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ARDIS W. SCHMIDT
EL PASO COUNTY CLERK & RECORDER

DECLARATION OF PROTECTIVE COVENANTS

FOR

PINON MESA SUBDIVISION FILING NO. 1

IN THE CITY OF COLORADO SPRINGS

EL PASO COUNTY, COLORADO

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THIS DECLARATION OF PROTECTIVE COVENANTS (this "Declaration") is made this 5th day of January, 1995, by 2-2C Realty Venture, a Colorado joint venture (called "Declarant" in this Declaration).

RECITALS

A. Declarant is the owner in fee simple of residential property (the "Property") in the City of Colorado Springs, described as follows:

Pinon Mesa Subdivision Filing Number 1, in the City of Colorado Springs, El Paso County, Colorado.

B. Declarant desires to place protective covenants, conditions, easements and restrictions on the Property in order to establish, protect and maintain the quality residential environment, character, values and amenities of the Property.

Declarant, for itself and its grantees, successors and assigns, does hereby impose and establish upon the Property, and all of the Property shall hereafter be subject to, all of the following restrictions, covenants, easements and conditions (collectively referred to as the "Protective Covenants"), all of which shall be deemed to run with the land and shall inure to the benefit of and be binding upon Declarant, its grantees, successors and assigns, and all parties having or acquiring any right, title or interest in or to the Property or any part thereof.

1. Land Use, Building Type and Occupancy. All of the Property shall be used for single-family residential purposes only. No more than one dwelling shall be permitted on any lot within the Property as originally platted (a "Lot"). No business, professional or commercial enterprise, whether profit or non-profit, shall be carried on, conducted or maintained upon,

in front of, or in connection with any of the Property. No buildings shall be erected within the Property except single family dwellings, each of which shall include no less than a two-car garage. All single-family dwellings constructed within the Property must be equipped with an internal fixed fire sprinkler system. Such fire sprinkler system must be installed in accordance with and must comply with all criteria as may be required by the City Code of Colorado Springs in effect as of the time construction occurs.

2. Continuity of Construction. Construction of all structures commenced on the Property shall proceed diligently to completion and shall be completed within nine months of commencement of construction. The time for completion shall be extended by any reasonable delay resulting from labor unrest, strikes, fire, national emergency or natural calamity. Failure to proceed diligently with construction or to complete within the time permitted shall be deemed a breach of these Protective Covenants.

3. Temporary Structures. No structure of a temporary character, garage, barn, excavation, basement, trailer, tent or other out-building will be permitted on any lot, except as may be determined to be necessary during construction and is specifically authorized by the Architectural Control Committee (described in section 4 below) prior to installation.

4. Architectural Control Committee. To carry out the administration and enforcement of the provisions of these Protective Covenants, there is hereby formed an Architectural Control Committee (the "ACC"). Declarant shall act as the ACC until it has sold all of the lots within the Property, or until such earlier time as Declarant elects to appoint a committee to serve as the ACC and assigns the right to act as the ACC to such committee. To create such a committee to act as the ACC, Declarant shall appoint three persons, all of whom shall either be an owner of a Lot or a representative of Declarant to act as the ACC. The ACC shall exercise the functions assigned to it by

this Declaration, including reviewing and approving all plans for improvements as provided in this Declaration. The ACC shall meet as required to consider and approve or disapprove any proposed change, addition or deletion of these Protective Covenants. The majority of the ACC may designate a representative to act for it. Any member of the ACC may resign at any time. In the event of the death, incapacity or resignation of any member of the ACC after the appointment of a committee by Declarant, the remaining members shall have full authority to appoint a successor. The ACC at its discretion will set a plan review fee to be paid at the time building plans are submitted to the ACC by the person submitting the plans. Neither the member of the ACC, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this Declaration. However, Declarant or the ACC may hire and pay a manager, an architect, a designer or any other agent to assist it in the review of plans and the enforcement of this Declaration and may pay attorney fees in connection with the interpretation, administration and enforcement of this Declaration.

