

THE AVION CLUB
DECLARATION OF RESTRICTIONS
COVENANTS, EASEMENTS,
IMPOSITION OF FEES
AND ARCHITECTURAL CONTROL

This Declaration is made by BRUSH CREEK AIRPORT LIMITED LIABILITY COMPANY, a Wyoming limited liability company (referred to hereinafter as "Declarant"), as of the 20th day of April, 1994.

PREAMBLE

1. Declarant is the owner of certain real property situate in Gunnison County, Colorado, described as follows:

Township 14 South, Range 85 West, 6th P.M.

Section 7: SW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$

Section 8: NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$

EXCEPTING THEREFROM: That parcel of land conveyed by Richard A. Landy, Ronald D. Rouse, Charles M. Ruland, Imogene M. Ruland, and Ruland Ranches, Inc., a Colorado corporation to William J. Lacy in Quit Claim Deed Recorded May 9, 1978 in Book 514 at page 799.

ALSO EXCEPTING THEREFROM: Three tracts of land conveyed by Richard A. Landy to Ruland Ranches, Inc., a Colorado corporation described in Quit Claim Deed recorded May 16, 1978 in Book 514 at page 984.

The Declarant intends to develop its property above described, as a residential-commercial development centered around the existing airstrip, with the capability of providing fly-in, fly-out service to the development.

2. The Declarant also owns certain water rights, easements and rights appurtenant to their properties located in Gunnison County, Colorado, described as follows; which will be dedicated to the development:

All water rights, appurtenant to the above described real property, include, without limitation:

- 1) 0.5 c.f.s. under Priority No. 269, decree dated July 6, 1931, Gorman Water District No. 59.
- 2) 0.5 c.f.s. under Priority No. 459, decree dated April 29, 1941, former Water District No. 59.
- 3) 1.0 c.f.s. under Priority No. 464, decree dated April 29, 1941, former Water District 59.
- 4) Contract right to convey water through Verzuh-Young-Bifano Ditch, Ditch No. 238, former Water District No. 59.

For the remaining rights, the following applies:

District Court, Water Division No. 4, Case Nos. W-3517, W-3518, W-3519, W-3520, W-3521, W-3232 and W-3233.

- 5) Landy Well No. 1, 0.5 c.f.s.
- 6) Landy Spring No. 1, 0.25 c.f.s.
- 7) Landy Spring No. 2, 0.25 c.f.s.
- 8) Landy Reservoir No. 1, 30 A/F
- 9) Landy Reservoir No. 2, 50 A/F

3. The Declarant intends to construct amenities for its development, including roads, water, sewage, collection systems, electrical and telephone service and airport improvements to be located upon certain common areas within the development, using therefor the above described properties and property rights.

4. The Declarant intends that its Land shall be developed as a staged development, including residential lot sites, multi-family living sites, service businesses, lodging facilities, and an equestrian ranch which will be a residential community affording its residents immediate use of aviation facilities, and which will be aesthetically pleasing, harmonious with the environment, and conducive to residential and recreational use for all concerned on a lasting basis which will preserve the natural beauty of the Land to the fullest extent possible during all seasons of the year. All buildings constructed within the development will be harmonious in size, contour, external materials and colors and may be free-standing or in clusters and may or may not have common or party walls with other buildings.

5. The Declarant believes that these objects can be best achieved through the imposition of restrictions, covenants, easements, and reservations upon the Land and through the control of the location, composition and architecture of the improvements to be placed on the Land. It further believes that its objects may be implemented by continuing control either by the Declarant or by its designee or representative homeowners association, all as hereinafter set forth.

DECLARATION

NOW THEREFORE, in order to achieve the above described objects, Declarant does hereby declare the restrictions, covenants, easements, impositions of fees and architectural control hereinafter set forth, the same to become encumbrances upon and covenants running with the land, as to such parcels within the Land which the Declarant may hereafter subject to this Declaration by filing one or more Plats for record with the Gunnison County Clerk and Recorder, it being the intent of the Declarant to encumber hereunder parcels of land (Subject Land) within the property described in the PREAMBLE and such other contiguous lands which the Declarant may acquire hereafter, as stages of its plan of development are realized through the subdivision process. As Subject Land is platted by the Declarant from time to time and becomes subject to the terms of this Declaration, this Declaration shall be considered to be a part of any and all conveyances, transfers, leases, mortgages, trust deeds and other documents affecting all or any part of such Subject Land whether or not specifically set forth in such documents. Anyone acquiring an interest in such Subject Land, shall be deemed to have accepted all the terms hereof and to be bound by year and every provision of this Declaration. The Declarant shall have no duty to designate any particular portion of the land as Subject Land, or to do so at any particular time.

