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DECLARATION

OF

CONDITIONS, COVENANTS, RESTRICTIONS, EASEMENTS AND CHARGES

SUNBIRD CLIFFS FILING NO. 2

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DECLARATION
of
CONDITIONS, COVENANTS, RESTRICTIONS, EASEMENTS AND CHARGES
AFFECTING THE REAL PROPERTY KNOWN AS
SUNBIRD CLIFFS FILING NO. 2

THIS DECLARATION made by Mountainscape Development, Ltd., a Wyoming limited liability company, hereinafter called the Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of a residential area of the City of Colorado Springs, as legally described in the plat attached hereto as Sunbird Cliffs Filing No. 2 ("Plat," a copy of which is attached hereto as Exhibit A) in El Paso County, Colorado (hereinafter the "Subdivision"), and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance and for the convenience of its residents and to this end desires to subject the Subdivision, together with any additional property hereafter included in this Declaration, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof; and

WHEREAS, Sunbird Cliffs Homeowners Association, a Colorado corporation not for profit, has been organized in order to implement this Declaration and will accept delegation and assignment of powers of maintaining and administering the parcel of real estate which consists of land contiguous to the south side of lots 1-6 and 24 through 31 of the Subdivision, being in the right of way for Point of the Pines Drive and extending from the backside of the curb to and including the fence on the rear of lots 1-6 and from the backside of the curb to and including the fence on the rear of Lots 24 through 31 along Point of the Pines Drive (the "HOA Area") and to include maintenance of said fence, or are otherwise intended for the general benefit of the area, and collecting and disbursing the assessments and charges hereinafter created. The HOA Area is identified in the Plat and marked on a copy of the Development Plan for the Subdivision which is attached hereto as Exhibit "B."

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NOW, THEREFORE, the Declarant declares the above recitals are hereby incorporated and that the real property Sunbird Cliffs Filing No. 2, together with such other real property as may hereafter be included in this Declaration, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes herein referred to as "Covenants") hereinafter set forth.

ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL CHARACTER
OF THE SUBDIVISION

Section 101. Property Uses. All Lots and building sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any lot or building site, except as provided in Section 107, or except as allowed by applicable zoning ordinances governing and regulating home occupations.

Section 102. Structures. No structures shall be erected within the Subdivision except single family dwellings and those accessory buildings and accessory structures which have been approved by the Approving Authority. No structure other than a dwelling, no accessory building other than a guest house or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other structure may be placed on any building site before completion of the dwelling upon such building site except with the permission of the Approving Authority.

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 or building site except as expressly hereinafter provided for temporary buildings.

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 105. Substantial Completion. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

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Section 106. 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 60 days without written permission of the Approving Authority, the Approving Authority will give the owner thereof Due Notice of such fact, and if construction on such structure is not diligently commenced within 30 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.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant and/or their assigns with the permission of the Approving Authority. Model Homes may be used and exhibited only by Declarant and/or their assigns or with the permission of the Approving Authority. 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 108. Drilling Structures. No derrick or other structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot.

Section 109. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the seven foot strips along and adjoining each rear lot line of each Lot, each of the five foot strips along and adjoining each front lot line of each Lot, and each of the five foot strips along each side lot line of each lot for use of all or part of such areas for the transmission of electric current, the transmission of electrical impulses or electronic signals, specifically cable television (only with prior approval of the Declarant), heat and fuel lines, sewer and water lines, drainage, utilities, fireplace projections and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Rights hereunder are separately assignable by Declarant to another entity so that Declarant may retain the same after it ceases to occupy such status.

Section 110. Underground Utilities. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

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Section 111. Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall arrange and maintain any drives, dwellings or other structures so that ingress and egress to and from their Lots is exclusively from a publicly dedicated street and not through other private property or adjoining public lands. There is to be no access from Point of the Pines Drive to any lot.