5. Architectural Control. No building, structure, fence, landscaping, wall, or any other object or improvement expressly requiring the approval of the ACC under the provisions of this Declaration (all of which are referred to individually as an "Improvement" or collectively as "Improvements") shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the Improvement and the topography of the Lot have been submitted to and approved by the ACC in accordance with section 6 below. In reviewing plans and specifications, the ACC shall consider the following specific requirements, which shall be applicable to Improvements constructed or installed on all Lots within the Property:

5.1 Floor Area. Excluding basements, porches, patios, covered but unenclosed areas and garages, a single-story dwelling shall contain not less than 1,600 square feet

on the main level, and multi-story dwellings shall have not less than 2,200 square feet of living area. However, the ACC shall have the authority to waive these floor area requirements, in its sole discretion.

5.2. Building Setbacks. Building setbacks must comply with requirements of the City of Colorado Springs (the "City") for front, rear, and side lot lines, as of the date of commencement of construction.

5.3. Materials and Colors. All exterior materials for roofing, siding, windows, doors, screens, and other items visible from the exterior of the dwelling must be of earth-tone colors and must be approved by the ACC prior to installation, as to quality of workmanship and materials, harmony of external design with the surrounding area and existing structures and general compatibility with the environment of the Property and nearby Pinecroft subdivisions.

5.4. Exterior Lighting. Exterior lighting that is subdued and whose light source is not directly visible from adjacent dwellings will be permitted for illuminating entrances, decks, driveways and parking areas and other purposes approved by the ACC. All exterior lights are subject to the prior approval of the ACC.

5.5. Landscaping. No trees, shrubs or other natural landscaping shall be removed or changed without the express consent of the ACC, which consent shall not be unreasonably withheld when such landscaping would interfere with the construction of a single-family dwelling approved by the ACC, or would interfere with driveways, sidewalks, site requirements or with requirements of the City. Landscaping on each Lot shall be completed in accordance with the plans submitted to the ACC as described in section 4 below, within three months after substantial completion of the single-family dwelling on the Lot. It is

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the policy of the ACC to limit the use of gravel, rock or paving as part of the landscaping on each Lot.

5.6. Changes or Alterations. No changes or alterations to an approved single-family dwelling, structure, landscaping plan or any other previously approved improvement shall be made until the proposed changes or alterations have been submitted to and approved by the ACC as provided in section 6 below.

5.7. Height Restriction. All buildings or structures located on lots 20 and 21 shall not exceed a height of 25 feet. No buildings or structures located on Lot 19 shall exceed a height of 25 feet if the front setback line of such building or structure is more than 50 feet from a public right-of-way. All buildings and structures on all other Lots shall not exceed a height of 30 feet, as provided in Section 14.1-1-109 of the City Code of Colorado Springs in effect as of the date of these Covenants.

5.8. Variances. The ACC may (by two-thirds vote after a committee has been appointed by Declarant), in its sole discretion, allow reasonable variances from the specific requirements of this Declaration. The ACC may consider topography, location of trees, configuration of the lot, area aesthetic considerations, view, hardship or other circumstances, not limited to the foregoing types, in making its decision to allow or disallow a variance.

5.9. Fences. Fences are discouraged and will only be permitted if previously approved by the ACC. The ACC shall review fence requests on an individual basis and its approval or disapproval of such requests shall be within its sole discretion. Notwithstanding the foregoing, a safety fence may be required along the back lot line of certain Lots due to severe cliff formations. Construction of a fence will be allowed only if such fence complies with specific design criteria established and approved by the

ACC, which criteria may be changed by the ACC, in its sole direction, from time to time.

