

Mountain Oaks Homeowner Association

Covenants

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7-1-09

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AFFECTING THE REAL PROPERTY KNOWN AS
MOUNTAIN OAKS SUBDIVISION

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AFFECTING THE REAL PROPERTY KNOWN AS
MOUNTAIN OAKS SUBDIVISION**

THIS DECLARATION, made and entered into this 16th day of July, 1987, by David R. Sellon & Company, a Colorado corporation (hereinafter referred to as "Declarant" with the consent of Gates Land Company, co-owner of the property

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the County of El Paso, State of Colorado, which is more particularly described as Mountain Oaks Subdivision, Filing No. 1.

NOW THEREFORE, Declarant hereby declares that all of the properties described above (and any additional properties which may be made a part thereof) shall be held, sold and conveyed, subject to the following Easements, Restrictions, Covenants and Conditions, and which shall run with the Real Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE.I
DEFINITIONS**

Section 101. "Association" shall mean and refer to Mountain Oaks Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

Section 102. "Architectural Control Committee" shall mean and refer to that committee or entity as appointed by the Declarant to review and approve the plans for all improvements constructed on the properties.

Section 103. "Board" shall mean and refer to the Board of Directors of the Mountain Oaks Homeowners Association.

Section 104. "Bylaws" shall mean and refer to the Bylaws of the Mountain Oaks Homeowners Association.

Section 105. "Common Area" shall mean all Real Property (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners, and those easements as established on the recorded plat, or other easements recorded for the benefit of the Association. The Common Area to be owned by the Association at the time of conveyance of the first Lot shall consist of those areas as indicated on the recorded plat, which areas are designated for common ingress, access for utilities, or open space and are identified on the recorded plat as tracts A-1, A-2, A-3, B-1, B-2, B-3, B-4, and those areas of landscaping and lighting along Broadmoor Bluffs Drive and Neal Ranch Road.

Section 106. "Cost of Collection" shall mean and refer to all expenses and charges incurred including reasonable attorney's fees.

Section 107. "Covenants" shall mean and refer to this document.

Section 108. "Declarant" shall mean and refer to David R. Sellon & Company, a Colorado corporation, its successors and assigns which transfer or assignment in whole or in part must be by written instrument.

Section 109. "Lot" shall mean and refer to each area designated as a Lot on the recorded plat of the Subdivision.

Section 110. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 111. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 112. "Properties" shall mean and refer to that certain Property identified as Mountain Oaks Subdivision, Filing No.1, Lots 1 - 53, and any property annexed pursuant to the provisions of this agreement.

Section 113. "Structure" shall mean and refer to any thing or device other than trees and landscaping, the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall or outdoor lighting. "Structure" shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any water in any natural or artificial stream, wash, or drainage channel upon or across any Lot.

ARTICLE II PURPOSE

Section 201. Declarant's Intent. Because of the unique hillside setting of the properties in an urban area, Declarant intends these covenants to be a reasonable restriction upon

the use of the properties and upon the Owners in order to accomplish various purposes including, but not necessarily limited to, the following:

- (a) to preserve the Property values and the improvements placed therein;
- (b) to preserve and enhance, now and in the future, the attractiveness and desirability of the properties;
- (c) to provide for an exclusive, residential living environment that exists compatibly with the commercial and recreational developments;
- (d) to ensure that the improvements and neighborhoods are compatible with each other;
- (e) to maintain common architectural themes and styles;
- (f) to preserve the natural wildlife and habitat which is abundant in the properties and therefore allow for development which will be compatible with wildlife and natural environment; and
- (g) to provide a process by which the development and construction activities will have minimal effect upon the existing surrounding neighborhoods.

**ARTICLE III
ANNEXATION OF ADDITIONAL PROPERTY**

Section 301. Annexations. It is the intent of the Declarant to develop additional properties adjoining Mountain Oaks Subdivision, Filing No. 1, which additional properties will be identified as Mountain Oaks Subdivision Filings No. 2 and No. 3, and therefore the Declarant reserves the right by subsequent written amendment filed of record to bring additional properties within these Covenants and to be part of the Mountain Oaks Homeowners Association. After recordation of said written instrument, the annexed properties will be subject to all of the terms and conditions of these Covenants and shall enjoy rights in and to all Common Areas. Thereafter, additional residential Property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

**ARTICLE IV
PROPERTY RIGHTS IN THE COMMON AREAS**

Section 401. Owners' Easements of Enjoyment. Subject to the provisions of Section 402 of this Article, every Owner shall have a nonexclusive right and

easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 402. Extent Of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(b) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area and to restrict the use of portions of the Common Area; and

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights and the right to the use of recreational facilities within the Common Area of a Member for any period during which any Assessment against his Lot remains unpaid, and for any infraction of its published rules and regulations; and

(d) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 403. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside in his residence.