Section 112. Fence and Landscaping Maintenance. Except for the fence to be maintained by SCHOA, the Lot Owners shall maintain, in good condition, that portion of the fence and landscaping which is located on their Lots. If such maintenance is not properly performed, Declarant shall have the right (but not the obligation) to enter onto any Lot which is subject to this requirement, and perform this maintenance at Declarant's expense. Declarant may then seek reimbursement of those expenses from that Lot Owner. Except in cases of emergency, Due Notice will be given to Owners of these Lots prior to any such entry and maintenance by Declarant. The party performing the maintenance shall not be liable for any loss, costs or damages to any Owner of a Lot on account of its performance of such maintenance, except for any such loss, cost or damage caused by gross negligence or willful misconduct. Once the improvements have been installed, no modifications shall be made to them without the prior written approval of the Approving Authority. The Approving Authority may require Lot Owners of the affected Lots to perform maintenance in such a way as to preserve the uniform and harmonious visual appearance of the fence and landscaping.

ARTICLE II

DENSITY, SETBACK AND QUALITY STANDARDS

Section 201. Single Dwelling on Lots. No more than one dwelling shall be erected or maintained within any Lot or the combination of two or more Lots or portions thereof as approved by the Approving Authority and aggregating not less than 7,000 square feet.

Section 202. Setback Areas. Except with the written approval of the Approving Authority, no building, porch, eave, overhang, projection or other part of a building shall be located within 16 feet of a front Lot line, or within five feet of a side Lot line not adjoining a street, or within 16 feet of a side Lot line adjoining a street, and no dwelling may be located nearer than 20 feet from any other dwelling, unless otherwise designated on the approved master plan or development plan on record at the City of Colorado Springs Planning Department. The Approving Authority's approval to vary from these setbacks may be given only (a) for fireplace projections integral with the building; and (b)

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for eaves and overhangs. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Colorado Springs, which regulations may vary from the provisions of this section and other sections.

Section 203. Dwelling Area Requirements. No dwelling shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable floor area of less than 2,100 square feet if the home is a two story or multi-level or 1,500 square feet if the home is a ranch plan, excluding the basement in each case. Each dwelling shall include a fully enclosed garage to accommodate at least two (2) private passenger motor vehicles. All driveways shall be improved with asphalt or concrete paving unless otherwise approved in writing by the Approving Authority.

Section 204. Height Restrictions. No dwelling or other structure shall exceed thirty-seven (37) feet in height from the lowest elevation of the finished grade contour along the perimeter of the structure exclusive of the standard chimneys, nor shall exceed twenty-nine (29) feet in height from the highest elevation of the finished grade contour along the perimeter of the structure, exclusive of standard chimneys.

Section 205. Roofs. All roof areas shall be of wood shakes, wood shingles, tile, slate, copper, premium asphalt or fiberglass "fake shake" roofing. Standard asphalt roofing materials not permitted.

Section 206. Accessory Buildings. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same Lot, and shall not be constructed without prior written approval of the Approving Authority.

Section 207. Antennas. No aerial or antenna for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

Section 208. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any accessory building and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off.

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Section 209. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from 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 time the damage occurred. The Approving Authority has the right to vary this time limitation upon written request and approval by the Approving Authority.

Section 210. Fences. Fencing is not permitted except as provided in this Section 210. Fencing shall be limited to areas outside the Preservation Easement shown on the Plat for the Subdivision. Lots 6 through 23 may only have a 4 foot high chain link fence attached to wood posts and rails. Between and along the side of homes on lots 6 through 23, but not protruding beyond the front of the dwelling or beyond the rear of the dwelling, with Declarants prior approval, five foot cedar fencing may be installed to screen items mentioned in sections 207, 301, 303, 304, 313 and 314. On lots 1 through 5 and 24 through 31, only 5 foot cedar privacy fencing may be used. Any other type of fence or screening must have prior approval from the Approving Authority.

Section 211. Garage. The structures on each lot are to include a two car fully enclosed garage. Site improvements on each lot shall include parking for two private passenger motor vehicles.

Section 212. Building Standards.

- a. Exterior materials shall be natural wood, brick, stone, stucco, masonite or other natural materials approved by Declarant.
- b. All windows must be painted or coated to blend in with the rest of the structure.
- c. Gutters must be painted the same color as the adjoining paint color.
- d. Exposed concrete must be stuccoed.
- e. Roof vents and roof flashing or valleys must be painted to conform with roof color.