6. **Procedure.** Any party desiring to build, erect or install any improvement or to alter or change any previously approved or existing improvement, on any Lot or other portion of the property, whether an owner of a Lot or a home builder,

(hereinafter referred to as "Builder"), shall submit two sets of plans and specifications to the ACC showing the nature, kind, shape, height, materials, floor plans, location, exterior elevations and color scheme for the improvement by providing paint chips, alterations, grading, drainage, landscaping plans, mailbox design, a cross section showing the height and locations of all structures, the square footage of a dwelling unit by story, and an indication of the amount of square feet within any building that shall be finished and the amount that shall be unfinished. In addition, Builder shall submit to the ACC an itemized breakdown of all costs of construction, certified as correct by Builder. Incomplete submittals shall be returned without review. In addition, Builder shall indicate an address to which approval or disapproval may be mailed. All the named items shall be submitted at least 20 days prior to commencement of construction. All plans for new construction of improvements must be accompanied by an initial fee of \$375.00 for review of plans. Any and each change to the plans originally submitted that necessitates further review by the ACC will require payment of an additional fee at the discretion of the ACC. The initial review fee may be changed from time to time at the discretion of the ACC.

The ACC shall have 14 days in which to indicate its approval or disapproval to the Builder at the address provided to the ACC. In approving or disapproving plans and specifications, the ACC shall have the right to take into consideration, among other things, the specific requirements and provisions of these Protective Covenants; the use and suitability of the proposed building or other improvement; the materials with which the

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Improvement is to be built; the quality of workmanship; the topography, size and shape of the lot upon which the Improvement will be erected; the harmony of the external appearance of the Improvement with its surroundings; and the degree, if any, to which the proposed Improvement will result in interference with views or cause intrusions of sound, light or other effect on neighboring sites beyond those to be reasonably expected in a quality residential area from conservative neighbors. In the event the ACC fails to give such written notice of approval or disapproval within 14 days after receipt of the items described above, approval shall be deemed granted and specific written approval will not be required. If the ACC gives written notice, it shall do so by indicating its action in a letter accompanying the return of one set of the plans and specifications submitted by Builder. The other set shall be retained by the ACC, along with a record of its action on the plans and specifications, for a period of one year from the date of substantial completion of construction. Thereafter, the ACC may destroy such plans, specifications and records without any liability being imposed on it thereby.

During the time that Declarant acts as the ACC, all requests for approval, together with required plans and other information, shall be sent to Declarant in care of Development Management, Inc. at 4065 North Sinton Road, Suite 200, Colorado Springs, Colorado 80907, unless Declarant designates a different address. After Declarant has appointed a committee to act as the ACC, all requests for approvals and related information shall be submitted to the address designated by the ACC by instrument recorded in the real property records of El Paso County, Colorado or other reasonable means of notification.

7. No Liability. Neither the Declarant nor the ACC, nor any member or agent thereof, shall be liable in damages to any person or entity submitting plans for approval or requesting a variance, nor to any owner of a Lot or any other portion of the Property, by reason of mistake in judgment, negligence,

nofeasance or any act or omission in connection with the approval, disapproval, or failure to approve or disapprove any plans, specifications or variance. Approval by the ACC shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Builder to comply with all codes, ordinances and regulations. Any Builder submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that he will not bring any action or suit to recover damages against Declarant, the ACC or its members, individually or collectively, or their advisers, employees or agents.

8. Easements and Utility Right of Way. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property. No structures, planting or other materials shall be placed or permitted to remain on or in the easements which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easements are on each Lot, and all improvements on or in the easements shall be maintained continuously by the owner of the pertinent Lot, except for those improvements for which a public authority or a utility company is responsible.

9. No-Build Areas. No-build areas for protection of natural features are reserved as shown on the recorded plat. No structures, planting or other materials shall be placed or permitted to remain on or in the no-build areas which may damage or interfere with the natural features of the areas. The no-build areas on pertinent lots shall be maintained continuously by the owner of the pertinent lot.