Section 404. Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots shall have the right, jointly or singularly, to pay taxes or other charges or assessments which are in default and which may become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any First Mortgagees making any such payment shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees of Lots duly executed by the Association and an original of said agreement shall be maintained by the Association.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

Section 501. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 502. 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, and 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. Class B Members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

ARTICLE VI
COVEHANT FOR MAINTENANCE ASSESSMENTS
OF HOMEOWNERS ASSOCIATION

Section 601. Creation of the Lien and Personal Obligations of Assessments.
The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special 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. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on Real Property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable Attorney's fees. The Board of Directors or Managing Agent may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of El Paso, Colorado. The lien for each unpaid assessment attaches to the property at the beginning of each assessment period and shall continue to be a lien against the Property until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for which it is filed and collected as part and parcel thereof. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such

Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 602. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties; for the improvement and maintenance of the Common Area; and for the maintenance, upkeep and replacement of all landscaping and facilities.

Section 603. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment shall be Fifteen Dollars (\$15.00) per month per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment may be increased each year based on the actual cost of expenses which shall take into account the increases in those expenses due to inflation.

(b) The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements of the Common Area that must be replaced on a periodic basis and for maintenance and repair of the exterior of all improvements.

Section 604. Special Assessments for Capital Improvements. 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 purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the exterior of any improvements or capital improvements upon the Common Area, 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 each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 605. Notice and Quorum for any Action Authorized Under Section 604. Written notice of any meeting called for the purpose of taking any action authorized under Section 604 of this Article shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 606. Uniform Rate of Assessment. Both 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, that Declarant and Gates Land Company shall pay no assessments for the Lots that they may own.

Section 607. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors.

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. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of such installment.

Section 608. Effect of- Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of two percent (2%) over prime rate of the First National Bank of Colorado Springs per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 609. Working Capital. The Association may require the first private Owner of any Lot who purchases that Lot from Declarant to deposit with the Association an amount equal to two (2) times the amount of the estimated monthly assessment, which sum shall be held, in an interest-bearing account, by the Association, as and for working capital. All earned and accrued interest shall belong to the Association to be used for working capital. Such deposit shall not relieve an Owner from making the regular payment of assessments as the same become due. Said deposit shall remain with the Association subject to the Owner's receiving a credit from any purchaser of the Owner's Lot.

Section 610. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, including purchase money mortgages 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 sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to the acquisition of title by any such First Mortgage. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of executory land sales contract shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 611. Homestead. The lien of the Association assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 612. Notice to Mortgagee of Default. Upon request, a first mortgagee or a seller under an executory land contract shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days.

ARTICLE VII RESIDENTIAL CHARACTER

Section 701. Private Residential. 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, profession or other activity conducted for gain shall be carried on or within any lot or building site.

Section 702. Approval by Declarant. No structure shall be erected within the Subdivision except single-family dwellings and those accessory buildings and accessory structures which have been approved by Declarant. No structure other than a dwelling, no accessory building other than a guest house or servants' 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 written permission of Declarant.

Section 703. Temporary Structures. No tent, treehouse, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lot any time except with permission of Declarant or except as provided in Section 708.

Section 704. New Construction. 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 or building site except as expressly provided for in Section 708.

Section 705. Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement unless enclosed in a service yard or with a building so as not to be visible from any neighboring property or adjacent street.

Section 706. Occupation and Construction Procedures. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. Trees, scrub oak and other natural vegetation shall be protected during construction. The Declarant can require that the area to be graded or otherwise disturbed be enclosed by fencing prior to the start of construction. All construction, material, storage, parking and all other activities whatsoever shall be restricted to the fenced area.

No other lot or adjoining property may be used or disturbed without the prior written consent of the Declarant. At such time as construction begins a trash contained area will be provided, properly used and maintained.

Section 707. Completion Time. The exterior of all buildings or other structures must be completed within one (1) 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 (60) days without written permission of Declarant, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and forthwith removed by the Declarant at the cost of the Owner.

Section 708. Temporary Sales and Construction Buildings. Temporary buildings for use in connection with construction within the Subdivision or in connection with sales of new homes or lots may be erected or maintained and model homes may be used and exhibited by Declarant, by anyone who owns or holds a contract or option to acquire two or more lots in the Subdivision, and with Declarant's permission by any lot owner.

The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary buildings shall be promptly removed when no longer used for the designed purposes.