Section 213. Preservation Easement. Certain areas within lots have been designated as Preservation Easement and are shown and are defined in the Development Plan, a copy of which is attached hereto as Exhibit B. The Preservation Easement shall be

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used by each lot owner only in such a manner as is consistent with the preservation of the natural growth and, except for drainage structures or underground utilities constructed within an easement and approved by Declarant, shall not be subjected to any kind of intensive or destructive use or any activity which might result in permanent damage to the existing natural growth. In amplification and not in limitation of this general restriction the following specific restrictions are imposed on the Preservation Easement:

- a. No planting or cultivation shall be permitted except planting and cultivating of plants native to the Pikes Peak Region.
- b. No alteration of ground conditions and no clearing of living growth shall be permitted.
- c. No structures of any kind shall be permitted.
- d. No vehicles or conveyances of any type shall be permitted within the Preservation Easement.
- e. No activity tending to produce litter shall be permitted.

ARTICLE III

LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on his Lot which tends to substantially decrease the beauty of the neighborhood as a whole or in the specific area. No building material shall be stored on any Lot, except temporarily during continuous construction of a building, unless enclosed out of view in a service yard or within a building.

Section 302. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage, or when open for working purposes of a limited duration.

Section 303. Maintenance Equipment. All maintenance 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. All outdoor clothes poles, clotheslines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

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

Section 306. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit. No annoying lights, sounds or odors shall be permitted to emanate from any living units

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. Within six months, weather permitting, after completion of a dwelling or within any extension of that period granted by the Approving Authority, all yards and open spaces shall be landscaped and thereafter maintained in lawn or landscape. Landscape shall include areas of natural vegetation and preservation of existing trees, scrub oak, or other natural vegetation. No existing trees, surface boulders, or scrub oak shall be removed from any Lot unless required by construction activity and unless approved by Declarant. The use of gravel, small rocks, and paving as landscape materials, to any substantial degree, is not permitted. Landscape plans must include either an 8 foot or taller evergreen tree or two 5 foot or taller evergreens plus one 1-1/2 inch ediper deciduous tree, all of which are located in the front yard.

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 Approving Authority, are likely to cause the spread of infection or weeds to neighboring property.

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 upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises 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 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 an additional assessment against the Lot involved.

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Section 311. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the written consent and approval of the Approving Authority. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. To eliminate erosion, Lot owners should revegetate approved grades and cuts.

Section 312. Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and except an aggregate of three domesticated dogs or cats, no more than two of which may be dogs, shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which, in the opinion of the Approving Authority, makes or causes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

Section 313. Trailers, Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, any towed trailer unit or truck, excepting only pickups solely for the private use of the residents of a dwelling, shall be parked overnight on any street or within any Lot except in a completely enclosed structure, or fully screened in a manner so as not to be visible at ground level from any neighboring property or street. In no case shall a commercial vehicle, commercial trailers or mobile home be parked on any Lot.

Section 314. Junk Cars. No stripped down, partially wrecked or junk motor vehicle or part thereof, shall be permitted to be parked on any street or on any Lot in such manner as to be visible at ground level from any neighboring property or street.

Section 315. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 316. Signs. The only signs permitted on any Lot or structure shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;
- (b) One sign of customary size for identification of the occupant and address of any dwelling;

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(c) Multiple signs for sale, administration and directional purposes installed by, or with the permission of Declarant and/or their assigns; and

(d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger.

Section 317. Mailboxes. Freestanding mailboxes will be of a design approved by the Approving Authority.

Section 318. Solar Collectors. Solar collectors or other devices are not permitted.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 401. Building and Landscaping Approval. No structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include, but are not limited to: the exterior appearance, material, color, height and location of each structure, covering, drive, walk and fence, and landscaping and grading of site. In granting or withholding approval, the Approving Authority shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the structure, covering or landscaping to the environment and to surrounding uses.

Section 402. Plans Submissions. All plans, samples and other materials to be submitted to the Approving Authority shall be submitted in duplicate. The minimum scale of these plans shall be a 1/20th inch to one foot ratio. The plot plan in this minimum scale shall show the location of all buildings, drives, walks, decks, patios, fences and any other structures. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used, and shall designate each exterior color to be used by means of actual color samples. Landscape plans shall show all planned landscaping which shall conform to the requirements of section 308, above.

