



**Declaration  
of  
Protective Covenants, Conditions, and Restrictions  
for**

**STRATMOOR HEIGHTS - FILING NO. 1**

WHEREAS, SUNSHINE HOME DEVELOPMENT, INC., a Colorado corporation ("Declarant"), is the owner of the following described real property (the "Property" or "Subdivision") situate in the County of El Paso, State of Colorado, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant is desirous of maintaining the Property as a first class and quality residential community:

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, liens, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the 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.

**ARTICLE I**

**PROVISIONS TO MAINTAIN THE QUALITY OF LIFE**

**Section 101. LAND USE AND BUILDING TYPE.** No Lot located on the Property ("Building Site") and shown on the recorded plat of the Property (the "Plat") shall be used except for residential purposes or, initially, for model homes. No building shall be erected, altered or placed or permitted to remain upon any Building Site other than detached single family dwellings not to exceed two stories, excluding buildings with garden levels and walkout basements. Not more than one single family dwelling ("Dwelling") shall be constructed on any one Building Site. Off street parking shall be provided as follows: for each detached single family home, there shall be at least two covered parking spaces and two additional parking spaces on an off-street concrete driveway.

**Section 102. STRUCTURES.** All Accessory Buildings and Accessory Structures must be approved by the Declarant. No Structure other than a dwelling, no Accessory Building, trailer, tent, mobile home, shack, garage or other similar or dissimilar temporary quarters may be used for living purposes, either temporarily or permanently. No other Structure may be placed on any Building Site before completion

of the dwelling upon such Building Site except with the permission of the Declarant. All accessory Buildings and Structures must be compatible and in harmony with the dwelling located upon the lot. No business building, machine shop or other industrial or commercial structure or building devoted to commercial or public enterprises shall be erected or used on any Building Site and no business which attracts any customers or clients to a Building Site shall be conducted or carried on or be practiced upon any Building Site or within any Dwelling or accessory building constructed thereon, except that buildings may be erected and used by Declarant, its successors, assigns or designees for use in developing and marketing the Subdivision and Building Sites.

**Section 103. CONSTRUCTION TYPE.** All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings. No reflective glass windows shall be utilized in any Improvements constructed within the Subdivision. Any and all roofing materials utilized for Improvements within the Subdivision shall be restricted to asphalt or composition shingles or such other materials as may be approved by the Committee

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

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

**Section 106. COMMENCEMENT OF CONSTRUCTION.** Commencement of construction of a single-family dwelling upon a Lot shall be commenced within twelve months of the Owner acquiring such Lot, unless such deadline shall be extended with the written permission of the Declarant, which permission may be granted or withheld in the sole and absolute discretion of the Declarant.

**Section 107. CONSTRUCTION COMPLETION.** The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty days without permission of the Declarant, the Declarant will give the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced within thirty days after such notice, the unfinished Structure (or unfinished portion thereof) shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. If not so removed by the Owner, the unfinished Structure (or unfinished portion thereof) may forthwith be removed by the Declarant at the cost of the Owner.

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

**Section 109. GARBAGE AND REFUSE DISPOSAL.** No Building Site shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All such items shall be kept in approved sanitary containers located on the Building Site so long as they in no way interfere with the overall beauty and reasonable enjoyment of the other Building Sites located within the Subdivision. No exterior incinerator shall be permitted on any Building Site. All equipment for the lawful storage of disposal of garbage and refuse shall be kept in a clean and sanitary condition. No weeds shall be permitted to grow upon any Building Site at a height in excess of six inches, or as provided by applicable law, whichever is lesser. Further, the owners of each Building Site located within the Subdivision shall use reasonable efforts in order to maintain their Building Sites in conformance with these Protective Covenants, as well as in conformance with reasonable and accepted practices in order to maintain the overall beauty of the Subdivision. Notwithstanding the foregoing to the contrary, during the construction of Dwellings on Building Sites, Declarant may store building materials upon the Property.

**Section 110. 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 any Building Site nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any Building Site. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted upon any Building Site.