Section 709. Drilling Operations. 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 said Property nor shall any water, oil, natural gas, petroleum, asphaltum, or other hydrocarbon substances be produced from any well located upon, on, or under said Property.

ARTICLE VIII EASEMENTS

Section 801. Reservation. 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 such easements to others over, under, in and across:

(a) each of the five foot (5') strips along and adjoining the side boundary lines of each lot, and

(b) each of the seven foot (7') strips along and adjoining the rear boundary lines 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, drainage, and drainage improvements and for other similar or dissimilar facilities and purposes, and for anyone or more of such purposes.

Section 802. Grant of Easements. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

Section 803. Underground Utilities. All utilities except lighting standards or customary service devices for access, control or use of utilities shall be installed underground.

Section 804. Common Easements. Lots 1, 2, 3, 4, 5, 6, 24, 25, 26, 27, 28, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44 and 45 shall have an easement for ingress, egress, and public utilities over that portion of Lots 2, 4, 5, 25, 27, 34, 39, 42, and 44 crosshatched on the plat. No other owners of Lots shall have any rights to the portion of Lots 2, 4, 5, 25, 27, 34, 39, 42 and 44 crosshatched on the plat. Maintenance and repairs of any improvements on this crosshatched area shall be the responsibility of the Homeowners Association.

Section 805. Emergency Easement. A non-exclusive easement is further granted to all police, fire protection, ambulance and all similar persons or entities to enter upon the Properties.

Section 806. Homeowners Easement. An easement is hereby granted to the Homeowners Association, the Board of Directors, and to the Declarant, its officers, agents, employees and assigns upon, across, over, and in the Properties as may be necessary or appropriate to perform the duties and functions which they are obligated to perform pursuant to this Declaration or otherwise.

Section 807. Use of Common Area.

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.

(b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.

(c) The use of the Common Area and the restrictions of use on any portion of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(d) No use shall ever be made of the Common Area which will deny ingress and egress by those Owners having access to Lots only over the Common Area and the right of ingress and egress to said Lots upon the Properties by vehicle and otherwise is hereby expressly granted.

**ARTICLE IX
DENSITY, SETBACK AND QUALITY STANDARDS**

Section 901. Single-Family Residence. No more than one dwelling shall be erected or maintained within any building site or lot.

However, nothing herein shall prevent the erection and maintenance of one dwelling on a combination of lots provided that the plan for the same is approved by the Declarant and the lot lines are vacated and the combination of Lots is not less than 5,000 square feet.

Section 902. Parking. No private passenger motor vehicles owned by, belonging to, used, leased or controlled by an Owner or his tenant shall be parked overnight on any street. The structures on each lot or building site shall include a two-car, fully enclosed

garage or such equivalent garage arrangements as may be approved by Declarant. The site improvements on each lot or building site shall include adequate driveway or other similar off-street space or temporary parking of one (1) private passenger motor vehicle. All driveways shall be improved with asphalt or concrete paving unless otherwise approved by Declarant.

Section 903. Setbacks. Except with Declarant's approval, no building, porch, eave, overhang, projection or other part of a building shall be located within the setbacks for each lot, which setbacks shall be as follows:

Front Setbacks: Broadmoor Bluffs Drive, and Neal Ranch Drive	20 Feet
Front Setbacks: Langley Place, Odessa Place, Mahogany Lane, and Bancroft Place	15 Feet
Front Setbacks Access Tracts "B"	10 Feet
Front Setbacks Access Easements	10 Feet
Side Setbacks	5 Feet
Rear Setbacks	15 Feet

No fence or hedge more than two feet (2') high shall be installed or maintained at any location on a lot which is closer to an adjoining street than the dwelling or any other building located on the lot except as approved by the Declarant. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Colorado Springs, which regulations may vary from the provisions of this Section and other Sections.

Section 904. Size of Home. No dwelling shall be erected which has an Architectural Floor Area of less than 1,600 gross 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 905. Building Height. No dwelling or other structure shall exceed thirty-five feet (35') in height from the lowest elevation of the natural grade along the perimeter of the structure, except with the prior permission of Declarant. In granting or withholding such permission, Declarant shall give primary consideration to the protection of views from adjoining lots.

Section 906. Architectural Style. 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. Formal styles such as French Provincial, English Tudor, and Colonial will not be approved except in modified forms. All buildings must be designed to fit the natural contours of the lot without excessive grading. All buildings shall be designed and all plans signed by a registered architect or by a qualified designer approved by Declarant.