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Section 403. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within thirty (30) days after delivery of all the required materials to the Approving Authority, the materials so delivered shall be deemed approved for the purpose of these Covenants. The Approving Authority may charge reasonable fees to cover the expenses incurred in reviewing plans, samples and materials submitted pursuant to this Declaration, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 404. Variances. The Approving Authority shall have the authority to grant for a Lot or building site a variance from the terms of one or more of sections 106, 110, 202, 203 and 209, subject to terms and conditions which may be fixed by the Approving Authority, and which will not be contrary to the interests of the Owners and residents of the Subdivision and where, owing to exceptional and extraordinary circumstances, literal enforcement of all of those sections will result in unnecessary hardship. Following an application for a variance:

(a) The Approving Authority shall call a meeting of Owners of Lots in the Subdivision, to be held in Colorado Springs at a place to be determined by the Approving Authority, notice of which meeting shall be given to all Owners at least twenty (20) days in advance, at which meeting all Owners shall have opportunity to appear and express their views.

(b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one (1) week after the meeting either grant or deny the variance.

(c) A variance shall not be granted unless the Approving Authority shall find that all of the following conditions exist:

(i) the variance will not authorize the operation of a use other than for private, single family residential use;

(ii) owing to the exceptional and extraordinary circumstances, literal enforcement of the section above enumerated will result in unnecessary hardship;

(iii) the variance will not substantially or permanently injure the use of other property in the Subdivision;

(iv) the variance will not alter the essential character of the Subdivision;

(v) the variance will not weaken the general purposes of these Covenants;

(vi) the variance will be in harmony with the spirit and purpose of these Covenants; and

(vii) the circumstances leading the applicant to seek a variance are unique to the Lot or building site or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

(d) If a variance is denied, another application for the same or a similar variance for the same Lot or building site may not be made for a period of one year after submittal of the original request.

(e) A variance granted hereunder shall run with the Lot or building site for which granted.

(f) The Approving Authority may charge reasonable fees to cover expenses incurred due to the request for variance submitted pursuant to this Declaration, exclusive of reimbursement to the members of the Approving Authority for their services.

Notwithstanding anything in this Section 404 to the contrary, the Approving Authority shall have the right and power, until December 31, 1996 or until all the Lots are built upon and occupied, whichever comes first, to grant variances of these covenants without having first submitted the application for variance according to the procedures outlined in subparagraphs (a) and (b) above of this Section 404, but only if, in the Approving Authority's sole opinion, the variance meets the conditions contained in subparagraph (c) of this Section 404.

ARTICLE V

APPROVING AUTHORITY

Section 501. Composition of the Approving Authority. The Approving Authority shall consist of three individuals, to be appointed by, and removed at the will of, the Declarant until December 31, 1996, and thereafter by a majority of the Lot

Owners. Members of the Approving Authority appointed by the Lot Owners must themselves be Owners of Lots within the Subdivision. Members of the Approving Authority appointed by Declarant need not be owners of Lots within the Subdivision. Appointment and removal of members of the Approving Authority shall be by written instrument signed and acknowledged by the Declarant or the person or persons making the appointment or removal and recorded in the records of El Paso County, Colorado. At any time the Declarant, by written instrument so recorded, may release its right to appoint and remove, whereupon appointment and removal shall be vested solely in a majority of Lot Owners. Further, at any time when the Approving Authority consists of less than three individuals, and the Declarant or the Lot Owners do not fill out the membership of the Approving Authority within 30 days of the vacancy, the then members thereof may fill any vacancy by a written instrument signed and acknowledged by the then members of the Approving Authority and recorded in the records of El Paso County, Colorado. Action by a majority of the Lot Owners is evidenced by a document signed by a majority of the Owners in counterparts and proved by an affidavit made by three Lot Owners testifying that they are Lot Owners and that the document signatories are all Lot Owners and represent a majority of the Lot Owners.

Section 502. Receipt by Approving Authority. Any item required or permitted to be delivered to the Approving Authority shall be deemed properly delivered when actually received by the Approving Authority.