**Section 111. EASEMENTS.** There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, devisable and releasable easements and the right from time to time to grant easements to others over, under, in and across each of the seven foot strips along and adjoining each rear Lot Line of each Lot, and each of the five foot strips along and adjoining each side Lot Line of each Lot for use of all or part of such areas for the installation, repair, maintenance and replacement of television cables, phone lines, postal facilities, lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and drainage Improvements and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Within these easements, no Improvements, planting, or other materials shall be placed or permitted to remain which may change the direction of flow or obstruct or retard the flow of water through the drainage channels located in the easements or through drainage channels stemming from said easements. Notwithstanding the foregoing, all easement areas located on each Building Site and all Improvements constructed thereon shall be maintained continuously by the owner of the Building Site, except for those Improvements for which a public authority or utility

company is responsible. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

**Section 112. UTILITY CONNECTIONS.** All utility connections installed in the Subdivision, including all electrical and telephone connections and installations of wires to buildings, including television, microwave or radio connections shall be made underground from the nearest available source, except for above ground appurtenances such as meters, pedestals and transformers, which shall be located for maximum aesthetic consideration, and except that during the construction of a building structure, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction. The location of all such transformers and other apparatus shall be subject to the prior approval of the Committee, in its sole discretion, consistent with the internal guidelines and regulations of the appropriate utility company concerned.

**Section 113. ACCESS RESTRICTION.** All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Structures so that ingress and egress to and from their respective Lots is Exclusively from a publicly dedicated street and not through other private property or adjoining public lands. All Owners acknowledge and agree that there shall be no vehicular access from any Lot on to Tract A or Tract B.

**Section 114. GARAGE AND DRIVEWAY.** The Structures on each Lot or Building Site shall include an attached two-car or three-car fully enclosed garage or such equivalent garage arrangements as may be approved by the Declarant. All driveways shall be improved with asphalt, brick pavers or concrete paving unless otherwise approved by the Declarant.

**Section 115. BUILDING LOCATION.** No building shall be located on any Building Site nearer to the front, side or rear Lot Lines than the minimum building setback lines shown on the Plat or as provided by applicable law, whichever is greater. In any event, no detached single family homes shall be located on any Building Site nearer to the front Lot Line than twenty-five feet (as measured from the property line), nor nearer to any side lot line than five feet; provided, however, that no building on a corner Building Site shall be located nearer to the side Lot Line adjacent to streets than fifteen feet. For the purposes of these setback areas, cantilevers, decks and stairways may not encroach into these setback areas and cornices, eaves, uncovered porches and/or patios shall be exempt from these setback requirements. No building shall be located on any Building Site nearer to the rear Lot Line than twenty-five feet.

**Section 116. COMPLIANCE WITH BUILDING CODES.** All construction must also conform to the building codes, zoning codes and subdivision regulations of the County of El Paso, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

**Section 117. DWELLING QUALITY AND SIZE.** All Dwellings shall be made of good quality of workmanship and materials. The main Dwelling, if a detached single-family home, exclusive of open porches, garages, and garden levels and walkout basements, shall not be less than 900 square feet for a one-story Dwelling, or less than 1,100 square feet for dwellings of more than one story.

**Section 118. GENERAL ARCHITECTURAL STANDARDS.** The Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 205 hereof.

**Section 119. FENCING.** No fence or exterior wall shall be erected, placed or altered on any Building Site nearer to any street than the minimum building setback shown on the Plat, or as provided by applicable law, whichever is greater. All rear lot fencing shall not exceed 72 inches in height and shall comply with the minimum front yard building setbacks. Corner lots next to side streets may have fencing which shall not exceed 72 inches in height. Any and all fencing materials utilized within the Subdivision shall be restricted to cedar or redwood or such other materials as may be approved by the Committee, in its sole discretion, and all fence designs and specifications for fences to be located within the Subdivision shall be approved by the Committee, in its sole discretion, prior to installation.

**Section 120. HEIGHT RESTRICTIONS.** No Improvement, building or appurtenance shall exceed the heights permitted by applicable ordinances, rules or regulations or 35 feet in height, whichever is less.

## **ARTICLE II**

### **DENSITY AND QUALITY STANDARDS**

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

**Section 202. ANTENNAE.** No exterior television, other antenna, microwave dish, or similar device of any type shall be erected, installed or maintained at any Building Site or upon any Improvement within the Subdivision; provided, however, this restriction shall not apply to such devices which applicable laws and regulations do not allow to be prohibited from installation (such devices must still receive the approval of the Committee for location and screening).