ARTICLE I - DEFINITIONS

- 1.1 **"Association"** shall mean the nonprofit corporation described in Article VI hereof.
- 1.2 **"Building Site"** shall mean that portion of a Site designated upon a Plat within which improvements must be located, including but not limited to structures, driveways, parking areas, utilities, roads, taxi ways and swimming pools; provided however that improvements required to be located within a Building Site shall not include lawns, underground sprinkler systems and landscaping.
- 1.3 **"Committee"** means the Design Review Committee described in Article VIII hereof.
- 1.4 **"Common Area"** shall mean any area within the Land which has been conveyed by the owner thereof to the Association and accepted thereby, or any areas designated as Open Space or Common Area on a Plat.
- 1.5 **"Common Expenses"** the amount budgeted annually by the Association pursuant to Section 6.5 hereof, which represents the anticipated costs and expenses of operating the Association and owning, managing, maintaining and operating the Common Areas and Facilities. Each

Owner shall be responsible for his pro rata share of the common expenses as set forth in Section 6.7 hereof.

1.6 **'Common Facility'** shall mean any Improvement which is located within a Common Area and which is commonly used or available for common use by all Owners.

1.7 **'Declarant'** shall mean the Declarant identified in the PREAMBLE. In the event that the Declarant shall delegate and assign rights or duties under this Declaration to the Association by document of record, then with respect to such the Association shall be treated as the Declarant and stand in the Declarant's stead with respect to such.

1.8 **'Improvements'** mean any construction, fixture or emplacement of any article, whether intended to be permanent or temporary, which is located or to be located within a Site or other area, including but not limited to, buildings or other structures, fences, poles, driveways, parking areas, utilities, roads, taxi-ways and swimming pools.

1.9 **'Land'** shall mean the property described in the PREAMBLE hereto and any property contiguous to such property which is acquired by the Declarant and which is intended by the Declarant to become a part of its staged development described in the PREAMBLE hereto.

1.10 **'Owner'** shall mean the fee simple title holder of each respective Site, as established by the records maintained by the Gunnison County Clerk and Recorder. Unrecorded interests shall not be recognized by this Declarant, Association or committee.

1.11 **'Plat'** shall mean any Subdivision Plat approved by the County Commissioners for Gunnison County and filed for record with the Gunnison County Clerk and Recorder by the Declarant, covering parcels within the Land. Each such plat shall contain specific language subjecting the Subject Land to this Declaration.

1.12 **'Site'** shall mean each separately numbered and designated parcel of land as shown on a Plat as a legal subdivision of land.

1.13 **'Subject Land'** shall mean those parcels within the Land which are platted by Declarant and which are designated by Declarant in writing to be subject to this Declaration.

ARTICLE II - EASEMENTS

2.1 **Generally.** Easements shall be only as shown upon a Plat and shall not be implied from any other action by the Declarant or any Owner.

2.2 **Changes.** Platted Easements may only be modified by the Declarant, and only in conformity with replatting procedures permitted by Gunnison County. No changes in easement location or scope may be made which will materially affect any vested property right of an Owner, without prior written approval by that Owner.

2.3 **Interference with Easements.** No improvement, structure or barricade of any kind whatsoever may be erected or placed upon any platted easement, the effect of which would be to materially interfere with use thereof, without the prior written approval of the Declarant. In order to approve interference hereunder, the Declarant must make a written finding that no Owner or the Association will be materially harmed by the permitted interference.

2.4 **Easements Available to All.** Easements for roads, utilities and common ways shall be open for use by all Owners and their guests and invitees, subject only to such rules and regulations which may be placed on their use by the Association to promote the purposes of this Declaration. The Declarant reserves the right to extend the platted easements for roads, utilities and all common ways throughout the Land (and any real estate which may be added to the Land by the Declarant) by means of recordation of Plats adding to the Subject Land from time to time, and thereby to subject them to usage by Owners of Sites in such additional Subject Land.

2.5 **Irrigation Ditch Easements.** The Plat(s) create suitable easements for existing irrigation ditches which traverse portions of the Land. All persons who enjoy the right to use these ditches to transport water shall have the right to use these easements and the platted roads within the Land for the sole purpose of maintaining and operating such ditches. No Owner or his guests may interfere with the maintenance and operation of the ditches, nor may any Owner or his guest cause or allow any materials, of whatsoever nature to be dumped into such ditches. In the event of ditch blockage which causes flooding within the Land, the persons having the right to maintain and operate such ditches may trespass upon any Site, in such manner as may be reasonably necessary to immediately restore the flow of water within such ditches; Provided that such persons shall compensate any Owner suffering damage by reason of such trespass.

