictions, easements, charges  
and liens, hereinafter set forth, each and all of which is and are for  
the benefit of said property and each owner thereof; and

WHEREAS, Subdivider has incorporated under the laws of  
the State of Colorado, as a non-profit corporation, the Eby Creek  
Mesa Homeowners' Association (hereinafter referred to as the "Association"),  
for the efficient preservation of the values and amenities in said community,  
and has delegated and assigned the powers of maintaining and administering  
and enforcing the covenants and restrictions, and collecting and  
disbursing the assessments and charges hereinafter created; and

WHEREAS, it is desired to establish certain standards covering  
the Subdivision by means of protective covenants so as to secure to  
each individual owner the full benefit and and enjoyment of his home  
and/or property with no greater restrictions upon the free and undisturbed  
use of his property than is necessary to ensure the same advantage

to other similar property owners; and to ensure the lasting beauty and investment value of the property;

NOW THEREFORE, in consideration of the acceptance hereof by the several purchasers and grantees (including executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees) of these parcels and said tract of land, Declarant hereby declares to and agrees with each and every person who shall be or who shall become owner of any of said parcels, that said parcels, in addition to the resolutions of the County of Eagle, State of Colorado, shall be and are hereby bound by the covenants set forth in these presents and that the property described herein shall be held and enjoyed subject to and with the benefit and advantages of the following restrictions, limitations, conditions and agreements.

#### ARTICLE I PURPOSE OF COVENANTS

It is the intention of Declarant, expressed by its execution of this instrument, that the lands within the Subdivision be developed and maintained as a highly desirable rural residential area. It is the purpose of these covenants that the present natural beauty, the natural growth and native setting and surroundings of the Subdivision shall always be protected insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the seclusion of each home site from neighboring home sites shall be protected insofar as is possible.

It is understood that wildlife may be prevalent within the Subdivision and it is agreed that each owner shall assume the risk of damage or destruction of crops or of personal property caused by such wildlife. The Declarant, the Homeowners' Association, its Board of Directors, the County of Eagle, and the State of Colorado, or any political subdivision thereof, including but not limited to the Colorado Department of Wildlife shall not be liable in damages to any owner by reason of any such damage or destruction. Any person or association acquiring title to any property in the Subdivision, by so doing agrees and covenants that he or it will not bring any action, claim or suit against any of the above mentioned persons, associations, or agencies or their advisors, employees or agents for any such damage or destruction.

#### ARTICLE II DEFINITIONS

2.1 "Association" shall mean and refer to the Eby Creek Mesa Homeowners' Association, a Colorado non-profit corporation, its

successors and assigns.

2.2 "Board of Directors" or "Board" shall mean the Board of Directors of the Eby Creek Mesa Homeowners' Association.

2.3 "Committee" shall mean and refer to the architectural control committee, hereinafter further defined and organized.

2.4 "Common Area" shall mean all the real property owned by the Association for the common use and enjoyment of the owners. The common areas to be owned by the Association at the time of the conveyance of the first lot are described as: all roads, road easements, utility easements, the pasture and park tract and other common areas.

2.5 "Declarant" or "Subdivider" shall mean Loren Chambers and Hunter Antonides, or any successor thereto by merger or consolidation. A successor or assign other than by merger or consolidation shall be deemed a successor or assign under this declaration only to the extent and only as to the particular rights or interests specifically designated in this written instrument.

2.6 "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a lot is encumbered.

2.7 "Mortgagee" shall mean any person named as the mortgagee or beneficiary under any mortgage.

2.8 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot or parcel which is a part of the property above described, including contract sellers, but excluding those having such interest merely as security for the performance of such an obligation.

2.9 "Parcel" or "Lot" shall mean and refer to each individual subdivided residential tract which is a part of the property.

2.10 "Property" or "Subdivision" shall mean and refer to that certain real property herein before described, encompassing each and all of the individual subdivided parcels and common areas and any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.11 "Residential tract" shall mean each of the subdivision tracts designated by number on the recorded plat of the Subdivision or any parties thereof.

ARTICLE III  
PROPERTY RIGHTS

3.1 Rights to be Conveyed by Declarant. Any conveyance of a lot by Declarant shall also include or be accompanied by conveyance of an undivided fractional interest in the common areas; the numerator of the fraction shall be one and the denominator of the fraction shall be the number of lots in the Subdivision.

3.2 Interest in Common Areas to be Appurtenant to Lots. The undivided interest in the common areas to be conveyed in connection with conveyance of any lot shall be appurtenant to that lot and may not be separated from that lot during the time this declaration continues in effect. Each lot, together with such undivided interest in the common areas, shall always be given, transferred, conveyed, devised, encumbered, or otherwise affected only as a complete set of property rights. Every gift, transfer, conveyance, devise, encumbrance or other transaction affecting a lot shall be presumed to be a gift, devise, transfer, conveyance encumbrance or other transaction, respectively, operating in like manner upon the undivided interest in the common areas appurtenant thereto.

3.3 Partition not permitted. The common areas shall be owned in undivided interest by all owners, and no owner may bring any action for partition thereof.