**Section 203. OWNER MAINTENANCE.** In order to keep the Subdivision an attractive, quality environment, each Owner shall maintain the exterior of any Improvements, including buildings, other Structures, landscaping, walks, driveways and parking areas on his Lot in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surface becomes worn-off or weather-

beaten. Any dead or diseased landscaping will promptly be replaced, all lawns will be properly mowed and maintained, and weeds and other noxious plants will be controlled. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawns, shrubs, trees, other landscaping materials, fences, signage, mailboxes and outdoor lighting.

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

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

### **ARTICLE III**

#### **LIVING ENVIRONMENT STANDARDS**

**Section 301. BUILDING AND GROUNDS CONDITIONS.** Each Owner shall prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on his Lot which tends to decrease the beauty of his Lot, the neighborhood, the Subdivision as a whole or in the area.

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

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

**Section 304. CLOTHESLINES.** No outdoor clotheslines will be permitted unless such clotheslines are approved by the Declarant and are placed upon a Lot in such a manner so as not to be visible from neighboring property or adjoining streets.

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

**Section 306. NUISANCES.** No owner of any Building Site shall suffer or permit any noxious or offensive activity to be conducted, carried on or practiced thereon or within any Dwelling or accessory building constructed thereon or otherwise use or

employ such Building Site and Improvements for any purpose that will constitute an annoyance to the neighborhood or a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment and quality of the Subdivision.

**Section 307. SOUND DEVICES.** 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 308. LANDSCAPING.** All portions of a Building Site not used for Improvements shall be landscaped utilizing "long-lived" ground cover, sod, shrubs, trees and other materials. Short-lived and non-living durable landscape materials may be utilized only as a supplement to long-lived elements. Every Building Site improved with a Dwelling shall be landscaped as approved by the Committee, in its sole discretion, within one year after the occupancy or completion of such Dwelling as evidenced by the Certificate of Occupancy, whichever shall first occur. The landscaping of each Building Site having once been installed shall be maintained in a neat, attractive, sightly and well-kept condition, which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased or unsightly materials, removal of weeds and debris and appropriate pruning of plant materials.

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

**Section 310. MOWING AND PRUNING.** In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot shall mow, cut, prune, clear and remove from the Lot diseased trees, unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. The Declarant has the right (but not the duty) to enter upon any Lot and perform this work after Due Notice to the Owner, in which case the reasonable costs incurred by the Declarant in performing such work will be a lien against the Lot involved in the same manner and to the same extent as provided in Section 404 below.

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

**Section 312. LIVESTOCK AND POULTRY.** No animals, livestock, pot-bellied or Vietnamese pigs, or poultry of any kind shall be raised, bred, or kept on any Building Site save and except that domesticated dogs, cats and other common household pets permitted by the Committee, in its sole discretion, may be kept so long as they are not kept, bred or maintained for any commercial purposes. All local codes and

ordinances regarding the number and control of animals shall be observed and the Committee shall have the power to adopt, in its sole discretion, rules and regulations regarding animals on the Property.

**Section 313. VEHICLES.** No vehicles other than four wheel automobiles shall be permitted to be parked on streets, adjoining Building Site and upon any Building Site within the Subdivision. This restriction shall apply to recreational vehicles, boats, motorcycles, campers, vans, hauling trucks, commercial type vehicles, trailers and mobile homes. Such prohibited vehicles may, however, be parked or stored on the side or in the rear yards of any Building Site so long as the same are completely surrounded by a sight barrier approved by the Committee, in its sole discretion.

**Section 314. INOPERATIVE VEHICLES.** No stripped down, partially wrecked or inoperative motor vehicle, or any part thereof, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible from any neighboring property or adjoining street.

**Section 315. REPAIRS OF MOTOR VEHICLES.** No motor vehicles, campers, trailers, boats or recreational vehicles shall be rebuilt or repaired, except in the garage area or in the driveway of each Building Site and under no circumstances shall such repairs be performed if the same result in the creation of any unsightly or unsafe condition as determined by the Committee for a period of longer than twenty-four hours.

**Section 316. SIGNS.** No signs of any kind shall be displayed to the public view on any Building Site except signs used by the Declarant or its authorized designees, successors and assigns to advertise the Subdivision and/or Building Sites during the construction and sales period and except that the owner of each Building Site may display one sign of not more than square feet advertising such Building Site and the Improvements located thereon for sale or rent. Any other signs shall require the prior written approval of the Committee in the Committee's sole discretion.