ARTICLE III - RESTRICTIONS ON LOCATION OF IMPROVEMENTS

3.1 **Generally.** For the purpose of assuring conformity to the Declarant's plan of development, Improvements (excepting only underground sprinklers and utilities) must be placed entirely within a Building Site, unless permitted by the Committee, as hereinafter provided.

3.2 **Committee Control of Improvement Location.** The Committee shall have and retain the full authority granted to it under Article VIII to control the placement of any Improvements, and it may permit Improvements to be located beyond a Building Site; provided however, that it must first make a written finding that such location promotes the purposes and objects of this Declaration, and that such location does not materially or adversely affect any Owners of other Sites having a boundary within 100 feet of such Site.

ARTICLE IV - SITE MODIFICATION

4.1 **Generally.** All Sites shall remain legal subdivisions of land for purposes of this Declaration, unless and until there has been a formal replatting of one or more Sites, resulting in a re-subdivision of one Site into two or more Sites, or a combination of two or more Sites into one Site, or a relocation of Site boundary lines between two or more Sites, all in accordance with this Declaration and applicable state statutes and local government ordinances and regulations. Subjecting a Site to a condominium regimen shall not be deemed to be a replatting under this Article IV.

4.2 **Approval.** No Site boundary lines may be relocated, added or eliminated without prior formal approval of the Association, which shall only be given after its written finding that the proposed change promotes the purposes and objects of this Declaration and does not materially and adversely affect an Owner of any Site having a boundary within 100 feet of the Sites subject to modification. The Association may condition approval upon applicant-Owner(s) relocating his or their Building Site, or eliminating one or more of multiple Building Sites which may otherwise result from a combination or relocation. The Association shall act on an application (which shall be accompanied by such information as the board may reasonably require) at its next regular meeting, unless its deliberations need to be extended due to weather conditions preventing the Association from conducting a Site inspection. In addition to Association approval the applicant-Owner(s) must obtain approval of Gunnison County to the Site modification.

4.3 **Effect of Approval and Replatting.** From and after the date a Site replat is recorded, the approved and replatted change in Site boundary lines shall result in the modified Site or Sites having the same rights and duties, insofar as this Declaration and the Association are concerned, as though it or they had been originally platted by the Declarant in the form of such replatting.

ARTICLE V - COMMON AREAS AND FACILITIES

5.1 **Common Areas and Facilities.** All Common Areas and Facilities will be designated on the Plats and will be for the common use and enjoyment of all of the Owners, subject only to reasonable rules and regulations prescribed by Declarant and the Association, and subject to the terms of this Declaration. Title to the Common Areas and Facilities will be conveyed by Declarant to the Association, free and clear of any liens and encumbrances, or other easements or limitations which would materially and adversely affect the Owners' use and enjoyment thereof, or burden the Association with the obligation to pay for such Common Areas or Facilities, except the easements and restrictions created by this Declaration and any Plat. At such time as all or any portion of the Common Areas and Facilities are conveyed to the Association, the Declarant shall assign all of its rights and duties with respect to the Common Areas and Facilities so conveyed to the Association and the Association shall accept, exercise and perform the same from that time forward. Without limiting the generality and scope of the foregoing, Declarant and the Association shall have the following rights to limit use of the Common Areas and Facilities:

A. With respect to the water system, Declarant and the Association shall impose such rules and regulations on water usage as may be necessary and appropriate to assure to all Owners continuous availability of water on a fair and reasonable basis. Use of water is prioritized within the Land as follows: First, as needed for health and safety purposes, such as fire protection; Second, for residential domestic use in-house for drinking, washing and sewerage purposes; third, for commercial usages; fourth, for lawn watering and irrigation; fifth, for recreational purposes, such as swimming pools. In the event of a breakdown in the water system, or water shortage from other cause, the Association shall make emergency regulations as may be necessary to assure water availability as prioritized above, and may obtain a court injunction enforcing the same on an ex parte basis and without posting bond therefor.

B. Declarant and the Association may control the use of roads, placing reasonable restrictions on loads, speeds, vehicle types, and other matters in the same manner as a municipality. The Association may enforce these regulations by fines against offending Owners which shall be treated as additional dues.

C. Declarant may control the use of the airport runway in order to promote safety and quiet enjoyment of the Land by all Owners. Declarant may impose a regimen of landing fees in order to provide a basis for maintaining and improving the runway and to provide needed safety devices. Since the airport is valuable to the public within the vicinity of the Land, Declarant may make use of the airport runway available to the public, on fair and equitable terms.

