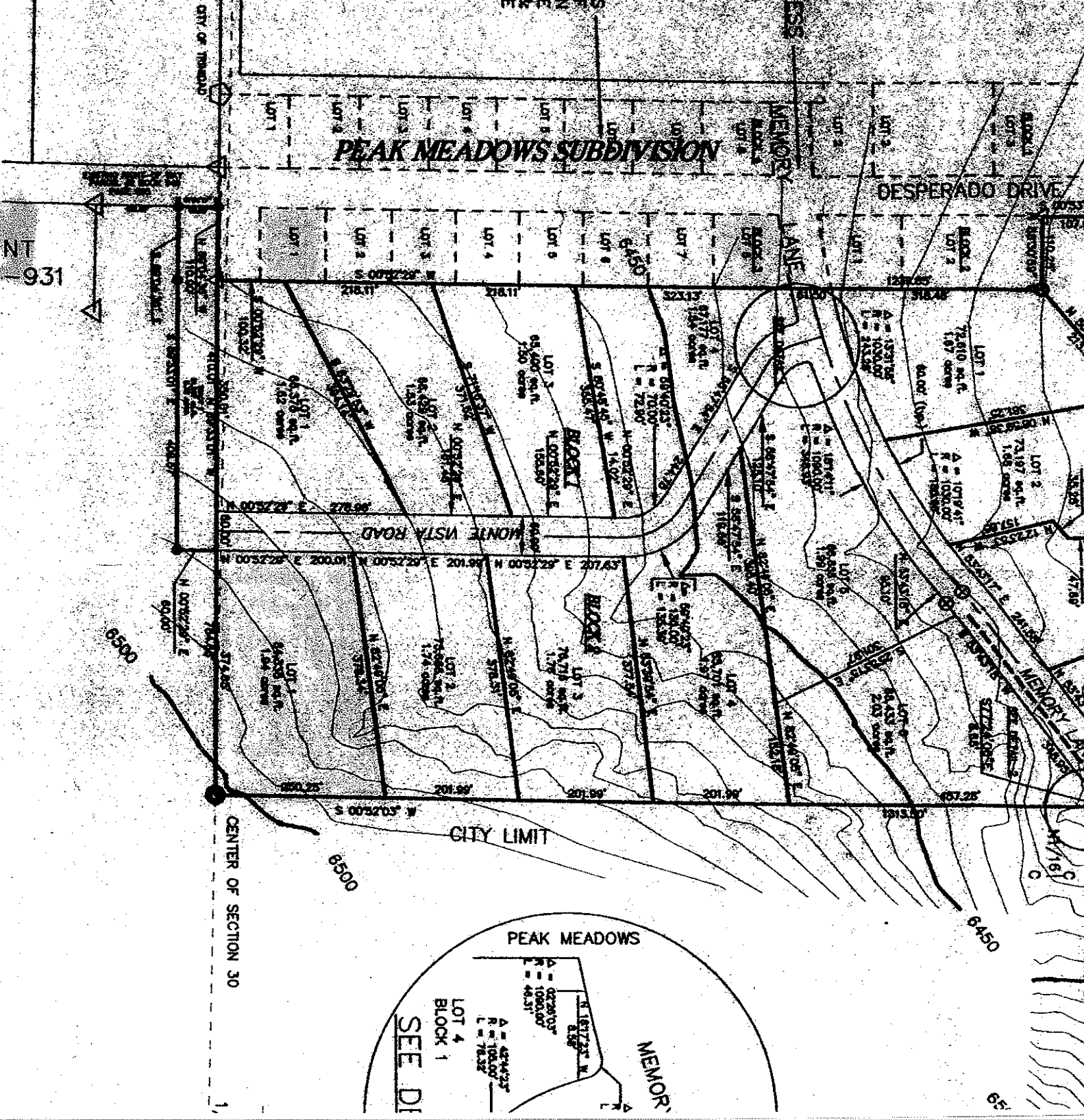


ALLNDALE

INFORMATION FOR PEAK MEADOWS
 SUBDIVISION TAKEN FROM PLAT OF
 SAID SUBDIVISION, RECORDED IN
 BOOK 915, PAGE 985 OF THE
 LAS ANIMAS COUNTY CLERK &
 RECORDER'S OFFICE

EXISTING ACCESS

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**BY-LAWS OF THE RESERVE AT FISHERS PEAK
PROPERTY OWNERS ASSOCIATION, INC.**

Article 1. Offices

The name of the corporation is Reserve at Fishers Peak Property Owners Association, Inc. a Colorado non-profit corporation, hereinafter referred to as the "Association". The Principal office of the Association in the State of Colorado shall be at 216 Spruce Street, Colorado Springs, Colorado 80905. The Association may have such other offices, either within or without the State of Colorado, as the Board of Directors may designate or as the business of the Association may require from time to time.