Section 503. Liability. Members of the Approving Authority shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

ARTICLE VI

HOMEOWNER ASSOCIATION

Section 601. Homeowners Association. A homeowners association shall be created for the Subdivision as provided for in this Article.

Section 602. Members of the SCHOA. Each person who owns a Lot in the Subdivision, shall by virtue of such ownership be a member of the Sunbird Cliffs Homeowners Association ("SCHOA"). If a Lot is owned by more than one person the membership for such Lot shall be vested in one of such persons as they themselves shall determine. Each member shall be entitled to one vote in the SCHOA. Declarant shall be a member of the SCHOA and shall be entitled to three votes for each Lot owned by it until the

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occurrence of the earlier of the following events, after which Declarant shall have one vote for each Lot owned by it: (i) on December 31, 1996; or (ii) two hundred forty (240) days after the date by which seventy-five per cent (75%) of the Lots, subject to the SCHOA from time to time, in the Subdivision have been conveyed by Declarant.

Section 603. Powers of the SCHOA. SCHOA shall maintain the landscaping and fence in the HOA Area contiguous to the south side of the Subdivision as shown on the Development Plan and shall assess each member equally for the costs of the watering, mowing, fertilization and landscaping of such tract and fence maintenance and repair and the maintenance, replacement and repair of signs which may be installed thereon, all as provided herein.

Section 604. Duties of the SCHOA. SCHOA shall assume the responsibility which these Covenants impose on it and to the extent that the Board of Directors determines will be in the best interests of the members, to exercise its powers and perform the functions for which it is given authority by the Covenants.

Section 605. Independent Status of Declarant and SCHOA. In performing any act under the authority of these Covenants which could also have been performed by the SCHOA, the Declarant shall act not as agent, but on its own account. In performing any act under the authority of these Covenants which could also have been performed by Declarant, the SCHOA shall act not as agent, but on its own account.

Section 606. Declarant Empowered to Act in Lieu of SCHOA. If the SCHOA fails to exercise any function or perform any act for which it has authority under these Covenants and Declarant reasonably believes that such failure has continued or will probably continue for such period as to prejudice the interests of members of the SCHOA, Declarant may, at its election, exercise any such function or perform any such act which the SCHOA has failed to exercise or perform. If Declarant, pursuant to this Section, exercises any function or performs any act which the SCHOA failed to exercise or perform, Declarant shall have like powers of assessment and shall have the same remedies and means of enforcement as are by these Covenants vested in the SCHOA.

Section 607. Declarant's Successors and Assigns. The rights and powers of Declarant under these Covenants shall pass to the successors and assigns of Declarant. Declarant may, by written instrument of assignment, transfer in whole or in part any or all of its rights and powers under these Covenants.

Section 608. Officers and Agents Excused from Liability. Declarant, the SCHOA, the officers and directors, members and

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agents of each of them shall not be liable to any part whatsoever for any act or omission, unless the act or omission is in bad faith and constitutes fraud.

Section 609. Activities and Responsibilities of SCHOA. SCHOA shall have authority and shall be responsible and obligated to provide for the services and operations described in Section 603 above. The SCHOA's powers shall include the further authority if so directed by vote of at least three-fourths (3/4) of the SCHOA's entire voting power to provide additional services commonly needed by the Owners, in addition to those provided by public authority or already provided by the SCHOA.

Section 610. Contracts for Service. The SCHOA may contract with outside firms for the provision of any of the services which the Association has authority to provide.

Section 611. Time Limit for SCHOA Action. Failure of the SCHOA to act within forty-five (45) days after submission in due form and detail of the materials required by the SCHOA's regulations and payment to the SCHOA of the appropriate fee shall be equivalent to approval.

Section 612. SCHOA Can Remedy Violations. In case of any breach of these Covenants, the SCHOA may give written notice to the Owner of the lot where the breach occurs, or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach and the intent of the SCHOA to invoke this Section unless within a period stated in the notice, not less than five (5) days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice, the SCHOA may cause the breach to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the SCHOA shall be paid by the person responsible for the breach and if not paid within thirty (30) days after the SCHOA has sent such Owner notice of the amount due, such amount, plus costs of collection, shall be a lien on the Lot (including improvements thereon) of the persons so notified and shall in all respects be the obligation of the Owner and enforceable as provided for other assessments by the SCHOA.