Section 907. Architectural Materials. All structures shall conform to the following materials and appearance standards:

- (a) Exterior materials shall be natural wood, brick, stone, stucco, or similar material approved by Declarant. Manufactured siding such as masonry, will be allowed in combination with the above materials.
- (b) Aluminum or wood windows are permitted. All aluminum windows shall be anodized and painted or coated a color to blend with the color of the building.
- (c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.
- (d) Exposed concrete shall be stuccoed and painted or textured in a manner approved by Declarant.
- (e) All roof areas shall be of wood shakes, wood shingles, tile, slate, copper, or such other material as may be approved by Declarant. Asphalt roofing materials are not permitted.

(f) All solar devices and systems will require specific approval by Declarant.

Section 908. Fencing. Fencing shall be limited and the location shall be approved by the Declarant. The style of fencing that will be approved shall be that style which is similar to fencing being utilized by the Declarant within the properties which can be modified with the Declarant's approval. No fencing shall be permitted in the American Telephone and Telegraph Company easement that is located within Lots 25, 26, 27, 30, 32, 34, 35 and 36.

Section 909. Landscaping. Within six (6) months after completion of a dwelling or within any extension of that period granted by Declarant, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is intended. No existing trees, surface boulders, or scrub oak shall be removed from any lot unless required by construction activity and unless approved by Declarant. The use of gravel, small rocks, and paving as landscape materials is not desirable.

Section 910. Accessory Structures. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot.

Section 911. Antenna. No aerial or antenna for reception of radio or television or other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

Section 912. Maintenance. Each Owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, 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 surfacing becomes weather-beaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawns, shrubs, trees, other landscape material, fences, signing, mail boxes and outdoor lighting. If an owner fails to provide exterior maintenance, the same may be performed by the Association at the cost of the Owner.

Section 913. Destruction. Any dwelling or building which may be destroyed in whole or part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months.

Section 914. Maintenance of Common Area. The Association shall be responsible for the landscaping and maintenance of the Common Area, and shall have the grass, weeds, trees, and/or vegetation cut and/or trimmed when necessary; provided, however, that said Common Areas may be left and maintained in natural vegetation. No Owner shall, in whole or in part, change the landscaping adjacent to his Lot by the addition or removal of any items thereon without the prior written approval of the Declarant.

ARTICLE X LIVING ENVIRONMENT STANDARDS

Section 1001. Unsightly Conditions. Each Owner shall prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

Section 1002. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 1003. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened as not to be visible from neighboring property or adjoining streets.

Section 1004. Outdoor Lines. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 1005. Trash. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers thereof, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections.

Section 1006. Noxious Activities. 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 upon any Lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any living unit.

Section 1007. Exterior Noise. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any building site.

Section 1008. Weeds and Diseased Trees. All such yards and open spaces and the entire area of every Lot on which no building has been constructed, shall be kept free from plant or weeds infected with noxious insects or plant diseases and from weeds which in the 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 opinion of the Declarant cause undue danger of fire. Trees infected with mistletoe, pine beetle or other diseases shall be removed by the Owner.

Section 1009. Right to Enter Lot. In order to effect insect, weed and fire control or to remove nuisances, Declarant has the right at its election to enter upon any lot upon which a building has been constructed and to mow, cut, prune, clear and remove from the premises bush, weeds or other unsightly growth which in the opinion of Declarant detracts from the overall beauty, setting and safety of the area, and remove any trash without such entrance and removal being deemed a trespass.

Section 1010. Drainage. No material change may be made in the ground level, slope, pitch or historic drainage patterns of any Lot as fixed by the original finish grading or existing natural conditions except after first obtaining the prior consent and approval of Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and neighboring Lots and so as to protect foundations and footings from excess moisture. Any construction or grading should direct surface waters to a drainage easement or to the street. Surface waters should not be concentrated and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts, and fills to eliminate erosion.

Section 1011. Animals. No animals except an aggregate of two (2) domesticated dogs or cats and except domesticated birds and fish and other small domestic animals permanently confined indoors shall be maintained within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Declarant makes an unreasonable amount of noise or odor or if a nuisance. No animal shall be kept, bred or maintained within the Subdivision for any commercial purposes.

Section 1012. Recreational Vehicles and Trailers. 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 overnight on a street or within any lot or building site

except in a completely enclosed structure, or fully screened in a manner approved by Declarant so as not to be visible at ground level from any neighboring property or street.

Section 1013. Junk Vehicles. No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any Lot in such manner as to be visible at ground level from any neighboring property or street.

Section 1014. 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 1015. 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) Such multiple signs for sale, administration and directional purposes during development;
- (d) Such 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.