Article II. Members

Section 1. The Developer when referred to in these By-Laws is Reserve at Fishers Peak, LLC, a Colorado Limited Liability Company. Members when referred to in these By-Laws are those parties who purchase a Tract or Tracts from Developer in that certain real estate known as the Reserve at Fishers Peak subject to the Declaration of Covenants, Conditions and Restrictions of the Reserve at Fishers Peak, recorded at reception #636573, Book 971, Page 523 in the records of the Clerk and Recorder of Las Animas County, Colorado on February 9, 1999.

Section 2. Annual Meeting. The annual meeting of the Members shall be determined by the Board of Directors. The purpose of the meeting shall be to elect Directors and for the transaction of such other business as may come before the meeting. If the day is fixed for the annual meeting shall be a legal holiday in the State of Colorado, such meeting shall be held on the next succeeding business day. If the election of Directors shall not be held on the day designated herein for any annual meeting of the Members, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as conveniently may be.

Section 3. Special Meetings: Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the President at the request of not less than ten percent of all the members of the Association.

Section 4. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Colorado unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all Members entitled to vote a meeting may designate any place, either within or without the State of Colorado, unless otherwise prescribed by statute, as the place for the holding of such meeting. If no designation is

made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Association in the State of Colorado.

Section 6. Quorum. A majority of the Members of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. If less than a majority of the Members are represented at a meeting of Members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 7. Majority of Quorum. Unless otherwise expressly provided in these By-Laws or the Declaration, any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

Section 8. Proxies. At all meetings of members, a Member may vote in person or by proxy executed in writing by Member or by his duly authorized attorney in fact or lending institution's representative. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Interest (s) held by a personal representative, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such membership into his name. Membership standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote a membership held by him without a transfer of such membership into his name.

Section 9. Informal Action by Members. Unless otherwise provided by law, any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

Article III. BOARD OF DIRECTORS

Section 1. Powers and duties. The business and affairs of the Association shall be managed by its Board of Directors. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and not be limited to the following, all of which shall be done for and on behalf of the Owners of the Tracts. The ACC Board of Directors shall have the same powers in absence of an elected Board of Directors, if no assessments are deemed necessary to run the affairs of the Association. The Board of Directors and the ACC Board of Directors

Shall administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the By-Laws of the Association and supplements and amendments.

- (a) To establish, make and enforce compliance with such rules and regulations as may be necessary for the operation, use and occupancy of all the Tracts with the right to amend the same from time to time. A copy of such rules and regulations shall be delivered or mailed to each member upon the adoption thereof;
- (b) To incur such cost and expenses as may be necessary to keep in good order, condition and repair all the areas in the Property required to be maintained by the Association;
- (c) To obtain and maintain all insurance required or permitted under the Declaration or otherwise deemed advisable by the Association;
- (d) To prepare a budget for the Association in the manner set forth in the Declaration to determine the amount of the expense assessments payable by the Owners to meet the expenses of the Property, and allocate and assess such expenses among the Owners as set forth in the Declaration and to adjust, decrease or increase the amount of the expense assessments and to levy and collect special assessments. (At the present time there is no need for annual dues or special assessments due to any common area maintenance or ACC expenses);
- (e) Collect delinquent assessments by suit or otherwise and to enjoin or seek damages from a Member as is provided in the Declaration and these By-Laws. The Board shall have the duty, rights, power and authority to suspend the voting rights of any member in the event that any assessment made remains unpaid more than 30 days from the due date for payment of it. Such rights shall be reinstated upon payment of all past due assessments and all interest and costs charged in conjunction with such delinquency. Such rights may also be suspended for a period not to exceed 60 days for infraction of published rules and regulations of the Association;
- (f) To borrow funds to pay for any expenditure or outlay required pursuant to the authority, granted by the provisions of the Declaration and these By-Laws, and to execute all such instruments evidencing such indebtedness as the Board may deem necessary and, upon the written consent of the members entitled to vote, to give security therefore provided, however that security shall only be taken in the Association's property, never in the Members' property except to extent assessment remains unpaid. The instruments on behalf of the