ARTICLE VII

COVENANTS FOR ASSESSMENTS

Section 701. Applicable to SCHOA. The Covenants contained in this Article shall apply to the SCHOA referred to as the "Association," unless specifically otherwise indicated.

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Section 702. Assessments a Lien and Personal Obligation. Declarant, for each Lot owned by it, hereby covenants and agrees to pay, and each Owner, by acceptance of a conveyance of his Lot, whether or not it shall be so expressed in the conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments for capital improvements and the other charges specifically authorized by these Covenants. Each type of assessment and charge shall be fixed, established and collected from time to time as hereinafter provided. Each such assessment and charge, together with the interest thereon and costs of collection, shall be a continuing lien upon the Lot against which it is made and shall also be the personal obligation of the person who owned the Lot at the time when the assessment or charge fell due.

Section 703. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, property values, welfare and convenience of the respective Members of the Association, for providing those services and operations, as provided in Section 603 above, and to pay for insurance, labor, equipment, materials, management, operational expenses and supervision, as it may relate to the Association.

Section 704. Basis of Annual Assessments. All expenses and current costs of the Association shall be prorated among the Lots in the respective Association equitably and ratably without distinction as to type or size of dwelling. Assessments shall be fixed annually in advance to cover the estimated financial requirements of the Association for the next calendar year. Approximately three (3) months before the beginning of the calendar year, the Association shall give each member notice of the proposed assessments for that calendar year, together with a copy of the budget and itemization of the financial requirements and estimated expenses and all other expenditures of the Association to be made during that calendar year and any amounts necessary to make up for any deficit for a previous period or to create reasonable reserves for contingencies and future repair, replacement and maintenance. The notice shall state a date and hour at least twenty (20) days after the giving of such notice and a place not more than ten (10) miles distant from the Subdivision at which the Directors will meet and each member shall have opportunity to express his views as to the proposed assessments and the budget. After such opportunity has been afforded as stated in the notice, the Board of Directors shall, by resolution, fix and determine the assessments for such calendar year against each Lot in the Association. In case of a failure to adopt a budget or give notice within the time above provided, the Association and the Board of Directors shall nevertheless proceed as above provided but at a later date and the assessments, as

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fixed by the Board of Directors, shall be valid the same as if all procedures had been timely, but the assessment shall not be payable sooner than twenty (20) days after the notice of the assessment.

Section 705. Assessment Limit. Annual average assessments on Lots on which a dwelling has been constructed shall not exceed one hundred twenty dollars (\$120), unless approved by the affirmative vote of two-thirds (2/3) of the SCHOA's entire voting power, provided that such assessments shall not exceed three hundred dollars (\$300), without unanimous approval of the SCHOA's entire voting power.

Section 706. Change in Basis of Annual Assessments. After affirmative vote of two-thirds (2/3) of the Association's entire voting power, the Association may change the procedures for determining assessments provided in Section 705.

Section 707. Special Assessments for Capital Improvements. After an affirmative vote of two-thirds (2/3) of the Association's entire voting power, and upon the written consent of the Owners of at least two-thirds (2/3) of all Lots in the Association, the Association may levy, in any assessment year, in addition to the annual assessments authorized above, a special assessment for the purpose of defraying, in whole or in part, the cost of acquisition or unexpected repair or replacement of a described capital improvement, including, but not limited to, purchase of asphalt, concrete, sod and machinery or equipment.

Section 708. Delay Assessments. After a Lot has remained unimproved for two (2) years following its first purchase from Declarant and thereafter until commencement of construction of a dwelling on the Lot, the Association may levy at the time of fixing the annual assessment on the Lot an additional delay assessment against such Lot in order to compensate for the adverse effect which unbuilt areas have on Lots improved with dwellings. The delay assessment shall be fixed according to a uniform rule and shall not exceed the annual assessment.