3.4 Use of Common Areas. There shall be no obstruction of the common areas nor shall anything be stored on any part of such common areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed on, or removed from the common areas except upon the prior written consent of the Association. Nothing shall be done or kept on the common areas or any part thereof which would result in the cancellation of the insurance, or any part thereof, which the Association is required to maintain pursuant hereto or increase the rate of insurance or any part thereof over what the Association but for such activity would pay, without the prior written consent of the Association. Nothing shall be done or kept on such common areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the common areas or any part thereof shall be committed by any owner. Each owner shall indemnify and hold Declarant, the Association, and the other owners harmless against all loss resulting from any such cancellation of insurance, increase in insurance rates, violation, damage or waste caused by him.



3.5 Owner's rights to Use of Common Area. Subject to the limitations contained in this Declaration, each owner, the members of his family, his tenants, or contract purchasers who reside on the property, his guests if accompanied by the owner, and the Declarant shall have the nonexclusive right to use and enjoy the common areas.

3.6 Declarant's rights to Use of Common Areas. With respect to any interest in the common areas transferred in whole or in part by Declarant to an owner of owners pursuant to this Article III, Declarant shall be deemed to reserve and retain a nonexclusive easement to make such use thereof or with respect thereto as may be necessary or appropriate to perform the duties and functions which Declarant is obligated or permitted to perform pursuant to this Declaration.

Declarant, and persons it may select, shall have the right of ingress and egress over, upon and across the common areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary incident to construction and complete development, repair and reconstruction of the common areas.

3.7 Declarant's Power to Transfer Interests in Common Areas. Declarant shall have the right and power to appoint and convey to any person or entity who is to construct, operate and maintain a water tank or water tanks with necessary accessory structures and facilities, fee simple title or any lesser legal right to so much of the common areas as may be reasonably necessary, in the judgment of Declarant, to operate and maintain such facilities.

Declarant shall have the right and power to grant easements for utility purposes over, upon, under or through any portion of the common areas and that portion of any lot designated on the recorded plat of the Subdivision as a utility easement.

3.8 Creation of Easements and Other Rights in Common Areas. All conveyances of lots or interest therein hereafter made, whether by Declarant or by subsequent owners, and all conveyances of the common areas or interests therein shall be construed to grant and reserve such reciprocal powers and easements as shall give effect to Sections 3.5, entitled Owners' rights to Use of Common Areas, Section 3.6, entitled Declarant's rights to Use of Common Areas, Section 3.7, entitled Declarant's Power to Transfer Interests in Common Areas, and Section 7.13, entitled Reserved Right to Enter for Development, even though no specific reference to such powers, easements or to those Sections appears in any such conveyance; and to the extent further or other grants or transfers may be necessary to give effect to the purposes of such Sections, such further or other grants or transfers shall be considered to have been made at appropriate times

without further instrument of grant. Confirmatory grants or transfers shall be made upon the request of any interested party by any owner who shall be considered to have made any such further or other grant pursuant to this Section.

3.9 Rights of Non-Owners in Common Areas. Upon unanimous approval of seventy-five percent (75%) of the owners, persons other than owners shall become entitled to make use of the common areas. The nature of the permitted use, the length of duration thereof, any obligations of the person or persons acquiring rights to contribute toward expenses of construction or maintenance of facilities on the common areas and all other terms of the agreement permitting such use shall be in writing signed by the Board and approved by seventy-five percent (75%) of the owners and by the permittee or permittees. All rights acquired pursuant to such agreement shall be subject to the provisions of this declaration and shall be consistent with the provisions hereof and any amendments hereto.

3.10 Ad Valorem Taxation. As soon as possible after any lot shall have been conveyed by Declarant, the new owner shall notify the Assessor of Eagle County Colorado, and shall request that the undivided interest in the common areas appurtenant to such lot be assessed separately thereafter to the owner of the lot to which it is appurtenant for all taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the common areas shall be apportioned equally among the lots. No forfeiture or sale of any undivided interest in the common areas for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to the remainder of the interests in the common areas. Each owner shall indemnify each other owner from loss resulting from failure of any owner to obtain such separate assessment. At the written request of any owner, the Association shall enforce such indemnity by increasing the assessments against a particular owner in an amount necessary to pay any delinquent tax or redeem from any tax sale where such tax or tax sale affects the undivided interest in the common areas owned by owners other than the defaulting owner. Such assessment may include all amounts incidental to such payment, or redemption and shall be an additional assessment subject to all the provisions of Article V hereof, including without limitation provisions with respect to agreement of the owners to pay the same and the remedies available in the event of failure to pay the same.

3.11 Mechanics' Liens. Subsequent to the transfer of any lot to an owner, no labor performed or materials furnished for use in connection with such lot with the consent or at the request of the owner or his agent or subcontractor shall create any right to file a statement

of mechanic's lien against the lot of any other owner not expressly consenting to or requesting the same or against any interest in the common areas so appurtenant to any lot except as to the undivided interest in the common areas appurtenant to the lot of the owner for whom such labor shall have been performed or such materials shall have been furnished. Each owner shall indemnify and hold harmless each of the other owners from and against liability or loss arising from the claim of any lien against the undivided interest of any other owner in such common areas for work performed or for materials furnished in work on the first owner's lot. At the written request of any owner, the Association shall enforce such indemnity by increasing the assessments against a particular owner in an amount necessary to discharge such lien, including all costs incidental thereto in obtaining the discharge of such lien. Such assessment shall be an additional assessment subject to all the provisions of Article V hereof, including without limitation provisions with respect to agreement of the owners to pay the same and the remedies available in the event of failure to pay the same.

#### ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Association: Membership. For the purpose of maintaining the roads and common areas as shown on the recorded plat, and providing all common community services of every kind and nature required or desired within the Subdivision for the general use and benefit of all lot owners, and for enforcement of these Declaration of Covenants, each and every lot owner, in accepting a deed for any lot in the Subdivision, agrees to and shall be a member of and be subject to the obligations and duly enacted By-laws and rules and regulations of the Eby Creek Mesa Homeowners' Association, a nonprofit corporation. Membership shall be appurtenant to and may not be separated from ownership of any parcel.

Members shall be all owners and the Declarant, and shall be entitled to one (1) vote for each parcel owned. When more than one person holds an interest in any parcel, all such persons shall be members. The vote for such parcel shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any parcel.

The Association may suspend the voting rights of an owner for any period during which any assessment against his parcel remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

ARTICLE V  
ASSESSMENTS

**5.1 Assessment; Creation of the Lien.** The Declarant, for each parcel owned within the properties, hereby covenants, and each owner of any parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) annual assessments of charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- (3) assessments for fines for pet control violations as provided in Section 7.6.

Such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Such liens shall be superior to all other liens and encumbrances on such parcel except: (a) valid tax and special assessment liens on the parcel in favor of any governmental assessing authority; and (b) a lien for all sums secured by a first mortgage, or by any mortgage to Declarant duly recorded in the Eagle County, Colorado real estate records, including all unpaid obligatory advances to be made pursuant to such mortgage and all amounts advanced pursuant to such mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any parcel after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this Article, the board shall prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the owner of the parcel and a description of the parcel. Such a notice shall be signed by a member of the Board and may be recorded in the office of the County Clerk and Recorder of Eagle County, Colorado. No notice of lien shall be recorded until there shall have been a delinquency in payment of the assessment.

A lien for sums assessed pursuant to this Article may be enforced by judicial foreclosure by the Board in the same manner in which mortgages on real property may be foreclosed in Colorado. In any such foreclosure, the owner shall be required to pay the costs

and expenses of filing the notice of lien and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The owner also shall be required to pay to the Association any assessments against the parcel which shall become due during the period of foreclosure. The Board shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, or otherwise deal with the same as the owner thereof.

A release of notice of lien shall be executed by the Board and recorded in the Eagle County, Colorado real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a parcel may pay, but shall not be required to pay, any amount secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Board shall report to any encumbrancer of a parcel any unpaid assessments remaining unpaid for longer than ninety (90) days after they shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

5.2 Statement of Account. Upon payment of a reasonable fee not to exceed Fifty and NO/100 Dollars, (\$50.00) and upon written request of any owner or any mortgagee, prospective mortgagee or prospective purchaser of a parcel, the Board shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such lot, the amount of the current yearly assessment and the date that such assessment becomes or became due, credit for advance payments or prepaid items, including, but not limited to, an owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within forty-five (45) days from the date such request shall have been made, all unpaid assessments which become due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the forty-five (45) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within fifteen (15) days, and the purchaser subsequently acquires the parcel.

5.3 Personal Obligation of Owner; Personal Liability of Purchaser for Assessment. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. No owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of common areas or any part thereof or by abandonment of his lot or any improvements thereon.

Subject to the provisions of Section 5.2, a purchaser of a parcel shall be jointly and severally liable with the seller for all unpaid assessments against the parcel up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

5.4 Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the property and for the improvement and maintenance of the common areas.

5.5 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first parcel to an owner, the maximum annual assessment shall be ThreeHundred and NO/100 dollars (\$ 300.00) per parcel.

(1) From and after January 1 of the year immediately following the conveyance of the first parcel to an owner, the maximum annual assessment may be increased each year by not more that fourteen percent (14%) above the maximum annual assessment for the previous year without a vote of the membership.

(2) From and after January 1 of the year immediately following the conveyance of the first parcel to an owner, the maximum annual assessment may be increased above fourteen percent (14%) by a vote of a majority of members voting in person or by proxy at a meeting duly called for this purpose or any adjournment or adjournments thereof.

(3) The Board of Directors of the Association may fix the annual assessment to an amount not in excess of the maximum.

5.6 Special Assessments for Capital Investments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the construction, reconstruction, repair or replacement of a capital improvement upon the common areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

5.7 Notice and Quorum for Any Action Authorized Under Sections 5.5 and 5.6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.5 and 5.6 shall be sent to all members not less than thirty (30) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be one-half (1/2) the required quorum of the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.8 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all parcels and may be collected on a monthly basis.

5.9 Date of Commencement of Annual Assessments; Due Dates for Payment of Assessments. The annual assessments provided for herein shall commence as to all parcels on the conveyance of the common areas. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year. Annual assessments shall be made on a April 1 through March 31 fiscal year basis. The Board shall give written notice to each owner as to the amount of the annual assessment with respect to his interest on or before April 1 each year for the fiscal year commencing on such date. Such assessments shall be due and payable on June 1 each year; provided, however, that the first annual assessment shall be for the balance of the fiscal year remaining after the date fixed by the Board as the date for commencement of the annual assessment obligations hereunder. Such first annual assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective owner. Each annual assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Board to give timely notice of any annual assessment as provided herein shall not affect the liability of any owner for such assessment, but the date when payment shall become due in such a case shall be deferred to a date thirty (30) days after such a notice shall have been given.