- (g) Association shall be the President or Vice President and Secretary or Assistant Secretary;
- (h) To enter into contracts to carry out their duties and powers and to hire and fire all personnel necessary for the operation, maintenance, repair, and replacement of the areas for which the Association is responsible under the Declaration;
- (i) To establish a bank account or accounts for the treasury and for all separate funds of the Association that are required or may be deemed advisable (none at present);
- (j) To make repairs, additions, alterations and improvements to the areas required to be maintained by the Association;
- (k) To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to allow examination thereof at any reasonable time by each Member and First Mortgagees of Tracts, and to cause a certified public accountant to prepare a compilation or review financial statement of the books and records of the Association at the end of each fiscal year. At the option of the Board, an annual review or audited financial statement may be required unless no monies are collected or deemed necessary to run the Association;
- (l) To Prepare and deliver annually to each Member the reports prepared under subsection (k) above;
- (m) To meet annually.
- (n) To supervise all officers, agents and employees of this Association, and to see that their duties are properly done;
- (o) As more fully provided in the Declaration, to:
 - (1) Recommend the amount of the annual expense assessment against each Tract;
 - (2) Send written notice of each annual expense assessment to every Owner subject thereto in the manner and at the times set forth in the Declaration if such action as collecting funds is deemed necessary by the Board of Directors.
 - (3) Foreclose the lien against any Tract for which assessments are not Paid within 90 days after the due date or bring an action at law against the Owner personally obligated to pay the same.

- (p) Subject to the provisions of the Declaration: to issue or to cause an appropriate officer to issue, upon demand by a person, a certificate setting forth whether any assessment has been paid; a reasonable charge may be made by the Board of Directors for the issuance of these certificates; if a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment to that person who relies thereon to his detriment;
- (q) To cause all officers and employees having fiscal responsibilities to be bonded, if and as it may deem appropriate;
- (r) Employ the services of a manager or managing agent, or both, and such independent contractors or other employees as they deem necessary, and delegate any of their duties to such persons; provided, however, when so delegated, the Board of Directors shall not be relieved of its responsibilities under the Declaration, the Articles of Incorporation or these By-Laws; and
- (s) In general, to carry on the administration of this Association and to do all of those things necessary and reasonable to carry out the governing and the operation of the Property, if deemed necessary by the Association.

SECTION 2. No Waiver of Rights. The omission or failure of the Association or any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Declaration, the Articles of Incorporation, these By-Laws or the Rules and Regulations adopted pursuant hereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board, the ACC Board or the managing agent shall have the right to enforce the same thereafter.

SECTION 3. Number, Tenure and Qualifications. The number of Directors of the Association shall be no less than one or more than ten (if two Boards are necessary). The number of Directors shall be set at any special or annual meeting of Directors or ACC Board of Directors, but the members shall be three until changed at a subsequent meeting of Directors. Each Director shall hold office until the new ACC Board of Directors are appointed or a Board of Directors meeting is held to determine whether an election is necessary to run the affairs of the Association after the Developer is no longer a Class B member. Tenure on any future Board of Directors shall be decided by the membership at any future Annual Meetings.

SECTION 4. Control of Property Owners Association. Notwithstanding anything else contained herein to the contrary, until the later of all infrastructure and amenities are complete or as long as Developer owns in fee simple greater than twenty (25) percent of the property subject to the Covenants, including any subsequently annexed property, the Developer shall be entitled to appoint the majority of the Directors for the Property Owner Association entitled to be elected pursuant to the By-Laws and the majority of the Member or ACC Board of Directors, until which time members decide to hold an election or future properties are annexed into the subdivision in future phases of development.

SECTION 5. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as the annual meeting of Members. The ACC Board of Directors shall hold regular meetings as building plans are submitted or issues of the Association arise under their control. The Boards may provide, by resolution, fix the time and place for the holding of additional regular meetings without other notice than such resolution.

SECTION 6. Special Meetings. Special meetings of the Board of Directors or ACC may be called by or at the request of the President or any Director called by them.. Any member may request a presentation for the ACC Board of Directors, as defined in the Declaration.

SECTION 7. Telephone Meetings. Members of the Board of Directors or any committee designated by the Boards may participate in any meeting of the Boards or Committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

SECTION 8. Notice. Notice of any special meeting shall be given at least seven days previously thereto by written notice delivered personally or mailed to each Director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 9. Quorum. A majority of the number of Directors fixed by Section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors or ACC Board of Directors, but if less than such majority is present of a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

SECTION 10. Manner of Voting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 11. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the Directors.

SECTION 12. Vacancies. At a vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the number of Directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of Directors by the Members.

SECTION 13. Compensation. By resolution of the Board of Directors, each Director may be paid his expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as Director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefore.

SECTION 14. Presumption of Assent. A Director of the Association who is present at a meeting of the Board of Directors at which action or any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Article IV. OFFICERS

SECTION 1. Number. The officers of the Association shall be a President, a Vice-President, if elected by the Board of Directors, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors.

Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary. The officers of the Association shall be natural persons of the age of eighteen years or older.