Section 709. Payment of Assessments. Annual assessments shall be payable in advance in annual or other installments as the Board of Directors of the Association may fix. The Association shall give each member written notice of each assessment, annual, delay or special, at least twenty (20) days in advance of the due date of the first installment for the annual period. Such notice shall state the amount of the assessment and if the assessment is payable other than in a single payment, the amount and due dates of each installment as fixed by the Association.

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Section 710. Certificates of Payment. The Association shall furnish on request of any Owner a written certificate signed by the Treasurer or other authorized officer of the Association, setting forth the amount of any and all unpaid assessments and charges against the Owner's Lot, which certificate shall set forth the amounts and due dates of any unpaid assessments or charges and shall be conclusive evidence of payment or nonpayment with respect to any person relying on the certificate. The Association may make a reasonable charge to compensate the Association for the expense and risk involved in issuing such certificates.

Section 711. Enforcement of Assessments. Each assessment and charge (with penalties and costs of collection as hereinafter provided), both prior to and after the levy thereof, together with the continuing obligation to pay all assessments and charges levied in future years, shall, except as provided in Section 712, be and remain a first lien upon the Lot against which assessed and the improvements thereon, which lien shall be superior to any other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lot or improvements, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instruments, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior. The personal obligation of the Owner to pay such assessments and charges, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. If the assessment or charge is not paid within thirty (30) days after the delinquency date, the delinquent Owner shall pay interest from the date of delinquency at the rate of one and one-half percent (1 1/2%) per month until it is paid, and the Association may bring an action at law against the Owner personally obligated to pay, and may bring an action to foreclose the lien against the Lot and improvements subject to the assessment or charge, and there shall be added to the amount of such assessment or charge the cost of preparing and filing the complaint in such actions. The judgment in any such action shall include interest as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 712. Protection of Lenders. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a recorded first mortgage or recorded first deed of trust, and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not. However, the lien of such assessments shall be superior to any homestead exemption as now or hereafter may be provided by Colorado law and the acceptance of a deed to land subject to this

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Declaration shall constitute a waiver of the homestead exemption as against the said assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof or the cancellation or foreclosure of any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not, 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. If the first mortgage or deed of trust is foreclosed and the holder of the encumbrance receives a certificate of purchase or a deed from the Sheriff or Public Trustee or other public officer, upon issuance to the holder of the certificate of purchase or deed, whichever occurs first, the holder as of the date of the receipt of the certificate or deed shall be obligated to pay all assessments otherwise due and owing hereunder. The encumbered property shall then again be subject to a lien as provided in these covenants for installments of assessments and charges thereafter falling due and for all assessments and charges thereafter made by the Association.

Section 713. Pledge of Revenues. In order to secure the repayment of any and all sums borrowed by it from time to time, the Association shall have the right and power to assign and pledge all revenues received, and to be received, by it under any provisions of these Covenants, including, but not limited to, the proceeds of the annual assessments payable hereunder. The Association shall have the further power to agree with any lender that the annual assessments shall, within the limitation of Section 705, be levied at a particular rate, or at not less than a particular rate.

ARTICLE VIII

1 GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 801. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning;

(a) Approving Authority. The architectural review board established pursuant to Section 501 of these Covenants.

(b) Accessory Buildings. Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities, separate guest houses without kitchens, separate servants' quarters without

kitchens, and other buildings customarily used in connection with the single family residence.

(c) Building Site. A Lot as established by the recorded Plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 7,000 square feet.

(d) City. The City of Colorado Springs, Colorado.

(e) These Covenants. This Declaration and the provisions contained in it.

(f) Lot. Each area designated as a Lot in any recorded plat of the Subdivision.

(g) Lot Lines. Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time. In the absence of such a definition, a front Lot line is each boundary line (whether one or more) between the Lot and any public street. A side Lot line is any boundary line which meets and forms an angle with a public street, except that for a corner Lot with two front Lot lines, the side Lot line is the boundary which forms an angle with the street which affords the principal access to the Lot.

(h) Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot. Thus, each Owner may have as many votes as the Owner is the owner of Lots in the Subdivision.

(i) 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, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting. Structure shall also mean an excavation or fill, the volume of which exceeds five cubic yards or any device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

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(j) The Subdivision. The area subdivided as Sunbird Cliffs Filing No. 2, according to the plat recorded in the office of the Clerk and Recorder of El Paso County, Colorado.