**Section 317. CONSTRUCTION ACTIVITIES.** During construction, all construction debris will be stored in a manner which will prevent its being blown away or otherwise dislodged by storms or high winds and will be removed from the construction site at least once per week.

**Section 318. DRAINAGE.** All changes from existing drainage channels or patterns on any Lot must not cause any harm or damage to other property, whether within or outside the Subdivision. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from any Structures on the Lot and so as to protect foundations and footings from excess moisture. Special attention shall be paid to the revegetation of approved grades and cuts to eliminate erosion. Changes of more than one foot from existing grades require the approval of the Declarant.

**Section 319. HAZARDOUS MATERIALS.** No materials shall be transported to, from or within the Subdivision in such a way as to create a nuisance or hazard.



Storage, use or disposal of hazardous or radioactive material within the Subdivision is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

**Section 320. MECHANICAL EQUIPMENT.** No heating, air conditioning, electrical or other equipment shall be installed on the roof of any building or structure or hung on exterior walls unless the same is enclosed, screened, covered and installed so as to be an integral part of the architectural design of the building to which said equipment is attached or related in a manner which shall first have been approved in writing by the Committee, in its sole discretion, except that solar energy collectors or panels, if used, may be installed on the roof of any building or structure or in any exposed location, if harmoniously done and if approved by the Committee in its sole discretion.

#### **ARTICLE IV**

#### **ARCHITECTURAL CONTROL, THE COMMITTEE AND THE RESERVED RIGHTS OF THE DECLARANT**

#### **Section 401. ARCHITECTURAL CONTROL.**

(a) No building, fence, wall, solar panels and associated equipment, mailbox or other structure (collectively "Improvements") shall be erected, placed or altered on any Building Site until the construction plans and specifications showing the kind, shape, height, materials, floor plans, exterior color scheme, a finish grade elevation of the Improvements, a landscaping and grading plan and a plot plan with the location of the Improvements (collectively "Plans and Specifications") have been submitted to and approved in writing by the Architectural Control Committee as to the quality and location of the Improvements with respect to designated Building Site lines, and the effect of such Improvements on the outlook from adjacent neighboring Building Sites. Further, no modification or reconstruction involving any Improvements may be undertaken without the prior written approval of the Architectural Control Committee (the "Committee").

(b) Whenever in these Protective Covenants the approval of the Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvements or proposal in question and all other facts which, in its sole discretion, it deems to be relevant. Prior to commencement of any construction of any Improvements within the Subdivision, two sets of the Plans and Specifications therefore shall be submitted to the Committee. After approval or rejection of said Plans and Specifications, one set of the Plans and Specifications shall be returned to the party which submitted them, and one set thereof shall be retained by the Committee. Construction of Improvements may not be commenced unless and until the Committee has approved such Plans and Specifications submitted in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to these Protective Covenants within forty-five days after receipt thereof; provided, however, that failure to so act within said period shall not be deemed to be the Committee's approval of the request submitted. The Committee shall approve Plans and Specifications submitted

for its approval only if it deems, in its sole discretion, that the construction, alterations or additions contemplated thereby, in the locations indicated, will not be detrimental to the Subdivision as a whole, and that the appearance of any Improvement affected thereby will be in harmony with the surrounding Improvements. The Committee may also, at its sole discretion, issue rules or guidelines regarding anything relevant to its function, including but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Committee may require a reasonable fee to accompany each application for approval. The Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper, including without limitation, environmental impact statements. Until receipt by the Committee of all required Plans and Specifications and other information, the Committee may postpone review of anything submitted for approval.

(c) The Committee shall meet from time to time as necessary to perform its duties hereunder; provided, however, that in its discretion, the Committee may from time to time by resolution unanimously adopted in writing, designate one of its members to take action or perform any duties for and/or on behalf of the Committee. In the absence of such designation, the vote of a majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken with or without a meeting, shall constitute an act of the Committee.

(d) The approval or consent of the Committee to the Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or other matter subsequently or additionally submitted for approval or consent to the same for a different person.

(e) Inspection of completed work and correction of defects therein shall proceed as follows:

(i) Upon the completion of any Improvement for which approved Plans or Specifications are required under these Protective Covenants, the owner of the Building Site shall give written notice of completion to the Committee.