SECTION 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

SECTION 3. Removal. Any officer or agent may be removed by the Board of Directors whenever in its judgment, the best interests of the Association will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 5. President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members and the Board of Directors, unless a different Chairman has been otherwise designated or elected. He may sign, with the Secretary or any other proper officer of the Association thereto authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION 6. Vice-President. In the absence of the President or in the event of death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECTION 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such Member; and (e) in general perform all duties incident

to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECTION 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of these duties in such sum and with such surety or sureties as the Board of Directors shall determine.

SECTION 9. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Director of the Association.

SECTION 10. Indemnification.

- (a) The Association shall indemnify every Director, Officer, agent, or employee against loss, costs, and expense, including counsel fees reasonably incurred in connection with any action, suit, or proceeding to which such person may be made a party by reason of being or having been such Director, Officer, agent or employee of the Association, except as to matters as to which such person shall be finally adjudged to be liable for gross negligence, willful misconduct or fraud.
- (b) No indemnification shall be provided for acts constituting gross negligence, fraud, or willful misconduct.
- (c) No Management Contractor, who is an independent contractor, or any other independent contractor shall be protected by these indemnification provisions nor by any insurance policies obtained by the Association in relation thereto, but any such protection is the sole and separate responsibility of any Management Contractor who is an independent contractor, or any other independent contractor, as one of their expenses of doing business.
- (d) In the event of a settlement, the settlement shall be approved by any insurance carrier providing coverage, and paid for out of any available insurance proceeds, provided, however, that the lack of insurance coverage or proceeds shall not abrogate the Association's duty to indemnify the Officers and Directors to the fullest extent permitted by law.

Article V. CONTRACTS, LOANS, CHECKS AND DEPOSITS

SECTION 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances

SECTION 2. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

SECTION 3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, savings institutions, trust companies or other depositories as the Board of Directors may select.

Article VI. FISCAL YEAR

The fiscal year of the Association shall begin on January 1, and end on December 31 in each year.

Article VII. CORPORATE SEAL

The Board of Directors shall provide an Association seal which shall be either circular in form and shall have inscribed thereon the name of the Association and the state of incorporation and the word "Seal", or shall be a rubber seal in substantially the same form as provided above.

Article VIII. WAIVER OF NOTICE

Unless otherwise provided by law, whenever any notice is required to be given to any Member or Director of the Association under the provisions of these By-Laws or under the provisions of the Colorado Revised Non-Profit Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article IX. AMENDMENTS

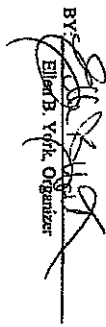
These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors at any regular or special meeting of the Board of Directors, subject to the rights of members to repeal or amend By-Laws as provided by law.

STATEMENT OF CONSENT

The undersigned, Ellen B. York, Organizer, of THE RESERVE AT FISHERS PEAK, LLC, does hereby consent on behalf of said limited liability company to use the name of The Reserve at Fishers Peak Property Owners Association, Inc., a new non-profit corporation being formed by Ellen B. York.

Dated this 13th day of March, 1998.

THE RESERVE AT FISHERS PEAK, LLC

BY: 
Ellen B. York, Organizer

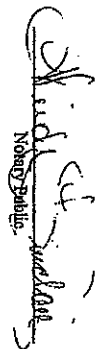
STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

I, Heidi Sinclair, a Notary Public, hereby certify that on the 12th day of March, 1998, personally appeared before me Ellen B. York, Organizer of The Reserve at Fishers Peak, LLC, who being by me first duly sworn, declared that she is the person who signed the foregoing document as organizer and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12th day of March, 1998.



3-1-98


Heidi Sinclair
Notary Public

By Commission Expires 06/01/2000

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
THE RESERVE AT FISHERS PEAK**

THIS DECLARATION, made on the date hereinafter set forth by The Reserve At Fishers Peak LLC, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant's are the owners of certain property in the County of Las Animas, State of Colorado, which is more particularly described below herein.

AND WHEREAS, Declarant's intend that all of the real property described below 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 property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof;

NOW, THEREFORE, Declarant's make the following grants, covenants, conditions, restrictions, submissions, and declarations:

ARTICLE I – Subjection of Property to this Declaration

Section 1.1 Property Subjected to Declaration. Declarant, as the owner in fee simple, by recording this instrument, does hereby subject to the provisions of this Declaration that certain property located in the County of Las Animas and State of Colorado, and more particularly described as:

The Reserve At Fishers Peak subdivision as designated by plat recorded on February 2, 1999, in the records of the Clerk and Recorder of Las Animas County, State of Colorado in Book 971, page 316-318, reception No. 636482.

Section 1.2 Conveyances Subject to this Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges, which are granted, created, reserved, or declared by this Declaration shall be deemed to be covenants pertinent to, running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or stake in the property as described above herein, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, or other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved, or declared herein as though fully and completely set forth in their entirety in any such document.