The Board shall give written notice promptly to each owner as to the amount of any special assessment with respect to his interest and any assessments for repair, correction or replacement of common systems, and the time for payment thereof. Such time may be fixed by the Board, but no payment shall be due less than thirty (30) days after such notice shall have been given. Each such assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

The Association may bring an action at law against the owner personally obligated to pay any assessment and in default, or foreclose the lien against the property.

## ARTICLE VI ARCHITECTURAL REVIEW

6.1 Architectural Committee. The Architectural Committee shall mean the Board of Directors, as said Board is presently constituted and shall be constituted from time to time in the future or any Committee appointed by the Board numbering between three (3) and seven (7). Said Architectural Committee shall have and exercise all of the powers, duties, and responsibilities set out in this instrument.

6.2. Approval by Architectural Committee. No improvements of any kind, including but not limited to dwelling houses (including foundations), barns, stables, outbuildings, exterior alterations to any structure, interior alterations adding additional living facilities, e.g. guest quarters, swimming pools, tennis courts, ponds, parking areas, fences, walls, garages, driveways, antennae, flagpoles, curbs, walks, shall never be constructed, excavated, or altered on any lands within the Subdivision, nor may any vegetation be altered or destroyed nor any landscaping performed on any tract, unless the complete plans for such construction or alteration as required in Section 6.3, hereof, are approved in writing by the Architectural Committee prior to commencement of such work. In the event the Architectural Committee fails to take any action within Sixty (60) days after complete architectural plans for such work have been submitted to it, than all of such submitted architectural plans shall be deemed to be approved. Structural engineering shall be the responsibility of the owner.

The approval by the Committee of any plans and specifications submitted for approval, as herein apesified, shall not be deemed to be a waiver by the Committee or Board of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features or elements are embodied in any subsequent plans or specifications submitted for approval for use on other building sites.

6.3 Architectural Plans: Submittals. Plans to be submitted for approval of any construction or alteration shall include, unless specifically waived by the Committee, architectural plans with front, side and rear elevations and floor plans for each floor and basement, exterior color schemes, a site plan indicating and fixing the exact location lines therof, complete landscaping plans for all landscaping and complete grading plans for any grading. The Committee may, in addition,



require a rendering or model when in its judgment such requirement is necessary for it to exercise the judgment required of it by the Covenants. In the event the proposed improvements shall be for repainting or redecorating the exterior of such structure without remodeling or changing it, or making additions therof, it shall only be necessary to file color schemes of such proposed work.

6.4 Preliminary Approvals. Persons or associations who anticipate constructing improvements on lands within the Subdivision, whether they already own such lands or are contemplating the purchase of such lands, may submit preliminary sketches of such improvements to the Architectural Committee for informal and preliminary approval or disapproval, but the Architectural Committee shall never be finally committed or bound by any preliminary or informal approval or disapproval until such time as complete architectural plans are submitted and approved or disapproved.

6.5 Variances. Where circumstances, such as topography, location of property lines, location of trees and brush, or other matters require, the Committee may, by a two-thirds (2/3) vote, allow reasonable variances as to any of the covenants contained in this instrument, on such terms and conditions as it shall require; provided that no such variance shall be finally allowed until ten (10) days after the Committee shall have mailed a notice of such variance to the owners of lots adjacent to the lot for which such variance has been requested and to owners of all other lots which the Committee determines to be affected by such variances. No variance shall be granted which will permit multi-family units on any lot or parcel.

6.6 Inspections. The Board or Committee may at any time during daylight hours and after twenty-four (24) hours notice to the owner or his agent, inspect any building, or property, for the purpose of determining whether said building, landscaping, revegetation, destruction of vegetation or grading conforms to these covenants and restrictions and to approvals given by the Committee pursuant thereto, or to inspect the sanitary system pursuant to Section 8.15, hereof. Inspection of the sanitary system may be made without notice only in the event the Board or Committee determines that an emergency exists and that immediate action is required to protect the health of residents within the Subdivision.

6.7 Architectural Committee not Liable. The architectural Committee or Board of Directors shall not be liable in damages to any person or association submitting any architectural plans for approval, or to any owner or owners of lands within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Any person or

association acquiring the title to any property in the Subdivision , or any person or association submitting plans to the Architectural Committee for approval, by so doing does agree and covneant that he or it will not bring any action or suit to recover damages against the Architectural Committe, or the Board of Directions, their members as individuals, or advisors, employees, or agents.

## ARTICLE VII GENERAL RESTRICTIONS ON ALL PROPERTY

7.1 Zoning and Subdivision Regulations. No lands within the Subdivision shall ever be occupied or used by or for any structure or purpose or in any manner which is contrary to the zoning or subdivision regulations of Eagle County, Colorado, validly in force from time to time, except as the same may be allowed under said regulations as a nonconforming structure or use.

7.2 No Mining, Drilling or Quarrying. No mining, quarrying, tunnelling, excavating, or drilling for any substance within the earth, including oil, gas, menerals, gravel, sand, rock and earth, shall ever be permitted within the limits of the Subdivision.

7.3 No Business Uses. No lands within the Subdivision shall ever be occupied or used for any commercial, business or industrial purpose nor for any noxious activity, and nothing shall be done or permitted to be done on any of said lands which is a nuisance or might become a nuisance to the owner or owners of any of said lands. Except for the subdivision sales office, no store, office, or other place of commercial or professional business of anykind; nor any hospital, sanitarium, or other place for the care or treatment of the sick or disabled, physically or mentally; nor any public theater, bar, restaurant, or other public place of entertainment; nor any church, nor any residential building housing more than one family shall ever be constructed, altered, or permitted to remain within the Subdivision.

