

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

BOOK 1258 PAGE 56

THIS DECLARATION, made on the date hereinafter set forth by Jose G. Rabanal, Rebecca Rabanal, John B. Curtis, and Sybil P. Curtis, hereinafter referred to as "Declarant.."

WITNESSETH:

STATE OF COLORADO COUNTY OF MESA
RECORDED AT 3:30 O'CLOCK P.M.
RECEPTION NO. 1223362 EARL BARBER, CLERK
MAY 6 1988

WHEREAS, Declarant is the owner of certain property in WEDGEWOOD PARK SUBDIVISION, FILINGS NO. 2 and 3, a Planned-Unit Development in Mesa County, Colorado, more fully described as follows:

Beginning S 0° 07' 00" W 1216.00 feet from the NW Corner of the NE 1/4 SW 1/4 Section 16, T 1 S, R 1 E, Ute Meridian, thence N 89° 59' 00" E 544.5 feet, thence N 0° 07' 00" E 160.00 feet, thence N 89° 59' 00" E 776.26 feet, thence S 0° 08' 00" W 1055.74 feet, thence West 495.45 feet, thence N 0° 07' 00" E 528.00 feet, thence West 825.00 feet, thence N 0° 07' 00" E 367.35 feet to the Point of Beginning. Containing 20.00 acres more or less and otherwise known as Wedgewood Park Subdivision, Filings No. 2 and 3.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Wedgewood Park Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

common open space in Block 1; and Recreational Vehicle Parking in Block 3, Wedgewood Park Subdivision. Filing No. 2, Mesa County, Colorado.

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

Section 6. "Declarant" shall mean and refer to Jose G. Rabanal, Rebecca Rabanal, John B. Curtis, and Sybil P. Curtis, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall

be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-third (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right 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 III

MEMBERSHIP AND VOTING RIGHTS

Section 1. 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 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they 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(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1983.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twelve Dollars (\$12.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. 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 7. Date of Commencement of Annual Assessments: Due Dates. 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. 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 (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates 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.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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, 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 V

ARCHITECTURAL CONTROL

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

ARTICLE VI

USE RESTRICTIONS

Section 1. Use of sites is restricted to high quality, single family dwellings having no less than 800 square feet of floor space exclusive of porches, patios, garages, carports and outside storage. No store, office, other than temporary construction offices, or other place of business of any kind and no hospital, sanitorium, or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon or other place of entertainment, nor any church, club, fraternal association or other association, save and

except the Wedgewood Park Home Owners Association, normally or regularly involving the gathering of people in groups larger than the family will be erected or permitted upon the sites, and no business of any kind or character whatever, including beauty shops, shall be conducted thereon, or in, or from any building thereon.

Section 2. There will be only one dwelling per site to be used by one family only. No mobile homes shall be parked or stored within the Subdivision. This does not include recreational vehicles which are treated in Section 4 below.

Section 3. The following location restrictions shall apply: Zero lot line restrictions shall be in effect; however, in no case shall there be fewer than ten (10) feet between living quarters of any two residences. Homes shall be arranged in such manner as to break the monotony of straight line front set-backs, with no front set-backs being less than fifteen (15) feet from the front property line.

Section 4. All recreational vehicles (motorcycles, snowmobiles, boats, campers, motor homes, etc.) will be stored on the rear portion of yards. No on-street parking of recreational vehicles is permitted. If said items are stored on any lot within the Subdivision in a storage building constructed therefor, plans must be approved, as provided for in Article V herein and such buildings shall be situated on the rear one-half (1/2) of any privately owned lot. Garage, storage buildings or any structure so approved for construction shall be expeditiously completed and immediately painted.

Section 5. No elevated tanks of any kind (oil, gas, water, etc.) will be permitted in the Wedgewood Park Subdivision.

Section 6. Clothes lines, equipment, garbage cans, service yards, or storage areas shall be adequately screened by planting or construction. No structure in excess of two (2) stories above ground level shall be erected, placed, or permitted on the site. Structures having only one (1) level above a basement shall be considered only one story. No radio, short wave or television antenna over ten (10) feet above the highest point of the roof line is permitted unless approved by the Architectural Control Committee or other appropriate Subdivision authority.

Section 7. No building or remodeling of any building, fence, wall or other structure will be commenced, erected or maintained until the plans and specifications therefore showing the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alteration or grading of the building site have been submitted to the Architectural Control Committee, or other appropriate Subdivision authority, and approved in writing thereby and filed therewith and a proper building permit has been obtained from the County. The Architectural Control Committee, when such is established, shall set a fee depending on the nature and extent of the plans for the cost of its examination. The Committee shall have the right to refuse approval for construction of any improvement which in its opinion is unsuitable because of aesthetic or other reasons. The fee shall not be refundable.

Section 8. No obnoxious, offensive or other activity which would constitute a public or private nuisance or annoyance to the neighborhood will be permitted, including, but not limited to, the repair of automobiles other than minor tune-up type work performed by an Owner on his own vehicle, on his or her own property, is expressly forbidden.

Section 9. Dangerous or wild animals, livestock, including rabbits, or poultry will not be kept. Household pets will be permitted so long as they remain in control of the site owner. The number of such household pets shall be limited by County laws or ordinances concerning the same.

Section 10. No firearms, fireworks, explosives, air rifles, BB guns, crossbow or similar devices shall be discharged at any point within nor at any target within the Subdivision.

Section 11. No advertising signs, billboards, or unsightly objects shall be maintained or erected. "For Sale" signs may be posted if no larger than those allowed by Mesa County Zoning Resolutions concerning the same.

Section 12. No junk or trash, including inoperable automobiles, will be allowed to accumulate and the same must be regularly moved.

Section 13. The Association upon the failure of the owner or tenant of any lot to maintain his lot, lawn, and/or improvements, including the payment of any taxes assessed thereon, in a reasonable satisfactory manner as determined by the Association, or upon use by the owner or tenant an unlawful activity, or in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the premises and/or improvements or abate the improper use or pay the taxes thereon and any costs shall be charged against the owner or tenant of said site and collected in the manner set forth in Article IV hereof.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE VIII
LANDSCAPING

Section 1. Type of Landscaping Permitted: Landscaping of each lot shall be predominately of a type commonly known as desert landscaping and shall consist of a ground cover adequate to keep down dust and weeds and shall be maintained in such manner as to beautify the area. Such desert landscaping may include, but is not limited to, crushed rock or crushed brick, large stones, etc., driftwood or other similar material; and/or various species of plants and shrubs not requiring excessive use of treated water for irrigation purposes.

Any area or aggregate of areas of grass or lawn shall not exceed twenty-five percent (25%) of the lot area excluding the house, drive, carport or garage and walks shall be contained within an enclosed courtyard on the rear fifty percent (50%) of the lot.

Section 2. Installation Schedule: Ground cover as described in Section 1 above shall be installed by builder in front yards within one hundred and twenty (120) days from the date of initial occupancy of each dwelling. Also, builder shall install one tree such as lombardy poplar, ash, or such other specie as recommended or approved by the parks department on every other (alternating) front property lines.

In event that weather conditions prohibit said ground cover installation during the 120 days as explained above, builder shall complete such installation within a reasonable period of time but at the earliest possible date permitted by weather conditions.