Section 1.3 Owners' Rights Subject to the Provisions of this Declaration. Each subsequent Owner of any Lot included within said property and the improvements constructed thereon, shall own said property in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

ARTICLE II – Definitions

Section 2.1 "Association" shall mean and refer to The Reserve At Fishers Peak, Property Owners Association its successors and assigns.

Section 2.2 "Board of Directors" or "Board" means the governing body of the Association as provided in this Declaration, the Articles of Incorporation of said Association, and the Bylaws thereof.

Section 2.3 "Declarant" Shall mean and refer to The Reserve At Fishers Peak, its successors or assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 2.4 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, together with any supplement or amendment thereto, recorded in the office of the clerk and recorder of the County of Las Animas, State of Colorado.

Section 2.5 "First Mortgagee" means the holder of any mortgage or any beneficiary of a Deed of Trust under which the interest of any owner is encumbered and which mortgage has first and paramount priority subject only to the lien of general or ad valorem taxes and assessments.

Section 2.6 "Lot" shall mean and refer to any plot of land designated by Lot number shown upon the recorded subdivision Plat as referred to in Section 1.1 above.

Section 2.7 "Mortgage" means any mortgage, Deed of Trust or other security interest by which a Lot and the improvements thereon is encumbered.

Section 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 which is a part of the subject property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.9 "Private Improvement" means the Building and other improvements as constructed and maintained upon the individual Lots which are privately owned.

Section 2.10 "Subject Property" shall mean and refer to that certain real property described in Section 1.1 above.

Section 2.11 "ACC" shall mean and refer to the Architectural Control Committee established under Article IV hereof.

ARTICLE III – The Association

Section 3.1 Purposes. The purpose of the Association shall be to promote the recreation, health, safety, and welfare of the Owners, and the general administration of the Subject Property.

Section 3.2 Membership and Voting Rights.

(a) Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(b) 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. 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. 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:

- 1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or
- 2) On October 1, 2008

ARTICLE IV – Architectural Control Committee

Section 4.1 Committee Members. The Architectural Control Committee shall be composed of three (3) persons: John Raye, Georgi Clark and Pam Hook. Declarant shall have the right to appoint initial committee members, who need not be Owners, and whose terms shall expire at 80% sell out of lots. The Committee shall appoint three (3) new committee members after said 80% sell-out of The Reserve At Fishers Peak. Members of such Architectural Control Committee shall not be entitled to any compensation for services performed. At all times the Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alteration within the Subject Property are in conformity with existing surrounding structures, and this Declaration and all rules and regulations as established by the Association.

Section 4.2 Chairman of Architectural Control Committee. The Architectural Control Committee shall elect a chairman, and all documents submitted to the committee shall be addressed to the chairman at his residence address, or to such other address as may be given in writing to the Owners by the Association or by the Architectural Control Committee.

Section 4.3 Committee Review. No structure, whether a building, accessory building, fence, wall, mailbox, driveway, or any other improvement shall be constructed or maintained upon the Subject Property, nor shall any exterior addition or change or alteration to existing improvements be made, or landscaping performed until complete plans and specifications showing the exterior design, height, building material, color scheme and location and size thereof, as well as the general plan of landscaping, fencing, walls, and grading plan, shall have been submitted to and approved in writing by the Architectural Control Committee. The submitted plans shall also include: completed building plans at 1/4" scale, engineered foundation design, soils report, final plot plan, colors and exterior materials list. If a preliminary opinion is desired from the ACC; preliminary sketches at a 1/8" scale for elevations and a site plan at 1/10" or larger scale with proposed drive, walks, and set backs shall be submitted to the ACC. In reviewing plans, the Architectural Control Committee shall consider the following.

a. Site Planning: Potential impact of home and improvements on nearby Lots and the views and privacy of all homes. Garages should be located so as not to dominate home entry.

b. Site Requirements: The ACC shall approve all dirt movement on a Lot. As the Subject Property natural topography varies considerably from lot to lot, the following limitations will apply, in the absence of special circumstances:

1) Cut and fill slopes may not be exposed following completion of construction unless replaced with topsoil and reseeded to match existing terrain;

2) No change in the natural drainage patterns for surface waters will be made that can adversely affect another lot. Any water (natural runoff) that is diverted from its natural course for construction reasons on any lot must be diverted back to its original course before exiting said lot.

c. Residence Parking:

1) There shall be no on street parking allowed.

2) Driveways and parking areas shall be of a finished surface consisting of concrete, asphalt, or approved gravel by ACC specs.

3) Each residence shall also have a garage with space for a minimum of two vehicles.

d. Compliance with Article V: The ACC shall also ensure that the plans conform with all the requirements set forth in Article V, infra.