There shall not be used or displayed on any Lot or structure any signs except those mentioned above or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental except upon the specific written approval by the Declarant. All permitted signs must be professionally painted, lettered and constructed.

Section 1016. Inflammables. No Owner shall use or permit to be brought into or stored in the buildings or improvements any inflammable oils or fluids such as gasoline, kerosine, naphtha or benzene in large enough quantities to be deemed hazardous to life, limb or property.

Section 1017. Parking. Except as expressly heretofore provided, no part of the public street adjoining the properties, and no part of the properties, including private driveways shall be used for parking, storage or display of any vehicle. All vehicles shall be kept in enclosed garages.

ARTICLE XI
ARCHITECTURAL CONTROL

Section 1101. Architectural Control. All architectural control shall be by the Declarant. It shall be the duty of the Declarant and the Declarant shall have the power by the exercise of its best judgment to determine that all structures, improvements, construction, decoration and landscaping on the properties conform to and harmonize with the existing surroundings and structures.

Section 1102. Review by Declarant. After the purchase of a Lot from Declarant, no structure, whether residence, accessory building, tennis court, swimming pool, antenna, whether on a structure or on said Lot, flag poles, fences, walls, house numbers, mail boxes, exterior lighting, or other improvements, shall be constructed or maintained upon said Lot and no alterations or repainting to the exterior of a structure shall be made and no landscaping performed unless complete plans, specification, and lot plans therefore, showing the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Declarant, and a copy of such plans, specifications and Lot plans as finally approved, deposited with the Declarant.

Section 1103. Procedures.

(a) The Declarant shall approve or disapprove all plans and requests within thirty (30) days after requests have been submitted. The Declarant shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the Declarant shall take into consideration the design, style and construction of the proposed building or alteration, its location on the Lot, the harmony of its design, architecture, and location with the terrain and surrounding neighborhood and shall determine whether such proposed building is consistent with the general terrain, the architecture of other buildings located upon the properties subject to this Declaration, and whether or not the construction or alteration of said building will adversely affect or decrease the value of other Lots and/or Dwellings because of its design, location, height or type of material used in construction.

The Declarant may make reasonable requirements of the Lot Owner, including the submission of additional plans, to ensure conformance of such building or alteration when erected with these restrictions and covenants and with the plans submitted and approved. The Declarant may require such changes as may be necessary to conform to the general purposes as herein expressed.

(b) The Declarant shall have authority to grant variances from the provisions of this Declaration in cases of irregularly shaped Lots, unusual terrain, or other conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Declarant shall be the sole and exclusive judge of whether or not said hardship exists.

(c) Whenever the Declarant disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Declarant.

(d) All plans submitted to the Declarant shall be left on file with the Declarant.

(e) It is the intent of these Declarations that the Declarant shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

(f) The Declarant shall resolve all questions of interpretation under the Covenants of this Declaration. They shall be interpreted in accordance with their general purpose and intent as herein expressed.

Section 1104. Liability of Declarant. The Declarant shall not be liable at law or in equity to any persons submitting requests for approval or to any Lot Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

Section 1105. Successors. After all of the Properties have been sold, the Declarant, if it so chooses, may transfer all or part of the functions, rights and powers of architectural control to an Architectural Control Committee consisting of three (3) members each of whom shall be an Owner of a Lot within the Properties. Thereafter, any vacancy may be filled by the remaining member or members of the Architectural Control Committee.

ARTICLE XII INSURANCE

Section 1201. Insurance. All insurance, other than title insurance, shall be governed by the provisions of this Article XII.

Section 1202. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado.

To the extent possible, the casualty, property, and liability insurance shall: (i) provide for a waiver of and subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be cancelled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and (iii) provide that the policy of insurance, shall not be terminated, cancelled or substantially modified without, at least thirty (30) days prior written notice to the Association.

Section 1203. Insurance by Owners. Each owner shall be responsible for obtaining property, hazard, liability and personal property insurance for any improvements to the Owner's Lot.

Section 1204. Fidelity Insurance. The Association may maintain adequate fidelity insurance coverage, if available, to protect against dishonest acts on the part of the Directors, officers, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall (i) name the Association as obligee; (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves; (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and (iv) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least fifteen (15) days' written notice to the First Mortgagees and the Association.

Section 1205. Common Area Insurance. The Association shall obtain and maintain at all times fire insurance with extended coverage and standard all risk endorsements, which endorsements shall include an endorsement for vandalism and malicious mischief. Said insurance shall insure the Common Area, together with all fixtures, improvements and service equipment located thereon and a part thereof. Additionally, the Association shall obtain and maintain comprehensive general public liability and property damage insurance covering all Common Areas.