7.4 Signs. With the exception of one "For Rent" or "For Sale" sign (which shall not be larger than 18 x 32 inches), one sign bearing the name of the owner or occupant of a lot (which shall not be larger than 4 x 18 inches) and an entrance gate sign at each entrance of the Subdivision, of a style and design approved by the Architectural Committee, no signs of any kind shall be erected, displayed, or permitted to remain on any tract.

7.5 Animals. No animals or poultry shall be kept on any lands in the Subdivision west of Eby Creek Road, except ordinary household pets belonging to the household. These household pets include dogs and cats and pets kept within the confines of the house at all times. For that portion of the Subdivision east of Eby Creek Road

animals may be kept in accordance with the provisions of the Zoning Resolution of Eagle County. The maximum number of dogs permitted on any one residential lot shall be two.

**7.6 Pet Control.** No animals or pets may be kept, bred or maintained for any commercial use or purpose. All domestic pets must be confined within the area of the lot. No person, possessor or keeper of a dog in the Subdivision is permitted to allow the same to run at large within the Subdivision. A dog is deemed running at large when off or away from the lot of the owner, possessor or keeper thereof and not under the control of such owner, possessor or keeper or his agent or servant or a member of his immediate family either by leash, chain, or cord. An animal within an automobile or other vehicle of its owner, possessor or keeper or his agent or servant or a member of his immediate family is deemed to be upon the owner's, possessor's or keeper's premises. If any such dog is found running at large or off the lot of the owner, possessor or keeper, it may be taken up by any member of the Board of Directors or their agents or the dog catcher and impounded in the dog pound, or any other facility made available by Eagle County for such purposes. No owner, possessor or keeper of any dog shall permit such dog by loud and persistent or habitual barking or other loud noise to disturb any person or neighborhood. Such animal is a public nuisance and may be impounded as above provided. No owner, possessor or keeper of any female animal shall permit the same to run at large while the animal is in estrus (in heat or season) or permit the same to create a nuisance by attracting other animals to the premises, and the same is a nuisance. The dog catcher is hereby given authority to enter upon roads and common areas of the Subdivision to perform any function authorized in this section. In addition to the above controls, the Homeowners Board of Directors may assess fines against owners for violations of this Section as follows:

First violation	\$100.00
Second violation	\$300.00
Subsequent violations	\$500.00

The Board of County Commissioners or any subsequent public agency may also opt to establish fines for dog control.

**7.7 No Resubdivision.** No tract described on the recorded plats of the Subdivision shall ever be resubdivided into smaller tracts nor conveyed or encumbered in any less than the full original dimensions as shown on said recorded plats; provided that conveyance or dedications of easements for utilities or private roads may be made for less than all of one tract.

**7.8 Combining parcels.** If two or more contiguous residential parcels are owned by the same owner or owners, they may be combined into one or more larger residential parcels by means of a written document executed and acknowledged by all of the owners thereof, approved by the Architectural Committee, and recorded in the real property records of Eagle County, Colorado. Thereafter, the new and larger parcels

shall each be considered as one for the purposes of these covenants.

7.9 Service Yards and Trash. All clotheslines, equipment, service yards, woodpiles, or storage piles on any tract shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring tracts and common areas. All rubbish and trash shall be kept in covered containers and removed from all tracts and shall not be allowed to accumulate and shall not be burned thereon. Each owner shall be responsible for keeping cleared of debris that portion of his lot between the front property line and the edge of the road abutting said lot.

7.10 Nuisances. No lot shall be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors or that will cause any noise that shall disturb the peace, quiet, comfort or serenity of the occupants of surrounding property. Nothing contained in this paragraph shall preclude the use of fireplaces in residences for the burning of wood or wood products. No lot shall be used in whole or in part for public gatherings, concerts or other open public activities without the consent of all adjoining property owners and the consent of the Board. No boats, unregistered automobiles, automobile parts, heavy construction equipment, trucks larger than a 3/4 ton pick-up truck, buses, mobile homes, trailers or campers shall be placed or stored on or about any lot unless garaged or screened from public view.

7.11 Underground Utility lines. All water, gas, electric, and telephone pipes and lines and all other utilities lines within the limits of the Subdivision must be buried underground and may not be carried on overhead poles or above the surface of the ground.

7.12. Drainage. All natural drainage courses traversing the property for the purposes of conduction of surface water that may drain from other properties shall not be obstructed, destroyed, damaged or altered without prior approval from the Board.

7.13 Trees and Landscaping. No trees or brush growing on any property or tract shall be felled or trimmed, no natural areas shall be cleared, nor shall any natural vegetation, rocks, or soil be damaged or removed, nor any landscaping performed, on any property or tract unless first approved in writing by the Architectural Committee.

7.14 Reserved Right to Enter for Development. Declarant, in continuation of its development in the areas, shall, at any time up to and including November 1, 1987, have and retain the right to enter upon any

lot or common area in the Subdivision as may be necessary or desirable in connection with the installation and maintenance of drainage or utility facilities; in connection with the completion, finishing and maintenance of roads, including grading, banking and paving; in connection with the filling and grading of any nearby or adjacent parcels of property; in connection with planting or landscaping work on any nearby or adjacent parcels of property; or in connection with improvements necessary or desirable in connection with any easements referred to herein or in the dedication on the recorded plat of the Subdivision, provided the same is accomplished without cost or expense to the owner of the lot or parcel and no damage is done to any improvements thereon.