Section 4.4 Landscaping. At the request of any Owner, or at its own discretion, the Architectural Control Committee shall review any portion of the landscaping of the Subject Property. The Committee may require the removal, transplanting, or restriction of any landscaping determined to be or become a nuisance to any Owners or a threat to the nonstructural integrity of any improvement.

Section 4.5 Procedures. The Architectural Control Committee shall approve or disapprove plans and specifications within fifteen (15) days after submission. In the event the Architectural Control Committee fails to take any action within fifteen (15) days after plans and specifications have been submitted, approval shall not be required, and this Article shall be deemed to have been fully complied with, except that nothing herein shall be deemed to authorize any construction upon or use of any Lot contrary to the restrictions set forth in Article V below herein. Each building or other structure shall be constructed, erected, and maintained in strict accordance with approved plans and specifications, and nothing shall be done within the Subject Property, which would impair the structural integrity of any improvement.

Section 4.6 Action by the Association. A majority vote of the Architectural Control Committee is required for approval of any proposed plans and specifications, and shall be final unless appealed to the Association membership for a final determination by majority vote.

Section 4.7 Damages. The Association and the Architectural Control Committee and any of its individual members shall not be liable for damages to any person by reason of any action or failure to act, or the approval, disapproval, or failure to approve or disapprove any plans and specifications submitted to them.

Section 4.8 Records. The Architectural Control Committee shall maintain written records of all actions taken by it and shall require that a duplicate original of any plan approved by the Association or the Architectural Control Committee be deposited with the Architectural Control Committee for future reference.

Section 4.9 Discretion. The Committee shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable, in their opinion for aesthetic or other reasons; and in so passing upon such plans specifications and grading plan, they shall have the right to take into consideration the

suitability of the proposed building or other structure and of the materials of which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and any unique characteristics of the Lot.

ARTICLE V – Restrictive Covenants and Obligations

Section 5.1 General Standards. All uses conducted on the Subject Property shall be contained within the structures and improvements thereon, there being no outdoor storage, display, or sale uses allowed, except as provided below herein.

Section 5.2 Principal Permitted Uses. The individual Lots and Private Improvements are hereby restricted to single family residential use and other similar activities. Such other buildings and improvements as are ancillary to such residence on each lot and ancillary to such a purpose are permitted, including, without limitation, garage, incidental out-buildings, studio, and not more than one office for a non-retail and non-public work place for the resident owner of the lot.

Section 5.3 Unauthorized Uses. Anything to the contrary herein notwithstanding, no Lot may be used for any type of Medical, Dental, or Veterinary Office, Pharmacy, Nursery School, or Restaurant. No business activity of any kind shall be allowed within the Subject Property except as specifically provided for herein, and no one other than the Association shall be allowed to store or maintain any type of tools or equipment or other personal property, including, but no limited to, firewood or other consumable materials exterior to the private improvements.

Section 5.4 Construction and Sales Facilities of Declarant. Any provision to the contrary herein notwithstanding, Declarant its agents, employees, contractors, successors and assigns, shall be permitted to maintain during the period of construction and sale of the Lots on the Subject Property, upon such portion of the Subject Property as Declarant may choose, such facilities as may be reasonable required, convenient, or incidental to the construction, sale or rental of Lots and interests, including, but not without limitation, a business office, storage area, signs, construction yards, model units, sales office, parking areas and lighting, and temporary parking facilities for all prospective tenants or purchasers of Declarant.

Section 5.5 Nameplates, Exterior Lighting and Signs. All exterior basketball hoops, antennae, flagpoles, exterior nameplates and signs are hereby prohibited except as expressly approved and authorized by the Association in writing pursuant to such rules and regulations as may be promulgated by the Association, except that the Declarant may maintain such nameplates and signs as it deems appropriate in its sole and absolute discretion during the period of construction and sale of the Lots except as may otherwise be prohibited by law. All exterior lighting must be of down light type and not project an

outward illumination. If lighting is mounted other than on a building, wattage can not exceed 75 watts and:

- a. In the ground or on a post not to exceed 18" above the ground;
- b. In or on a wall – not to exceed 66' above ground;
- c. Attached to Vegetation – firmly affixed and mounted not more than 66" above ground level.

Section 5.6 Compliance with Law. No immoral, improper, offensive, or unlawful use shall be permitted or made of the Subject Property or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction shall be observed.

Section 5.7 Prohibitions Against Effecting Exterior Appearance. Except for those improvements erected or installed by Declarant, no exterior additions, alterations, or decorations to any building, walls, and other structures shall be commenced, erected, or maintained without the prior written approval of the Architectural Control Committee as to conformity and harmony of external design and location with existing structures on the Subject Property.