The Declarant reserves the right to convey roads within the Land to Gunnison County; provided that the County shall accept the duty to maintain such roads following conveyance.

5.2 Declarant's and the Association's Duties. The Common Facilities conveyed by the Declarant shall be delivered in operable and useable condition, and fully constructed or completed in accordance with its undertakings and agreements with Gunnison County under the terms of the Gunnison County Land Use Ordinance. Following conveyance thereof, the Declarant shall have no further duty with respect to the care, maintenance or replacement of the Common Areas and Facilities so conveyed, but the same shall be solely that of the Association. The Declarant may convey the Common Areas and Facilities to the Association in stages, consistent with its staged development plan, and may defer conveyance until its development is completed; provided however, the Declarant must convey all of the Common Areas and Facilities to the Association, on or before the sale of 75% of the Sites finally platted within the Land.

During the period of time the Declarant retains ownership of the Common Areas and Facilities, the Declarant may charge the Association for reasonable and necessary costs of operating, maintaining and replacing such Common Areas and Facilities, and the Association shall assess the Owners therefor in the same manner as though the Association owned the Common Areas and Facilities, and itself had incurred such costs. During the period of its ownership the Declarant shall make the Common Areas and Facilities to which it retains ownership available to the Owners as prescribed by the Declaration. In the event that the Declarant fails to maintain the Common Areas and Facilities in good working condition or fails to provide adequate road, airport, water and sewage service to the Owners, then the Association shall have the right to have a receiver appointed for the Declarant with respect to the Common Areas and Facilities and to obtain judicial conveyance of the Common Areas and Facilities to the Association. All costs of such proceedings, including reasonable attorney's fees shall be awarded to the prevailing party.

5.3 Expenses. All expenses incurred by the Association in performing its duties under this Declaration, or which may be reasonably necessary in protecting, preserving, maintaining, replacing and operating the Common Areas or Facilities or maintaining and operating the Association, or any expenses beyond the contemplation hereof which may be authorized by affirmative vote of two-thirds of the Owners at an Association membership meeting duly called and noticed for such purpose, shall be Common Expenses and shall be borne ratably, as provided in 6.5 hereof, by all Sites which may be Platted and subjected to this Declaration, both as a lien against said Sites and as a personal obligation of the Owners of such Sites at the time of assessment by the Association, all as more fully set forth in 6.6 and 6.7 hereof.

5.4 Conveyance or Disposition. The Common Areas and Facilities shall be held by the Declarant and the Association in trust for the Owners, and shall not be conveyed or otherwise disposed of (except for conveyance of the roads to Gunnison County), unless previously approved by affirmative vote of eighty percent (80%) of the membership of the Association. The General Common Areas and Facilities may not be encumbered by the Declarant or the Association, unless the encumbrance is subordinated by its terms to this Declaration, so that the General Common Areas and Facilities will remain available to the Owners and devoted solely to their use and enjoyment.

ARTICLE VI - WATER RIGHTS

The water rights described in the PREAMBLE are subject to this Declaration, as follows:

6.1 The water rights are hereby dedicated to the Avion Club, as they are or may hereafter become necessary to provide an adequate source of domestic water for the Avion Club. At such time or times as the Declarant may convey part or all of the water system to the Association under Article V above, he will accompany such conveyance by a conveyance of part or all of the water rights which provide an adequate source of water for the water system being conveyed, free and clear of liens and encumbrances. All the water rights will remain appurtenant to the Land and will not be conveyed separately therefrom or used separately therefrom.

6.2 Certain of the water rights are conditional in nature and require the Declarant to use due diligence in developing them as part of the development of the Avion Club, including the requirement to periodically report to the Water Court to establish such due diligence in order to keep such conditional water rights in effect. The Declarant will keep such rights in effect and will convey them in that condition. Upon such conveyance, the Association will have the duty to report to the Water Court in order to keep such water rights in effect.

ARTICLE VII - ASSOCIATION

7.1 Creation and Duration. The Declarant has caused a nonprofit corporation, AVION CLUB OWNERS ASSOCIATION, INC., to be formed under the laws of the State of Colorado. The Association shall remain in good standing during the effective period of this Declaration, and in the event it shall become defunct, any three Owners may re-activate it according to the Colorado Non-Profit Corporation Code.