7.15 Off-road Vehicles. Off-road vehicles such as dirt bikes and 4-wheel drive vehicles shall not be operated on any unpaved area within the Subdivision west of Eby Creek Road.

7.16. Maintenance of Private Roads. Roads providing access to the lots in this Subdivision are shown on the recorded map and plat of the Subdivision. Any private roads and driveways shall be constructed and maintained by the lot owner and such private roads and driveways shall be constructed with proper drainage and necessary culverts subject to the provisions contained in Article VI. Snow removal on any private road and driveway upon any lot shall be done in such a manner so that the roads as shown on the recorded map and plat of said property shall not be blocked or the drainage thereof impaired.

7.17 Parking. No vehicles shall be parked or kept on any of the roads as shown on the recorded map and plat of said property, it being the obligation of each lot owner to provide proper parking on his lot to accomodate himself and his guests. The parking area for vehicles belonging to the lot owner, or for any vehicles stored on his lot, shall be covered and screened from public view.

## ARTICLE VIII RESTRICTIONS ON RESIDENTIAL TRACTS

8.1 Single Family Residential Use. Only single family residential use may be permitted on any lot, no multi-family units shall be permitted.

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

- (1) One detached single-family dwelling house;

(2) One attached or detached garage for not more than three (3) cars; and,

(3) In that portion of the Subdivision east of Eby Creek Road, one barn, stable, greenhouse or other nonresidential outbuilding other than a garage (if permitted by County Subdivision and Zoning Regulations.)

8.3 General Requirements. The Architectural Committee shall exercise its best judgment to see that all improvements, construction, grading, landscaping, and alterations on the lands within the Subdivision conforms and harmonizes with the natural surroundings and existing structures as to quality, external design, materials, color, siting, height, topography, grade and finished ground elevation. The Architectural Committee shall protect the seclusion of each home site from other home sites insofar as possible. In passing upon any plans or specifications submitted to it, the Committee shall consider:

(1) suitability of the improvement and material from which it is to be constructed to the site upon which it is to be located;

(2) the nature of adjacent neighboring improvements;

(3) the quality of the materials to be used in any proposed improvement, and

(4) the effect of any proposed improvements on the outlook of the adjacent or neighboring property.

In passing on any plans and specifications, it shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired, and to maintain for the benefit of the Committee and all subsequent individual lot owners, the natural character of the land and to require that all man-made structures blend into the natural background rather than stand out against it.

#### 8.4 Specific Requirements for Construction.

##### 1. Roofs.

(a) The following roofing materials shall not be used: aluminum, iron metal in any form, any shiny materials, paper, composition shingles, asbestos, and material with a painted, baked or ceramic surface or tar and gravel, except that tar and gravel may be permitted if the rock used is specifically approved by the committee and roof has adequate pitch.

(b) The following roofing material shall be permitted: wood shingles, wood shakes, glass, copper, slate, sod, and flat profile concrete or clay tile in charcoal, brown, or gray colors. Other materials will be considered, but will require written approval from the Committee.

(c) The pitch of the roofs shall not be less than four in twelve.

2. Walls. The exterior walls of the principal buildings and outbuildings shall be as follows:

(a) The following are acceptable materials: stained or natural wood siding, stucco in off-white or earth-tone colors, brick in muted earth-tones, and stone.

(b) The following are non-acceptable materials: metal siding, plywood as the finish exterior surface, painted wood siding, vinyl or plastic siding, reflective glazing (mirror coated), exposed concrete block or concrete (with the exception of a maximum of 10" where foundation wall meets finish grade), asbestos, composition materials, paper or tar paper, and any material with bright colors.

8.5 Set Back Requirements: Building Envelopes. All improvements shall conform with Eagle County Regulations.

8.6 Landscaping. All landscaping plans must be approved in advance by the Committee. In general they shall be in keeping with the following; landscaping shall be compatible with the natural terrain with the use of trees, plants and shrubs which are indigenous to the area. The arrangements of planting should be such as to cause a uniform transition from the immediate site of construction, and all of this transition should occur within the lot area. Driveways requiring cuts or fills in the land must be landscaped.

8.7 Color. A complete exterior color scheme shall be submitted to the Committee with the plans of each structure and such color scheme shall include a description of all visible materials to be used and all artificial coloring to be applied thereto, including paints, stains, varnish or any other surfacing whatsoever. It is the intent of the Committee to encourage use of colors and materials which are indigenous to the area and which will blend in with the site. Bright colors are not allowed. In addition, the owner shall furnish upon the request of the Committee, actual color samples, i.e. a stain sample on the wood to be used.

8.9 Used or Temporary Structures. No used or previously erected or temporary house, structure, house trailer, or nonpermanent out-building shall ever be placed, erected, or allowed to remain on any residential tract, and no dwelling house shall be occupied in any manner prior to its completion.

8.10 Towers and Antennae. No towers or radio or television antennae shall be erected on any residential tract except when inside the building itself.

8.11 Tanks. Any tank used in connection with any dwelling house or other structure on any residential tract, including tanks for storage of gas, fuel oil, gasoline, oil or water, shall be buried, or if located above ground shall be screened from public view.