(ii) Within such reasonable time as the Committee may set, but not to exceed fifteen days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that such work was not done in strict compliance with all approved Plans and Specifications submitted, it shall notify the owner as provided herein in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the owner to remedy the same.

(iii) If, upon the expiration of forty-five days from the date of such notification, the owner of the Building Site shall have failed to remedy such noncompliance, the Committee may commence an action at law or in equity to require

the removal or reconstruction of the noncomplying Improvement. Owner acknowledges that an equitable remedy (i.e., specific performance or injunction) may be the only remedy available to the Committee in such case and hereby consents to it.

(f) The Committee may inspect all work in progress and give notice of noncompliance as provided in subparagraph (e) (ii) above. No further work shall be done, pending resolution of the dispute, which would hamper correction of the noncomplying item if the Committee shall find such noncompliance exists.

(g) Neither the Committee nor any member thereof shall be liable to any Owner of any Building Site or to any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties under these Protective Covenants unless due to the willful misconduct or bad faith of the Committee or its members, as the case may be. The Committee shall take into consideration the aesthetic aspects of architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness or conformance with building or other codes.

**Section 402. THE ARCHITECTURAL CONTROL COMMITTEE.** The Committee shall consist of three persons. The following persons are hereby designated as the initial members of the Committee:

Jannie Richardson

Lonnie J. White

Lynn D. Colligan

Each member of the Committee shall hold office until such time as he has resigned or has been removed and his successor has been appointed by an affirmative vote of the record owners of twenty-five percent of the Building Sites located in the Subdivision, with one vote per Building Site. Members of the Committee may be removed at any time with cause by a vote of the record owners of seventy-five percent of said Building Sites and the record owners of seventy-five percent of the Building Sites within the Subdivision shall have the power, through the proper execution of a written instrument to that effect, to change the membership of the Committee or to take from the Committee or restore to it any of its powers and responsibilities hereunder. Notwithstanding the above provisions to the contrary, if there are one or two vacancies on the Committee and at least one remaining member of the Committee, the remaining Committee members may, in their discretion, appoint successor member(s) to the Committee, without the necessity of obtaining approval of the Owners.

**Section 403. LIABILITY.** Neither the Declarant nor the Committee, their successors or assigns, any venturer, director, officer, member, agent or employee of any

of them shall be liable to any party for any action or failure to act with respect to any matter concerning these Protective Covenants. Every Owner or occupant of any of the Property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant and/or the Committee to recover any such damages or to seek equitable relief because of the same.

**Section 404. ENFORCEMENT.** The Protective Covenants herein contained shall run with the land and shall be binding upon and inure to the benefit of Declarant and the Owners of every Building Site on the Property. All covenants, conditions, restrictions and agreements herein contained are made for the direct, mutual and reciprocal benefit of each and every Building Site; shall create mutual equitable servitudes upon each Building Site in favor of every other Building Site; shall create reciprocal rights and obligations between respective Owners of all Building Sites and privity of contract and estate between all grantees of said Building Sites, their heirs, successors and assigns; and shall, as to the Owners of Building Site, their heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Building Sites. These Protective Covenants may be enforced as provided hereinafter or as allowed by applicable law or equity by each Owner of a Building Site, the Committee, or the Declarant, acting for itself and as trustee on behalf of all of the Owners. Each Owner, by acquiring an interest in a Building Site hereby appoints Declarant and the Committee as its irrevocable attorney-in-fact for such purposes. Violation of any condition, covenant, restriction or reservation contained herein shall give to Declarant, the Committee, and to each Owner of a Building Site the right to bring suit in law or equity against the party or parties violating or intending to violate any such covenants, conditions, restrictions and/or reservations to enjoin them from so doing, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any condition, covenant, restriction or reservation herein contained shall give to Declarant, and the Committee, the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof. Each Owner of a Building Site does hereby consent to such entry, and no such entry by Declarant, the Committee, or their agents shall be deemed a trespass, and Declarant, the Committee and their agents shall not be subject to liability to the Owner of said Building Site for such entry and any action taken to remedy or remove a violation, provided, however, that where the violations to be abated are items of construction, judicial proceedings shall be required prior to the alteration or demolition of same. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on any Owner of a Building Site in violation of any provision of these Protective Covenants. In any legal or equitable proceeding for the enforcement of these Protective Covenants or any provision hereof, whether it be an action for damage, declaratory relief or injunctive relief, or any other action, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees. The prevailing party shall be entitled to said attorneys' fees even though said proceeding may be settled prior to judgment. All remedies provided herein or at law or in equity shall be cumulative and are non-exclusive.

