

**VILLAGE 9 DECLARATION**  
**OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by THOMAS M. WILKINSON,  
hereafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in Mesa County, State of Colorado, which  
is more particularly described as:

Commencing at the southwest corner of said Southeast Quarter of the Northeast Quarter of Section 25,  
thence North 0\* 11' 46" West, along the west line of said Southeast Quarter of the Northeast Quarter of  
Section 25, a distance of 50.00 feet to the north line of "B-1/2" Road and the POINT OF BEGINNING of  
this description; thence continuing North 0\* 11' 46" West, along said west line, 1269.79 feet to the  
northwest corner of said Southeast Quarter of the Northeast Quarter of Section 25; thence North 89\* 55' 23"  
East, along the north line of said Southeast Quarter of the Northeast Quarter of Section 25, a distance of  
1024.99 feet, thence South 0\* 09' 02" East, 119.65 feet to a found iron pin; thence South 62\* 35' 40" East,  
50.84 feet to a found iron pin; thence South 0\* 04' 32" East, 25.00 feet to a found iron pin; thence North  
89\* 55' 28" East, 20.00 feet to a found iron pin; thence South 0\* 12' 01" East, 361.54 feet; thence North 9\*  
55' 28" East, 27.50 feet; thence South 0\* 12' 01" East, 210.00 feet; thence South 89\* 55' 28" West, 27.50  
feet; thence South 0\* 12' 01" East, 449.97 feet to a found iron pin; thence North 89\* 51' 32" East, 75.08  
feet to a found iron pin; thence South 0\* 03' 15" East, 79.71 feet to a found iron pin and the north line of  
aforesaid "B-1/2" Road; thence South 89\* 53' 50" West, along said north line, 164.86 feet, to the point of  
beginning, containing 31.82 acres, more or less. The basis of all bearings being the bearing of North 9\* 53'  
50" East for the East-West Quarter Section line in Section 25.

WHEREAS, such property is the replat of a portion of Village 9 Subdivision, Filing 3. Covenants,  
Conditions and Restrictions effecting such property have previously been recorded in Book 1255 at Page 81  
and in Book 1198 at Page 82 of the records of the Mesa County Clerk and Recorder. The Covenants, Conditions  
and Restrictions contained herein replace and amend entirely such Covenants.

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above  
shall be held, sold and conveyed subject to the following easements, restrictions, covenants and  
conditions, which are for the purpose of protecting the value and desirability of, 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 1. "Association" shall mean and refer to Village Nine Filing 3, Homeowners Association, Inc., its successors and assigns.

Section 2. "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 part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Thomas M. Wilkinson, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot who 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 2. The Association shall have two classes of voting membership:

**Class A.** Class A member(s) 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. 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 Lot.

**Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal to the total votes outstanding in the Class B membership, or
- (b) On July 1, 1985.

**ARTICLE IV**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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 to the Association: (1) annual assessments or charges, and (2) special

assessments for capital improvements, 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. Each such 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 2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area.

Section 3. **Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Thirty-six Dollars (\$36.00) per Lot for all Lots except for Lots abutting Tracts A through O which shall be \$46.00 per year.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. **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 a capital improvement upon the Common Area, including fixtures and personal property related therein, 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.



The lien of such 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 land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sale contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer or cancellation, or forfeiture of executory land sales contract. No sale or transfer, or cancellation or forfeiture of executory land sales contract shall release such Lot from liability for any such charges thereafter becoming due or from the lien thereof.”

## ARTICLE V

### **RESTRICTIONS AND ARCHITECTURAL CONTROL**

Section 1. **Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon Properties, nor shall any exterior addition to or changes or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. **Fences.** No fences, foliage, trees or hedges in the nature of a fence will be planted, maintained, constructed or erected closer to the street than the leading edge of the residential building constructed on such Lot.

Section 3. **Vehicles.** Vehicle parking in driveways and on the streets in front of houses shall be limited to temporary parking of guest or resident vehicles in current use and currently licensed. Storing automobiles, trucks, campers, recreational vehicles, boats, snowmobiles, motorcycles, motor bikes or any vehicle of any other description in the street, driveway, yards of residences, in front of the principal building set back lines is specifically prohibited. Such vehicles may be stored behind such set back lines within the boundaries of such Lot, provided such stored vehicles are fenced or screened to the satisfaction of the architectural committee. No such fence or

screen shall be erected without the prior approval of the architectural committee. Vehicular maintenance or repair which renders the vehicle inoperable for more than twenty-four hours is prohibited on street, driveway or front yards of residences. This provision shall not permit the commercial repair of any type of vehicle, such activity being expressly prohibited.

Section 4. **Public Service Company Tariffs.** [Amendment] All Lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The Owner or Owners shall pay as billed a portion of the cost of public street lighting in the subdivisions according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

## ARTICLE VI GENERAL PROVISIONS

Section 1. **Enforcement.** The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. **Severability.** Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. 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 Lot Owners. Any amendment must be recorded.

Section 4. **Annexation.** 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.

Section 5. **FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans

Administration: Annexation of additional properties, dedication of Common Areas, and  
amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set  
its hand and seal this 9<sup>th</sup> day of November, 1982.

\_\_\_\_\_  
Thomas M. Wilkinson

STATE OF COLORADO  
COUNTY OF MESA

The foregoing instrument was acknowledged before me this 9th day of November, 1982,  
by Thomas M. Wilkinson.

WITNESS my hand and official seal.

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Patricia J. Shields  
Notary Public

BOOK 1399 PAGE 772

*Thomas M. Wilkinson*  
Thomas M. Wilkinson

STATE OF COLORADO )  
COUNTY OF MESA ) ss.

The foregoing instrument was acknowledged before me  
this 9th day of November, 1982, by Thomas M. Wilkinson.

WITNESS my hand and official seal.

My commission expires: My Commission Expires Date is 1984-  
My address is: 440 Hall Ave. Greeley, CO 81501



*Patricia J. Shields*  
Notary Public