8.12 Exterior Lighting. All exterior lights and light standards on residential tracts shall be approved by the Architectural Committee for harmonious development and the prevention of lighting nuisances to other lands in the Subdivision.

8.13 Garbage and Refuse Disposal. No site shall be used or maintained as a dumping ground for rubbish. Trash, garbage, refuse, or obnoxious or offensive material shall not be permitted to accumulate on any site. Each lot owner shall be responsible for periodic removal of the trash, garbage and rubbish at sufficient intervals so that no site shall become unsightly. The burning of trash, garbage and rubbish is prohibited. Fly-tight containers are required for the storage of garbage and refuse, pending its removal and disposal. Trash containers shall not be exposed to public view except on day of scheduled trash removal.

8.14 Easements. Easements for installation and maintenance of utilities, drainage facilities, roads and other reserved areas, are and will be reserved as shown on the recorded map and plat of said subdivision. Within said easements, no structure, planting or other material shall be placed or permitted to remain, which might damage or interfere with the installation or maintenance of any such reserved areas. The easement area of each tract and all improvements on it, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

8.15 Water and Sanitation. All lavatories and toilets shall be installed indoors and connected with the central sanitary system. Each owner shall, upon water being available to his lot, at his expense connect his water system to the water main.



8.16 Leasing of Portion of Lot. No portion of any lot may ever be leased to any person or association separate from the dwelling on such parcel, unless the lessee is the owner of the parcel adjacent to such leased parcel.

8.17 Fences. Fences shall be constructed of wood and shall not be painted. Chain link fences and metal fencing are not permitted. Fences enclosing more than a fourth of an acre shall be split rail design with the top rail not over 40 inches high, and a space of at least 12 inches between the top rail and the next.

#### ARTICLE IX RESTRICTIONS ON COMMON AREAS

9.1 Improvements. No improvements of any kind or nature shall be constructed, altered, or allowed to remain on any common area except barns, picnic tables, recreational facilities, or similar improvements for the benefit of or use of all of the members of the Homeowners' Association. All such improvements shall be approved by the Architectural Committee as elsewhere herein provided, and shall conform and harmonize in appearance and siting.

9.2 Improvements by Association. The Association shall have the right and power to construct and reconstruct recreational facilities incidental thereto in the common areas. Such facilities may include any of the improvements permitted in Section 9.1. The Association also shall have the right and power to landscape the common areas by planting or removing trees, brush, flowers, grass or other vegetation.

9.3 Improvement of Roads. The Association shall have the right and power to construct and reconstruct surfaced or unsurfaced Roadways and walkways, including appropriate ditches, culverts and other drainage facilities.

9.4 Construction of Drainage and Utility Facilities. The Association shall have the right and power to construct and reconstruct drainage facilities and utilities, including water, sewer, sanitary systems for any lot, with long term lease provisions and rules and regulations for use thereof, gas, electric, telephone and cable television service on all property within the Subdivision which is subject to easements for purposes of drainage and for utilities, including water, sewer, gas, electric, telephone and cable television service, pursuant to the plat of the Subdivision appearing in the real estate records in the office of the County Clerk and Recorder of Eagle County, Colorado.

**9.5 Management, Operation and Maintenance of Common Areas.**

Subject to the rights of the owners set forth in these Covenants, the Association shall be responsible for the exclusive management and operation of the common areas and all improvements thereon (including furnishings and equipment related thereto) except as otherwise provided relating to individual sewage treatment and sanitary condition, order and repair, the Association shall make the use of any facilities on the common areas available to all persons entitled to use such facilities at such reasonable hours as the Association shall determine and shall provide such assistance or supervision as the Association shall deem appropriate. In any event, the Association shall furnish such services with respect to the common areas at such hours as the owners of two-thirds (2/3) of the lots may request in writing from time to time. The Association shall be responsible for the maintenance and repair of buildings and improvements located on the common areas.

**9.6 Maintenance of Roads.** The Association shall provide for the best and highest quality care, operation, management, maintenance, repair and replacement of all roadways constructed or to be constructed on the roads and of any and all drainage easements and drainage pipes or facilities within the same which may be established or provided with respect thereto. Maintenance shall include the removal of snow to the extent necessary to assure full use of such roadways.

**9.7 Maintenance of Drainage and Utility Facilities.** The Association shall provide for the best and highest quality care, operation, management, maintenance, repair and replacement of all drainage and utility facilities, including water, sewer, electric, telephone and cable television service which is subject to easements for such facilities, to the extent that such functions shall not be performed by any special district or other entity which may provide such service.

**9.8 The Association May Obtain Services of Third Persons.** The Association may obtain and pay for the services of any person or entity to the extent it deems advisable, to manage such of its affairs, or any part thereof, as relate to its functions under this Declaration, including such other personnel as the Association shall determine to be necessary or desirable to the proper operation of the common areas, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its functions under this Declaration. The Association may arrange with others to furnish utility facilities and services, including water, sewer, gas, electric, telephone and cable television service, and trash collection to the common areas and to the lots to the extent necessary to serve the

improvements from time to time located thereon and may arrange to have owners pay such others direct for the reasonable cost of providing such facilities and services.