Section 5.8 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, kept, or allowed on any Lot except that not more than two domestic dogs, two domestic cats, and litters thereof under the age of four months may be kept provided that they are not kept, bred or maintained for any commercial purpose. On any Lot larger than 1 acre in size, not more than one horse per full acre may be kept. Thus, for example, if a Lot contains 2.5 acres, no more than two horses could be kept and on a Lot of 0.9 acres, no horses could be kept. All fences, barns and other related buildings must be approved by the Architectural Control Committee. No animal may leave a Lot except on a leash. All animal waste must be removed from Lots at least once a week.

Section 5.9 Restriction Against Offensive Business. No use which may be offensive, noxious, or detrimental to the Subject Property or improvements of the Subject Property or its Owners, employees, tenants or invitees shall be allowed, nor shall there be any use which as a matter of common experience tends to create a nuisance, including but not limited to uses which might result in the emission of noxious gases, glare, heat, odor, noise, radio transmission, or high intensity light.

Section 5.10 Additions to Structures. There shall be no additions or alterations to approved structures as erected, on the Subject Property, including but not limited to the addition of nameplates, signs, antennae, signaling devices, heating or cooling equipment, or any other devices of any nature whatsoever, without the express prior written consent of the Architectural Control Committee, pursuant to such rules and regulations as it may establish for such purpose.

Section 5.11 Parking. No vehicle of any kind may be parked in the Subject Property except on such portions of public streets as may be designated by the Association and such parking shall not be for the purpose of repair or maintenance of such vehicle. Except for necessary deliveries or maintenance, repair or construction work, no commercial vehicles or trucks and no recreational vehicles shall be stored or parked on any Lot. The term 'recreational vehicles' shall include, for the purposes of this Declaration, motor homes, motor coaches, buses, pickup trucks with camper tops or similar accessories, camping trailers or trailers of any type. No unused vehicles of any kind shall be stored or parked on any portion of the Subject Property, except in areas as may be designated by the Association. "Unused vehicle" shall be defined as any vehicle, which has not been driven under its own propulsion for a period of twenty-four (24) hours or longer. A written notice describing a vehicle which is in violation of this Section and requesting removal thereof may be served to the owner by posting on the vehicle or by direct service upon the owner, and if such vehicle has not been removed within twenty-four (24) hours thereafter, the Association shall have the right to remove the vehicle without liability therefore, and the expense thereof shall be charged against the owner. No gravel drives or parking areas will be permitted.

Section 5.12 Resubdivision or Combination. No Lot may be resubdivided by any Owner other than Declarant. If any Lot owner owns two contiguous lots and wishes to combine the two into one Lot, such combination may be done with the prior approval of the ACC. The plot for the newly configured single lot must be recorded and approved by all governmental bodies having jurisdiction over either Lot. All expenses associated with recording and pursuing any required governmental approval shall be at the sole expense of the Lot owner.

Section 5.13 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in or under any portion of the Subject Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Live trees may not be cut or removed from any Lot, except in the instance of construction of foundations, basement, or cellars, walls, and roadways that are necessary for improvements, utilities, and allowable out-buildings, or by approval of the Architectural Control Committee.

Section 5.14. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 5.15. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers.

Section 5.16. Sewage Disposal. No individual sewage-disposal system shall be permitted on any lot unless such system is equipped in accordance with the standards and

requirements for such system which are substantially equal to or exceed the minimum requirements for such system and as issued by The City Code or in connection with the insurance of the mortgages covering property in Colorado and in effect on the date such system is installed.

Section 5.17 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in 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.

Section 5.18 Water Supply. No individual water-supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the local public health authority. Approval of such system as installed shall be obtained from such authority.

Section 5.19 Set Backs. All setbacks will be reviewed on the merits of the submitted site plan design. Minimum setbacks for Lots are to be per City Code.

Section 5.20 Building Massing. In order to intensify the concept of not over dominating the environment, building masses should be predominately horizontal rather than vertical but not create long unbroken elements.

Section 5.21 Building Height. The terrain of the Subject Property is varied and unique with hilltops, valleys, and other changes in elevation, making absolutely uniform applicability of height restriction for residences both inadvisable and impractical. These Restrictions are intended to discourage and/or prevent any residence, which would appear excessive in height when viewed from the street or out of character with other residences because of height. The ACC may disapprove a proposed residence if, in the committee's opinion, it would appear out of character with the constructed residence, even if it complies with maximum height restrictions. In no case shall the overall height of a residence exceed 25 feet measured in a vertical plane from the highest parapet or roof ridge to the natural grade at the lowest point adjacent to the residence, exclusive of driveway.

Section 5.22 Building Size. No residence will contain less than 1500 square feet of interior living space.