Section 1206. Other Insurance. The Association may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate.

ARTICLE XIII
GENERAL PROVISIONS

Section 1301. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot or dwelling in the Subdivision.

Section 1302. Covenants Are Accumulative. 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. The provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 1303. Covenants May Not Be Waived. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceableness of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh, or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the ground of waiver.

Section 1304. Enforcement. These Covenants are for the benefit of the Owners jointly and severally and the Declarant and may be enforced by action for damages, suits for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy instituted by one or more Owners, Declarant, the Association, successors, or any combination of them. All costs incurred by anyone in connection with any successful enforcement proceeding shall be paid by the party determined to have violated the Covenants.

The Declarant may give notice to the Owner of the Lot where a breach occurs or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach, and the intent of the Declarant to invoke this Section unless within a period stated in the notice, not less than five (5) calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice, the Declarant may cause the breach to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's Property as necessary for such purpose shall not be

deemed a trespass. The cost so incurred by the Declarant shall be paid by 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 twelve percent (12%) per annum and plus cost of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) of each person so notified and shall in all respects be the personal obligation of the Owner. The Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection against the Owner personally obligated to pay 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 cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce these Covenants as otherwise may be provided by law or equity.

Section 1305. Duration, Revocation and Amendment. Each and every provision of the Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of the Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. These Covenants may be amended or revoked by an instrument approved in writing by not less than two-thirds (2/3) of the members with the Declarant having the weighted voting rights as set forth in Article V. Thereafter, this Declaration may be amended by an instrument approved in writing by not less than two-thirds (2/3) of the Members. Such amendments or revocation shall be effective when duly recorded; provided, however, that any amendment or revocation must comply with the statutes of Colorado and the resolutions and ordinances of the City of Colorado Springs, Colorado, or of any successor governmental entity having jurisdiction over the Properties in existence at the time such amendment becomes effective.

Section 1306. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other covenants shall in no way be affected or impaired but shall remain in full force and effect.

Section 1307. Actions In Writing. Notices, approval, consents, extensions, applications and other actions 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 or other action. Permission, consent or approval of Declarant under these Covenants is not effective unless in writing.

Section 1308. Notices. Any writing, including any communication from the Declarant to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the

dwelling situated on the Lot owned by that Owner, or (b) if there is no dwelling, then to the address furnished by the Owner to the Declarant; and if the Owner has not furnished an address, then to the most recent address of which the Declarant has a record.

Section 1309. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereof), as reasonably determined by the Association in excess of \$10,000.00, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned to all First Mortgagees of Lots, Members and to the Declarant. The Association shall have full power and authority to defend in said proceedings, but the Association shall not voluntarily enter into any stipulations or agreements pursuant to which the Common Area or any part thereof or any interest therein shall be taken, unless all First Mortgagees of Lots, Members and the Declarant receive at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be payable to the Association, subject to the rights of all First Mortgagees; provided, however, that the proceeds from a condemnation award shall first be used to repair and restore the Common Area unless (i) there is a substantial or a complete taking and (ii) at least two-thirds (2/3) of the Owners vote not to repair or restore the Common Area. Unless there is a substantial or complete taking and two thirds (2/3) of the Owners vote not to repair or restore the Common Area, the Association shall arrange for the repair and restoration of the Common Area, and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that there is a substantial or complete taking and two-thirds (2/3) of the Owners vote not to repair or restore the Common Area, then in that event, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving one (1) equal share, provided that the Association shall first pay out of the shares of each Owner the amount of any unpaid lien or encumbrances on his Lot in the order of the priority of such liens or encumbrances. All assessments owed to any governmental entity shall be paid first followed by all other liens or encumbrances of record, with final payment of assessments owed to the Association, if any. No provision of this Declaration or of any other document relating to the properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to the mortgage or deed of trust in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or taking of Lots or Common Area, or both.

If an Owner's Lot is taken by eminent domain, then such Owner's membership in the Association shall terminate.

Section 1310. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by regular mail, postage prepaid, addressed in the name of the Owner at such mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by regular mail, postage prepaid, to the address of the Association.

Section 1311. Power of Attorney. The Declarant hereby appoints the Association irrevocably as attorney-in-fact for and on behalf of the Homeowners to deal with the project in the event of condemnation, damage or destruction. Title to any Lot declared and expressly made Subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any subsequent Owner shall constitute the appointment of the attorney-in-fact herein provided during the period such grantee owns his Lot.