**9.9 The Association May Acquire Personal Property.**

The Association may acquire and hold for the use and benefit of all of the owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the owners in the same proportion as their respective interests in the common areas. Such interests shall be appurtenant to ownership of lots and shall not be transferable except upon the conveyance of a lot. A conveyance of a lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, but each owner shall provide to any transferee an appropriate confirmatory bill of sale upon request by such transferee. Each owner shall have the nonexclusive right to use all personal property acquired by the Association pursuant thereto. Transfer of title to a lot under foreclosure shall entitle the new owner to receive the interest in such personal property associated with the foreclosed lot.

**9.10 Rules and Regulations.** The Association may make reasonable rules and regulations governing the use of the common areas and all personal property of this Declaration, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association shall have the right to suspend any owner's rights to make use of the common areas or any part thereof during any period or periods during which such owner fails to comply with such rules or regulations, or with any other obligations of such owner under this Declaration. The Association may also take judicial action against any owner for and on behalf of the other owners to enforce compliance with such rules, regulations or other obligations, or to obtain damages for noncompliance, all to the extent permitted by law.

**ARTICLE X**  
**ENFORCEMENT**

Enforcement may be initiated by the Homeowners' Association and shall be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any of these covenants, wither to restrain such violation or to recover damages for violation of the same, and such judgment obtained against any violator shall include reasonable attorney's fees to be determined by the court, and court costs. The failure of the Declarant, or the owner of any other lot, to enforce any of the restrictions herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

ARTICLE XI  
GENERAL PROVISIONS

11.1 Covenants to Run. All of the covenants contained in this instrument as the same may be lawfully amended from time to time, shall be a burden on the title to all of the lands in the Subdivision, and the benefits thereof shall inure to the owners of all of the lands in the Subdivision, and the benefits and burdens of all said covenants shall run with the title to all of the lands in the Subdivision.

11.2 Other Rights of the Association. The Association may exercise any other right, power or privilege given to it expressly by this Declaration or by law, and every other right, power or privilege reasonable to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power, or privilege.

11.3 Registration of Mailing Address. Each owner shall register his mailing address with the Association and all notices or demands intended to be served upon any owner pursuant hereto shall be given by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices to be served on the Association pursuant hereto shall be given by registered or certified mail, postage prepaid, addressed in the name of the mortgagee at such address as the mortgagee previously may have furnished to the Association in writing. Unless a mortgagee furnishes the Association such address, the mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mails in the form provided for in this Section.

11.4 Assignment of Rights and Duties by Declarant. Any functions to be performed by Declarant pursuant to this Declaration and any rights and duties of Declarant arising as a result of this Declaration may be assigned by Declarant in whole or in part at any time or from time to time at the sole discretion of Declarant.

11.5 Duration of Declaration. All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, provided, however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by the owners of not less than two-thirds (2/3) in number of the lots, said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten (10) years and thereafter for successive

periods of ten (10) years unless at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by recorded instrument directing termination signed by the owners of not less than two-thirds (2/3) of the lots as aforesaid.

11.6 Amendment. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the parcel owners, and thereafter by an instrument signed by not less than fifty-one percent (51%) of the parcel owners.

11.7 Effect of Provisions of Declaration. Each provision, covenant, condition and restriction contained in this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property then within the Subdivision is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of any person's or entity's acceptance of any right, title or interest in any parcel of property within the Subdivision be deemed accepted, ratified, adopted and declared as a personal covenant of such person or entity and, as a personal covenant of an owner, shall be deemed a personal covenant to, with and for the benefit of Declarant, and to, with and for the benefit of other owners; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude running, in each case, as a burden with the title to each parcel of property included within the Subdivision, and, both as a real covenant and an equitable servitude, shall be a burden upon and binding on each such parcel of property and upon each person or entity owning any right, title or interest in such parcel of property for so long as such person or entity owns any such right, title or interest, and, with respect to any lot and any undivided interest in the common areas appurtenant thereto shall, both as a real covenant and an equitable servitude, be deemed a covenant and servitude for the benefit of any property now or hereafter owned by Declarant within the Subdivision and for the benefit of any and all other property within the Subdivision; (d) shall be deemed a covenant, secured by a lien binding, burdening and encumbering the title to each parcel of property now or hereafter included within the Subdivision and, with respect to any lot and the undivided interest in the common areas appurtenant thereto, shall, as a lien be deemed a lien in favor of Declarant; and (e) shall be deemed a condition subject to which title to each parcel of property now or hereinafter within the Subdivision is and shall at all time be held, enforceable by a power of termination and right of re-entry vested in Declarant as hereinafter provided.

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

11.9 Limited Liability. Declarant, its successors or assigns shall not be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice, the owners severally agree to indemnify Declarant, its successors or assigns, against loss resulting from any such action or failure to act if in good faith and without malice.

11.10 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, its successors or assigns, and all owners, their successors and assigns.

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

11.12 No Waiver. Failure to enforce any provision, restriction, covenant or condition in this Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

11.13 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this Declaration.

IN WITNESS WHEREOF, W. HUNTER ANTONIDES  
AND LOREN S. CHAMBERS has  
executed this Declaration of Covenants the day and year first above written.

EBY CREEK MESA

BY:

*W. Hunter Antonides*  
*Loren S. Chambers*

STATE OF COLORADO

)

) ss.

COUNTY OF EAGLE

)

*Susan A. Vaughn*

Subscribed and sworn to before me this 28<sup>TH</sup> day  
of OCTOBER, 1981, by W. HUNTER ANTONIDES  
AND LOREN S. CHAMBERS

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: DECEMBER 16, 1984

Susan A. Vaughn  
Notary Public