Section 5.23 Materials. Exterior surfaces must be approved by the Architectural Control Committee.

Section 5.24 Building Colors. Exterior wall color must be approved by the Architectural Control Committee.

Section 5.25 Accent Color. Accent colors on front doors, window sash and other incidental elements is allowed as long as, in the opinion of the ACC, the accent does not overwhelm the buildings basic color or create a visual distraction from the street, or adjacent Lots.

Section 5.26 Building Projections. All projections from buildings including but not limited to chimney caps, vents, gutters, downspouts, utility boxes, porches, railings, exterior stairways, and exposed foundations shall be visually integrated into overall design and color scheme of surface materials.

Section 5.27 Roofs. Since roofscapes form an important part of the visual environment, they must be carefully designed. Visual harmony and historic sensitivity shall be reviewed by the ACC. The ACC requires roof pitches of no less than 6 in 12 and massing pertaining to roofing must not create long horizontal plains but have broken elements (roofs) to create visual interest. Flat roofs require parapet walls and undulation in heights and massing.

Section 5.28 Roofing Material

- a. Tile or Concrete, Terra-cotta, Metal or Fiberglass
- b. Metal Roofing, of Non Reflective Type.
- c. Shake – Hand split or sawn.
- d. Slate

Section 5.29 Fences. No fence, hedge, wall, or other dividing instrumentality over six feet in height measured from the ground on which it stand shall be constructed or maintained on any lot. Any fences must be of stone, rock, or wood materials or acceptable PVC with no wire allowed between posts; except that the boundaries of the sub-division now containing wire fencing may be continued with such fencing.

Section 5.30 Overhead Lines. No overhead lines shall be installed or maintained on or over any portion of any lots.

ARTICLE VI – General Provisions

Section 6.1 Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, as well as the Articles of Incorporation and Bylaws of the Association. 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 6.2 Indemnification. Any employee of the Association and each director and officer of the Association, shall be indemnified by the Association against all expenses and liability, including attorneys' fees reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, provided that this indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of said person's duties; provided further that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association and only to the extent covered by an Officer's and Board of Directors' Errors and Omissions policy. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

Section 6.3 Severability. Invalidation of any one of these covenants or restrictions or any part thereof, by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 6.4 Duration and 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. So long as the Declarant maintains its Class B membership pursuant to Section 3.2 above herein, the Declarant shall be entitled to amend this Declaration as may be reasonably necessary in order to: (a) comply with any statutes, ordinances, rules or regulations of any government or quasigovernmental agency or authority, or (b) to meet the requirements of any private or government controlled mortgage agency, company or lending institution for the purpose of facilitating first mortgage loans secured by the Subject Property or any portion thereof. Thereafter, this Declaration may be amended during the first twenty (20) year period by an instrument approved and signed by the Owners of not less than ninety percent (90%) of the Lots and by not less than all of the First Mortgagees of the Lots, based on one (1) vote for each Mortgage held, and thereafter by an instrument approved and signed by the Owners of not less than seventy-five per cent (75%) of the Lots and by not less than seventy-five per cent (75%) of the First Mortgagees of Lots. Any amendment shall be duly recorded upon finalization.

Section 6.5 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Declaration or the intent of any provision hereof.

Section 6.6 Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender, and the use of the singular shall be deemed to refer to the plural and vice versa when the context so requires.

Section 6.7 Claims. No claims or causes of actions shall accrue in favor of any person in the event of the invalidity of any provision in this Declaration or for failure of the Association or Declarant to enforce any provision hereof. This Section may be

pleaded as a full bar to the maintenance of any suit, action, or arbitration brought in violation of this provision.

Section 6.8 Notices. Any notice required to be sent to any member or Owner pursuant to the provisions of this Declaration shall be deemed to be delivered when mailed postage prepaid to the last known address of the member or to the lot for which the Owner is a member.

Section 6.9 Annexation. Developer may from time to time within ten years after the date of the recording of this Declaration of Protective Covenants for The Reserve At Fishers Peak annex property Developer deems appropriate to the development by recording one or more annexation statements. Upon the recording of such Annexation Statement in the public records of Las Animas County, Colorado, all of the real property described in such Annexation Statement shall be deemed to be part of the development and subject to all of the terms and provisions of these Covenants.

In Witness whereof, the Declarant has executed this document this 9th day of February, 1999.

The Reserve At Fishers Peak, LLC

By: [Signature]
LLC, Business Manager

STATE OF COLORADO }
COUNTY OF Las Animas } ss

Subscribed and sworn to before me this 9th day of February,
1999 by [Signature] as LLC, Business
Manager of The Reserve At Fishers Peak

[Signature]
NOTARY PUBLIC

My Commission Expires: 10/28/2001