If any part of the improvements within the Properties are damaged or destroyed, the Association is empowered to repair or reconstruct such improvements using the proceeds of insurance, and, if necessary, the proceeds from any special assessments. However, if the damage or destruction to the entire Properties is greater than two-thirds (2/3) of the full replacement value thereof, not including land, two-thirds (2/3) of the Owners may agree not to repair or reconstruct the damaged or destroyed improvements. In that event, the Association shall forthwith record with the Clerk and Recorder of El Paso County, Colorado, a notice setting forth such fact or facts. The Association shall then, in accordance with the provisions of this paragraph, sell the Properties as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association. Assessments shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, such proceeds shall be divided by the Association equally, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Lots. Each such account shall be in the name of the Association as attorney-in-fact and the Association shall use and disburse the total amount of each such account without contribution from one account to another toward the partial or full payment of the lien of any owner or toward the sales price of any executory land sales contract encumbering the Lot represented by such separate account. Thereafter each such account shall be supplemented by the apportioned amount of the

proceeds obtained from the sale of the entire Property. Such apportionment shall be equal as between Lots. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as provided in Section 1309 of this Article.

Section 1312. Right of Inspection. All Owners shall have the right upon reasonable notice to examine the books and records of the Homeowners Association.

Section 1313. Management Agreements. Any agreement entered into by the Association for professional management of the properties must provide for termination by either party without cause or upon payment of a termination fee upon ninety (90) days' written notice. No contract shall be written to exceed a maximum term of three (3) years.

Section 1314. Leases. Any lease agreements between an Owner and a lessee shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing.

Section 1315. Dedication of Common Areas. Declarant, in recording this Declaration of Covenants, Conditions and Restrictions, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners as more fully provided for in this Declaration of Covenants, Conditions and Restrictions.

Section 1316. Prohibited Acts. Unless at least two-thirds (2/3) of the Owners of the individual Lots in the Association have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by such Homeowners Association for the benefit of the Lots in Mountain Qaks Subdivision. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause;
- (b) Change the method of determining the obligations, assessments, dues or other charges that may be levied against a Lot Owner, provided that this shall not prohibit the imposition of such charges, nor shall it prohibit the increase in any dues or assessments;

(c) By act or omission, change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of residences, the exterior maintenance of Lots, the maintenance of the Common Area., party walks or common fences and driveways or the upkeep of lawns and plantings in Mountain Oaks Subdivision;

(d) Fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and

(e) Use hazard insurance proceeds from losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 1317. Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 7th day of August, 1987.

DAVID R. SELLON & COMPANY

By: David R. Sellon
David R. Sellon, President

ATTEST:
Clinton L. Emerson
Clinton L. Emerson, Secretary

APPROVED BY CO-OWNER OF REAL PROPERTY:

GATES LAND COMPANY

By: D. K. Sunderland
D. K. Sunderland, President

ATTEST:
D. R. Davidson
D. R. Davidson, Assistant Secretary

STATE OF COLORADO)
) SS:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 7th day of August, 1987, by David R. Sellon as President and Clinton L. Emerson as Secretary of David R. Sellon & Company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of August, 1987

My Commission Expires: 2/14/89.



Camela Zink
NOTARY PUBLIC
660 Southpointe Court, Suite 210
Colorado Springs, CO 80906

STATE OF COLORADO)
) SS:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 11th day of August, 1987, by D. K. Sunderland as President and D. R. Davidson as Secretary of Gates Land Company. Assistant

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of August, 1987

My Commission Expires: 4-15-87.



Melissa K Herdwin
NOTARY PUBLIC
Address: 155 W. Lake Ave
Colo 80905 CO 80906

**AMENDMENT TO DECLARATIONS OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MOUNTAIN OAKS SUBDIVISION FILING
NOS. 1, 2, 3 AND 4**

THIS AMENDMENT ("Amendment") is made this 30th day of December, 1996 to the Declarations of Covenants, Conditions and Restrictions affecting Real Property known as Mountain Oaks Subdivision Filing Nos. 1, 2, 3, and 4 by the Mountain Oaks Homeowners Association, a Colorado non-profit corporation ("Association").

RECITALS

A. All of the lots within the Mountain Oaks Subdivision Filing Nos. 1, 2, 3 and 4 are the subject of certain Declarations of Covenants, Conditions and Restrictions affecting the real property known as Mountain Oaks Subdivision, variously recorded in the Clerk and Recorder's Office of El Paso County, Colorado, in Book 5410 at Page 122, et seq. Book 5872, Page 173, Book 5872, Page 203 and Book 6043, Page 1317, as from time to time amended (collectively the "Covenants").

B. All terms of art utilized herein (capitalized) shall have the same meaning as set forth in the Covenants unless the context otherwise required or as otherwise specifically defined herein.