**Section 405. DECLARANT'S RIGHTS TO COMPLETE DEVELOPMENT OF THE PROPERTY.** No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of the Property or nearby areas and to subdivide, resubdivide, or rezone any portion of such Property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Property; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any Structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Property, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Committee or of the Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant or by the Association. Nothing in this Section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration or in the Association documents, which rights are incorporated in this section by this reference.

## **ARTICLE V**

### **PROPERTY RIGHTS**

**Section 501. OWNERS' EASEMENT 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 the recreational facilities for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;
- (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, as provided in its Articles of Incorporation.

- (d) the right of the Association to assume the responsibilities, duties, obligations and benefits of "Landlord" under the unrecorded Sign Lease wherein Lamar Sign Company is "Tenant", including but not limited to the right to renew, extend, amend or terminate said lease and the right to negotiate a new lease with Lamar Sign Company or another tenant for said or similar sign.

No such dedication or transfer shall be effective unless an instrument signed by two-thirds of each class of members agreeing to such dedication or transfer has been recorded. As long as there is a Class B membership, dedication or transfer of Common Area will require approval of Federal Housing Administration or the Veterans Administration.

**Section 502. DELEGATION OF USE.** Any Owner may delegate, in accordance with the Association's By-Laws, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

## **ARTICLE VI**

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

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

**Section 602. MEMBERSHIP.** 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 603. CLASSES OF MEMBERSHIP.** The Association shall have two classes of voting membership:

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

**Class B.** The Class B Member shall be the Declarant or its assigns, and shall be entitled to three 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 the total votes outstanding in the Class B Membership, or (b) on January 1, 2008.

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

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

## **ARTICLE VII**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 701. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant, for each Lot owned within the Property, 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 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 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 assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 702. PURPOSE OF ASSESSMENTS.** The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

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

- (a) expenses of management;
- (b) premiums for all insurance which the Association maintains as required or permitted under these Covenants;
- (c) common lighting, water and other common utility and sewer service charges;
- (d) repair, replacement, improvements and maintenance which is the responsibility of the Association;
- (e) wages for Association employees;
- (f) legal and accounting fees;
- (g) any deficit remaining from a previous assessment year;
- (h) a working capital fund;
- (i) the creation of reasonable contingency reserves, surpluses and sinking funds;
- (j) trash removal;
- (k) security services;
- (l) taxes and other assessments applicable to any real property owned by the Association; and
- (m) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of these Covenants.

**Section 704. MAXIMUM ANNUAL ASSESSMENTS.** Until January 1, 2006 the maximum annual assessment shall be Zero Dollars (\$00.00) per Lot.

- (a) From and after January 1, 2006 the maximum annual assessment may be assessed at Twenty-Five Dollars per lot and said maximum annual assessment may be increased each year after not more than five percent above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 2006 the maximum annual assessment may be increased above five percent by the vote or written assent of two-thirds of each such class of members.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (d) Notwithstanding anything in this Section 704 to the contrary, the annual assessment shall never exceed the amount of the permissible average annual common expense liability allowed by Colorado Common Interest Ownership Act, exclusive of optional user fees and any insurance premiums paid by the Association.



**Section 705. SPECIAL ASSESSMENTS - 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 thereto, provided that any such assessment shall have the vote or written assent of two-thirds of each class of members.

**Section 706. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 704 AND 705.** Any action authorized under Section 704 or 705 shall be taken at a meeting called for this purpose, written notice of which shall be sent to all members not less than thirty nor more than sixty days in advance of the meeting. If the proposed action is favored by two-thirds of the vote cast at such meeting, but such vote is less than the requisite two-thirds of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty days from the day of such meeting.

**Section 707. UNIFORM RATE OF ASSESSMENT.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 708. EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION.** Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of eighteen percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and may foreclose the lien against the Lot as the Association elects. 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 709. SUBORDINATION OF THE LIEN TO DEEDS OF TRUST.** The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VIII**

### **MAINTENANCE**

**Section 801. ASSOCIATION MAINTENANCE.** The Association shall be responsible for the repair, replacement, improvements and maintenance of the Common

Area and all improvements thereto. The Stratmoor Heights Homeowners Association will own and maintain Tract "A" and Tract "B" as open space.