(k) Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers letters or other designations and all in between.

(l) Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, and the singular to include the plural and the plural to include the singular.

(m) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least ten (10) days prior to the action required by the Notice.

Section 802. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 803. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intentment or meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in a written instrument, duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of El Paso County, Colorado, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 803.

Section 804. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 805. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 806. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they

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may not be waived, modified or terminated, and a failure to enforce these Covenants 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 vitality, and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement, and each such person agrees not to 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 807. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Declarant, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Declarant or the Approving Authority, or any combination of these. Until seven years after these Covenants are filed of record, or when Declarant and/or their assigns owns no property within the Subdivision, whichever is longer, Declarant may also enforce these Covenants in any of the manners permitted above. All costs, including reasonable attorneys' fees, incurred by the Declarant or the Approving Authority in connection with any successful enforcement proceeding initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 808. Declarant Can Remedy Violations. The Declarant and/or the Approving Authority may give notice of a breach of these Covenants to the Owner of the Lot where a breach occurs or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach, and the intent of the Approving Authority and/or Declarant to invoke this Section, unless within a period stated in the notice, not less than five (5) calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice of the Approving Authority and/or Declarant (whichever gives the notice),

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the Approving Authority and/or Declarant may cause the breach to be cured and terminated at the expense of the Owner or Owners, so notified, and entry on Owner's Lot or Lots as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the Approving Authority and/or Declarant shall be paid by the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and plus cost of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) of each person so notified and shall in all respects be the personal obligation of the Owner. The Approving Authority and/or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection, against the Owner personally obligated to pay and may bring an action to foreclose the lien against the Lot and improvements subject to the lien. There shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest, as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The foregoing specified rights and remedies shall not limit the right of any Lot owner to enforce these Covenants as otherwise may be provided by law or equity. Until seven years after these Covenants are filed of record, or when Declarant and/or its assigns own no property within the Subdivision, whichever is longer, Declarant may also enforce these Covenants in any of the manners permitted above.

Section 809. Duration of Restrictions. Unless sooner terminated as provided in Section 811, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2013 and shall be automatically renewed for successive periods of 10 years, unless before the year 2013 or before the end of any 10-year extension, there is filed for record with the Clerk and Recorder of El Paso County, Colorado, an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in the Subdivision.

Section 810. Amendment and Extensions. From time to time any sections of these Covenants (except Section 109) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by a majority of all Lot Owners and filed for record in the records of El Paso County, Colorado.

Section 811. Termination. As to a single section (except Section 109), amendment may include termination. As to these Covenants entirely (except Section 109), they may be terminated at any time by an instrument signed and acknowledged by of the majority of all Lot Owners and filed for record in the records of El Paso County, Colorado.

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Section 812. Partial Amendments. These Covenants may be amended for any portion of the Subdivision by a written instrument executed by Declarant and by 100% of the then Owners of Lots in said portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendment contains at least 20 contiguous Lots; and
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonably determines that the amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots.

Section 813. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 814. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 815. Notices. Any writing described in Section 814, including but not limited to, any communication from the Approving Authority or the Declarant to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the Lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Approving Authority has a record.

Section 816. Successor to Declarant. At any time the Declarant may assign all its rights and duties as such to a successor in interest and the successor in interest shall thereafter, for all purposes, be the Declarant of these Covenants. A change in the Declarant shall be evidenced by the recordation in the records of El Paso County, Colorado, of a properly acknowledged instrument signed by both the then Declarant and its successor.

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IN WITNESS WHEREOF, the Declarant has executed this
Declaration this 17th day of November, 1992. ^{92 JAW}

DECLARANT:

MOUNTAINSCAPE DEVELOPMENT, LTD.
a Wyoming limited liability
company

By: James L. Walters
James L. Walters
Manager

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

The foregoing instrument was acknowledged before me this 17th
day of November, 1992, by James L. Walters, as Manager of
Mountainscape Development, Ltd., a Wyoming limited liability
company, the Declarant.

Witness my hand and official seal.
My commission expires:

Patricia K. Bergeron
Notary Public

37208



My Commission Expires
Nov. 2, 1995