10. Prohibited Activities. No noxious or offensive activity shall be carried on upon any Lot, nor anything done thereon, to cause annoyance, embarrassment, discomfort, or a nuisance in the neighborhood. No offensive or hazardous activity

shall be permitted on any Lot or in any dwelling unit. No annoying lights, sounds or odors shall be permitted to emanate from any dwelling unit. No ashes, trash, rubbish, garbage, grass or shrub clippings, building materials, scrap materials or other refuse containers shall be stored or accumulated so as to be visible from any neighboring properties or street. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. No outdoor clotheslines or poles or other drying facilities will be placed so as to be visible from neighboring properties or adjacent streets. No dog runs, service yards, wood piles or storage areas shall be so located as to be visible from neighboring properties or adjacent streets. All Lots and yards are to be kept free of weeds and harmful insects. No stripped down, partially wrecked, or junk motor vehicles may be stored on any Lot or elsewhere on the Property, except in an enclosed structure which has been approved by the ACC. No maintenance, servicing, repair, dismantling, or repainting of any vehicle, boat, machine or device may be carried on except in an approved, completed enclosed structure.

11. Signs. No signs, billboards, poster boards or advertising structures of any kind shall be erected or maintained on any Lot or Improvement for any purpose whatsoever except for one sign of not more than five square feet advertising the pertinent lot for sale or rent, or one sign for identification of a residence of not more than one square foot.

12. Vehicles. No boat, trailer, camper, tractor, commercial vehicle, mobile home, motor home, motorcycle or utility trailer or other tow trailer may be kept on any Lot or elsewhere on the Property unless enclosed in the structure which has been approved by the ACC. None of these vehicles are to be parked in the street, on driveways or where visible to the surrounding properties or adjacent streets.

13. Livestock and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept in reasonable number, provided that they are for personal enjoyment and not for commercial purposes.

14. Towers, Dishes and Antenna. No towers, satellite dishes, antennae or other devices for the transmission or reception for radio, television, microwave or other signals shall be permitted on any visible exterior location within the Property without the prior written consent of the ACC. No approval shall be granted if such tower, satellite dish, antenna or other device is visible from a street.

15. Soils, Grading and Maintenance. The soils within the State of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Residence (defined below) if the Residence and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soil particles thereby resulting in consolidation and/or collapse of the soils.

Declarant intends to sell Lots to individual purchasers, who shall construct or have constructed a single-family residence on each Lot (a "Residence"). The purchaser or any successor thereof, of a Lot is referred to in this section 15 as an "Owner." Declarant shall require the Owner to have prepared a grading plan for the Owner's Lot or Lots in accordance with specifications of the Department of Veterans Affairs or the Federal Housing Administration, which plan shall be submitted to the ACC prior to commencement or construction of a Residence, certified and stamped by a registered engineer. The Lot shall be graded by the Owner in accordance with the approved grading plan. No change in the approved grading plan may be made without the prior written approval of the ACC. Anyone desiring to change

the grading plan shall cause to be prepared by a professional engineer, a revised grading plan which must be submitted to the ACC prior to the change of grading. The procedure for approving grading plans shall be the same as the procedure described in section 6 for approval of plans and specifications. Each Residence shall be located on a Lot in such a way as to be compatible with the approved grading plan and not interfere with drainage patterns established by the grading plan. The final drainage patterns established during grading of a Lot are the sole responsibility of the Owner and neither Declarant nor the ACC shall have any liability whatsoever for damage caused by improper grading or drainage on any Lot.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Residence to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water into the soil surrounding the Residence. An Owner shall maintain the grading and drainage patterns of the property established according to the approved grading plan authorized by the ACC.

An Owner shall not impede or hinder in any way the water falling on his Lot from reaching the drainage courses established for the Lot and the Property.

Declarant's grading plan for the property does not contemplate the removal of soil from any Lot or to importation of soil onto any Lot. Without the prior written consent of Declarant, no owner shall add more than one cubic yard of soil or other fill material to any Lot nor remove more than one cubic yard of soil or other material from his Lot, except for material that is excavated for the foundation and basement of a house.