## ARTICLE IX

### GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

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

- (a) **Agencies.** "Agencies" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GMNA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration of the Department of Housing and Urban Development ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA"), or any other public, quasi-public or private agency or entity which performs or may in the future perform functions similar to those currently performed by the entities specifically listed herein.
- (b) **Approving Authority.** Sunshine Home Development, Inc. is designated as the approving authority. Sunshine Home Development, Inc. may from time to time delegate to the Association or to a committee appointed by the Association the functions and status of approving authority and may revoke any such delegation.
- (c) **Architectural Control Committee.** The approving authority or a committee established to maintain architectural control.
- (d) **Association.** The Stratmoor Heights Home Owners Association, Inc., a Colorado non-profit corporation, its successors and assigns.
- (e) **Association Documents.** The various operative documents of the Association, whether recorded or adopted at the time this Declaration is recorded or at a later time, as the same have been or may be amended, modified, supplemented or otherwise changed from time to time, all of which are incorporated herein by this reference and which are identified as follows:
  - (1) the Articles for Incorporation of the Association;
  - (2) the Bylaws of the Association;
  - (3) this Declaration, including plat and amendments to Declaration.

- (f) **Board of Directors.** The Board of Directors of Stratmoor Heights Home Owners Association, Inc., as the same is provided for in its Articles of Incorporation and By-Laws.
- (g) **Building Site.** A Lot as established by the recorded Plat or the combination of two or more Lots or portions thereof as approved by the Declarant.
- (h) **Common Area.** All real property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows: Tracts A and B in Stratmoor Heights Filing No. 1, El Paso County, Colorado.
- (i) **Covenants.** This Declaration and the provisions contained in it.
- (j) **Declarant.** Sunshine Home Development, Inc., a Colorado Corporation, or its successors and assigns.
- (k) **Design Standards.** The standards, rules and guidelines applicable to Residences and Improvements promulgated and adopted by the Architectural Control Committee from time to time.
- (l) **Due Notice.** The written notice delivered in accordance with the requirements of these Covenants at least 10 days prior to the action required by the notice.
- (m) **First Mortgage.** Any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the county of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).
- (n) **First Mortgagee.** Any person or entity named as a mortgagee or beneficiary under any First Mortgage or Deed of Trust.
- (o) **Gender and Number.** Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.
- (p) **Improvement.** Any Structure, object or activity on a Lot which alters the previous exterior appearance of the Lot or any Structures located on it. Grading activity, removal of natural vegetation,

construction of any Structures or additions to remodeling, repainting and material changes to any previously approved building, Structure or landscaping plans all fall within the definition of an "Improvement."

- (q) **Lot.** Any plot of land shown upon any recorded subdivision map of the Property which is used or intended for use as a residential dwelling site, but does not include the Common Areas, private streets, easements or right-of-way.
- (r) **Owner.** The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including owners who have sold on contract, but have not conveyed their fee interest, but excluding those having such interest merely as security for the performance of an obligation.
- (s) **Property.** That real property hereinbefore set forth and such property as annexed hereto.
- (t) **Structure.** Any thing or device, other than trees and landscaping, the placement of which upon any Building Site might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, lawn ornamentation, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting or play equipment. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters to the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.
- (u) **The Subdivision.** The Area subdivided as Stratmoor Heights Filing No. 1 according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.

**Section 902. DECLARANT RESOLVES QUESTIONS OF CONSTRUCTION.** These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised its discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision.

It shall be presumed that the Declarant at all times exercised its discretion in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural standards set forth in these Covenants have been met shall be final and conclusive. In the event that the rights and powers of the Declarant are transferred to an Architectural Committee pursuant to the terms of these Covenants, then the provision of this Section 902 shall be applicable to the Architectural Committee to the same extent as this Section provides for the Declarant.