C. At the annual meeting of the Association on November 17, 1996, the Amendments set forth herein were adopted by a vote of the owners of more than 60% of the units (lots) to which at least 67% of the votes in the Association are allocated, all as required by the Covenants.

NOW THEREFORE, the Association hereby declares that the Covenants shall be and hereby are amended by the terms and provisions set forth below:

1. **Antennas.** The Covenants provide (§911) as follows:

No aerial or antenna for reception of radio or television or any other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

In order to accommodate the requirements of recent changes in the Federal Communications Act, as implemented by the Federal Communications Commission Report No. DC96-78 dated August 6, 1996, the following is added to permit antennas in accordance therewith by the addition of the following language:

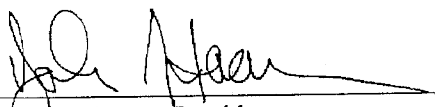
Notwithstanding the foregoing, a small dish antenna not exceeding one meter in diameter, shall be permitted on the exterior of residences located within the subdivision provided that such antennas shall be mounted in the least obtrusive and least visible place possible to reduce its visibility to other houses and from the public street to the minimum amount, subject only to the requirements of reasonable signal reception in accordance with the requirements of the Federal Communications Commission. No such antenna shall be erected without prior approval of the Association's Architectural Control Committee which may also require that such antenna/dish be painted to match the predominant exterior color of the house so long as signal reception will not be materially impaired. Approval shall be deemed given if not otherwise denied within five working days after written application for such permission has been given by the Owner to the Architectural Control Committee.

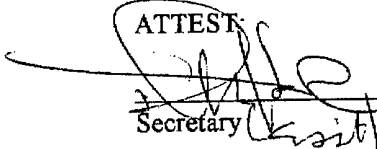
2. **Ratification.** Except as modified hereby, all other terms and provisions of the Covenants of the Declarations described above shall remain in full force and effect and are hereby ratified and confirmed by the Association.

3. **Certification.** By his signature below, the President of the Association hereby certifies on behalf of the Association that this Amendment has been duly adopted pursuant to the provisions of the above-referenced Declarations and Covenants, the Bylaws of the Association and in accordance with Colo. R. Civ. Proc. §38-33, 3-217 and that this amendment has been prepared and executed by the Association and shall be recorded by the Association in the Clerk and Recorder's Office of El Paso County, Colorado, where the Mountain Oaks Subdivision is situate. Further, the President certifies that he is in possession of documents evidencing the written consent or vote of the owners of lots to which 67% of the votes of the Association are allocated and the Declaration and Bylaws do not specify any greater or lesser percentage for the purpose of amending the provisions of the Declarations and Covenants.

IN WITNESS WHEREOF, the Association has caused this Amendment to be executed by its duly authorized officers and representatives.

MOUNTAIN OAKS HOMEOWNERS
ASSOCIATION


BY 
John Haaren, President

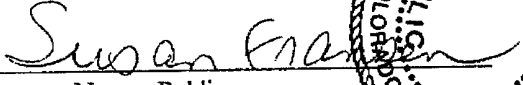
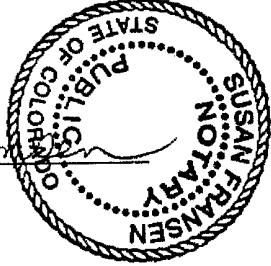
ATTEST:

Secretary

STATE OF COLORADO)
)ss
COUNTY OF EL PASO)

The above and foregoing Amendment to Declarations of Covenants was
subscribed and sworn to before me this 22nd day of Jan., 1997 by
John H. [Signature] President of Mountain Oaks Homeowners Association.

Witness my hand and official seal.



SUSAN FRANSEN
NOTARY PUBLIC - STATE OF COLORADO
COMMISSIONED IN EL PASO COUNTY
MY COMMISSION EXPIRES 1-26-99

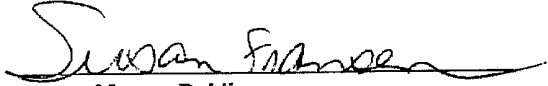

Notary Public


STATE OF COLORADO)
)ss
COUNTY OF EL PASO)

The above and foregoing Amendment to Declaration of Covenants was
subscribed and sworn to before me this 27th day of Jan., 1997 by Tom HASKINS
Assistant Secretary of the Mountain Oaks Homeowners Association.

Witness my hand and official seal.


SUSAN FRANSEN
NOTARY PUBLIC - STATE OF COLORADO
COMMISSIONED IN EL PASO COUNTY
MY COMMISSION EXPIRES 1-26-99


Notary Public