10. Amendment. For as long as Declarant owns any Lot or other portion of the Property, any provision of these Protective Covenants may be waived, amended or terminated at any time by a written instrument referring to these Protective Covenants signed by Declarant and the then current record owners

of at least 50 percent of the Lots within the Property, with all signatures notarized, and recorded with the El Paso County Clerk and Recorder. After such time as Declarant no longer owns any lot or other portion of the Property, any provision of these Protective Covenants may be waived, amended or terminated by a written instrument referring to these Protective Covenants signed by the then record owners of at least 75 percent of all Lots within the Property, with all signatures notarized, and recorded with the El Paso County Clerk and Recorder.

17. Enforcement. These Protective Covenants are for the benefit of owners of Lots within the Property, jointly and severally, Declarant and the ACC. If any person shall violate or threaten to violate any of the provisions of these Protective Covenants, Declarant, the ACC or any owner of any of the Property, or any combination thereof, shall enforce the provisions of these Protective Covenants by instituting such proceedings at law or in equity as may be appropriate to enforce the provisions of these Protective Covenants, including an action for prohibitive or mandatory injunctive relief to prevent or remedy the threatened or existing violation of these Protective Covenants, an action for damages and any and all other available remedies. In the event of any litigation to enforce these Protective Covenants, the prevailing party shall be entitled to recover all costs and attorneys' fees incurred by such party. In the event of any violations, and in addition to any other remedies available, Declarant or the ACC shall have the right of entry on the lot owned by the party in violation, and may cure any deficiency or violation, without jeopardy of any claim of trespass, at the expense of the party in violation. Declarant or ACC may order any work necessary to cure the deficiency or violation, without being guilty of or liable for trespass, at the expense of the party in violation. Declarant or the ACC may order any work necessary to cure the deficiency or violation.

18. Penalties and Expenses of Enforcement; Liens for Nonpayment. If any person violates any of the provisions of

or the ACC. Declarant or the ACC shall have the power to bid in the amount of its lien or otherwise bid on the Lot at any foreclosure sale and shall have the right to acquire and hold, lease, mortgage or convey the Lot.

The amount of any such expense as assessed against the Lot shall also be a personal debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid expenses may be maintained without foreclosing or waiving the lien securing the debt, and shall include all costs and expenses thereof, including all attorneys' fees incurred to obtain such judgment.

Any mortgage holder or similar encumbrancer holding a lien on the subject Lot, may pay any unpaid expenses created hereunder with respect to the Lot, and upon such payments such encumbrancer shall have a lien on the Lot for the amounts paid, the lien to be of the same priority as the lien of his respective mortgagee.

19. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and covenants contained in this Declaration shall be for the benefit of and be binding upon each Lot described in this Declaration and each owner of a Lot or other portion of the Property, their respective successors, heirs, assigns and assigns, and shall continue in full force and effect for a period of 25 years from the date this Declaration was recorded in the real property records of El Paso County, Colorado, and, thereafter, shall be automatically extended for five successive periods of ten years each, unless these Protective Covenants are terminated effective at the end of the original 25-year term or any 10-year extended term by an instrument referring to this Declaration signed by the then record owners of at least two-thirds of all the Lots within the Project, with all signatures notarized, is recorded with the El Paso County Clerk and Recorder.

20. No Waiver. Failure to insist upon the enforcement of any one or more of the provisions contained in this

Declaration shall not constitute a waiver of any of the remaining provisions. The granting of a waiver by Declarant of the ACC shall be applicable only to the specific matter waived, and shall not be deemed a waiver of any provision or requirement of this Declaration.

21. **Severability.** Invalidity of any provision of this Declaration by judgment of court or arbitrator shall in no way affect any of the other provisions, which shall remain in full force and effect.

Z-2C REALTY VENTURE, a Colorado joint venture

BY: *[Signature]*
Attorney in Fact

STATE OF COLORADO

COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this day of January, 1995 by David D. Jenkins as Attorney in Fact for Z-2C Realty Venture, Colorado joint venture.

Witness my hand and official seal:

My commission expires: 03/19/98



[Signature]
Notary Public