**Section 903. ASSIGNMENT OF DECLARANTS RIGHTS AND DUTIES.**

All or any part of the rights, powers and reservations of Declarant herein contained may be assigned or delegated by Declarant, in whole or in part, to any person, corporation, partnership, limited liability company, or association, including the Committee, which will assume any or all of the duties of Declarant hereunder and upon any such person, corporation, association, partnership, or limited liability company's evidencing its consent in writing to accept such assignment or delegation, said assignee or delegate shall, to the extent of such assignment or delegation, assume Declarants' duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. At the time Declarant has conveyed all Building Sites to third party purchasers, then and in that event, all rights and duties of the Declarant shall automatically be assigned and transferred to the Committee. Prior to such automatic assignment and transfer, Declarant may, in its sole discretion, relinquish its rights and duties under this Declaration by execution and recordation of an assignment transferring said rights to a substitute Declarant and/or to the Committee. Upon any such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties so assigned and assumed. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns.

**Section 904. WAIVERS.** Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing validity and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

**Section 905. DURATION OF RESTRICTIONS.** Unless sooner terminated as provided in section 906, the restrictions and other provisions set forth in these Covenants shall remain in force until twenty years after the date of recordation of these Covenants in the El Paso County records, and shall be automatically renewed for successive periods of

ten years unless before the expiration of the initial twenty years, or before the end of any ten year extension, there is filed for record with the Clerk and recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in the Subdivision, in which event these Covenants shall terminate at of the end of the initial twenty year term or ten year extension, as applicable.

**Section 906. AMENDMENT AND TERMINATION.** All sections of these Covenants may be terminated at any time, and from time to time any one or more sections of these Covenants may be amended or one or more new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County and provided that any of the other requirements set forth in this Section 906 are satisfied. Until ten years after the recordation of these Covenants in the real property records of El Paso County, Declarant reserves the right to unilaterally amend these Covenants, including addition of new sections hereto, without having to obtain the approval of the percentage of Owners specified in the first sentence of this Section 906. Notwithstanding, any other provision in this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent must be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Property has been conveyed by Declarant to the first Owner other than Declarant.

**Section 907. LIABILITY OF EMPLOYEES.** No member of the Association, the Architectural Committee, officer or director of Declarant, or any of their employees or agents will be liable to any party whatsoever for any act or omission taken pursuant to these Covenants unless the act or omission amounts to fraud or willful misconduct.

**Section 908. SEVERABILITY.** The terms and conditions of these Protective Covenants shall be construed as severable; therefore, should any one or more of them for any reason be declared voidable, void or legally unenforceable, then and in such event, any and all other provisions contained herein which are not directly negated, modified or in any way altered thereby shall remain in full force and effect.

**Section 909. NOTICES.** All notices or other communications required by these Covenants shall be in writing and shall be served on the parties as follows: The mailing of a notice or other communication by registered or certified mail, addressed to a party at its address registered with the Committee (or at any subsequent address which has been furnished in writing to the Committee), return receipt requested, shall be deemed sufficient service and shall be deemed duly made, given and delivered as of the date which is three days after the postmark date on the return receipt.

**Section 910. COLORADO COMMON INTEREST OWNERSHIP ACT.** Declarant hereby claims that these Declarations and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned

communities from the provisions of CCIOA if the annual average common expense liability of each lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed the maximum allowed by CCIOA. Declarant has incorporated that limitation on annual average common expenses in Section 704 of this Declaration. Notwithstanding this exemption, this Declaration and the Subdivision are subject to the provisions of C.R.S. 38-33.3105, 38-33.3-106 and 38-33.3-107 of CCIOA.

**Section 911. VA/FHA APPROVALS.** Until the termination of Declarant's reserved rights under this Declaration and provided further that the FHA, the VA or any other Agencies are insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the appropriate agencies, in accordance with the procedure set forth herein: (a) transfer of ownership of any of the Common Areas owned by the Association, or (b) annexation of any additional real property to the Property; or (c) material amendments to the Articles of Incorporation or the By-Laws of the Association.

DATED at Colorado Springs, Colorado this \_\_\_\_ day of June, 2004.

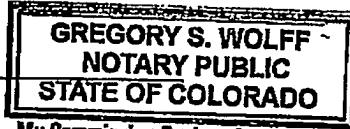
SUNSHINE HOME DEVELOPMENT, INC.,  
A Colorado Corporation

BY: Jannie Richardson  
Jannie Richardson  
President

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

The foregoing instrument was acknowledged before me this 22nd day of June, 2004, by Jannie Richardson, President - Sunshine Home Development, Inc., a Colorado Corporation.

My commission expires: \_\_\_\_\_



My Commission Expires Aug. 5, 2009

WITNESS my hand and official seal.

Gregory S. Wolff  
Notary Public