7.2 Membership. The Owner or Owners of each Site shall be entitled to one membership in the Association per Site and such membership shall continue as long as such member is an Owner in good standing in accordance with the Bylaws of the Association. In the case of alteration of a Site in accordance with Article IV herein, each altered Site created thereby shall be entitled to one membership. Each membership shall be entitled to one vote with respect to all matters to come before the membership for decision. If any Site is subject to multiple ownership, then such ownership shall designate in writing a representative to vote or otherwise participate at membership meetings. In cases of questions or controversies concerning proper representation, the same shall be determined by the Association's board of directors, and in a case which appears unclear to the board; it shall have the right to disallow participation by the Site.

7.3 Duties and Authority. The Association shall have the duty of providing management, operation, maintenance, repair, landscaping, and, improvements for the General Common Areas and Facilities, conveyed to the Association by the Declarant and described herein, and for all easements described in Article II hereof. It shall be further responsible to provide such insurance as may be necessary or desirable with respect to the General Common Areas, Facilities and easements. At the time of this conveyance to the Association, the Association shall assume the additional responsibilities of providing common services to the Owners, including, but not limited to water, sewage collection and airport. The Association may employ a managing agent to perform its duties hereunder. Such agent shall have the powers and duties set forth in the Bylaws of the Association.

7.4 Costs of Association. The Association shall perform its duties and obligations prescribed by this Declaration, or additional duties or obligations which may be assumed by the Association, upon a cost basis and shall have the right to establish appropriate cash reserves to insure the performance of its duties and obligations. Initially the Association will enter into a management agreement with the Declarant or its designee for a period of three (3) years from the date of recording of the initial Plat, which agreement shall provide for the performance of its obligations on a cost plus overhead basis.

7.5 Assessments and Charges. No less often than annually the board of directors of the Association shall adopt a budget for the coming calendar year which shall provide adequately for the Association's anticipated costs of operation for such year and which shall fix the date or dates when such budget sums shall be due, whether by lump sum or installments. Within thirty (30) days thereafter the Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of all Owners to consider ratification of the budget not less than fourteen (14) days or more than sixty (60) days after mailing or other delivery of the summary. The budget will be deemed ratified unless at the meeting so-called sixty percent (60%) or more of the Owners reject the budget. In the event of rejection the preceding budget shall continue in effect until new budget ratification occurs. The budgetary amount so ratified shall constitute Common Expenses and become a charge against Owners and Sites on the date the budget is ratified, which shall constitute an assessment of the budgetary amounts against the Sites and Owners on such date. By following the same process, the Board may modify the budget to meet unanticipated needs of the Association and any additions to the budget resulting therefrom shall constitute Common Expenses and become a charge and assessment against Owners and Sites on the date the modified budget is ratified.

With respect to any Common Facility or service provided to Owners, the board shall have the authority to impose service charges in addition to, or in lieu of, Common Expenses if it determines that imposition of such charges is more equitable to the Owners than Common Expenses. For example, and not by way of limitation, if the board determines that the costs of providing water service to Owners should be separately charged due to disparity in water usage between Sites, then the board shall have full authority to impose a regimen of periodic charges against Sites and their Owners for such service, based upon the costs of providing that service, including capital and overhead expenses, and actual or estimated usage of water by the various Sites, or alternatively upon

a metered charge for water usage on a Site-by-Site basis, and such charges shall enjoy the same rights and status as Common Expenses; that is, they shall constitute a lien against the Site receiving such service which shall be deemed to have attached on the date of provision of service, or billing date, whichever shall first occur, and shall constitute a personal obligation of the Owner of such Site at the same date.

The Common Expenses incurred by the Association in its operation shall be borne by the Owners upon an assessment basis. Each Owner of a Site by acceptance of a deed therefor, whether or not so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association his respective assessment as herein provided. Each Owner and Site shall be responsible for an amount equal to the fraction of the total Common Expenses that the Site bears to the total number of Sites in the Subject Land; provided however, that:

- A. Any common expense or portion thereof benefitting fewer than all of the Sites shall be assessed exclusively against the Sites benefited.
- B. Costs of common insurance shall be assessed in proportion to risk.
- C. Costs of utilities shall be assessed in proportion to usage.
- D. If any common expense is caused by the misconduct of an Owner, the Association shall assess that expense solely against that Owner's Site.

As Plats are recorded which add new Sites to the Subject Land, then such Sites shall be added to the total Sites to be computed in determining assessments and each Site so added shall be subject to payment of assessments from and after the date of assessment. At the time the newly platted sites become Subject Land, the Association shall recompute individual assessments for the remaining balance of the budgetary year and rebill Owners with adjusted assessments.

The assessments made shall be based upon the Association's cash requirements deemed to be such aggregate sum as the Board of Managers of the Association shall from time to time determine is to be paid by all of the Owners, including Declarant, for unsold Sites, to provide for the payment of all estimated expenses incurred in connection with the maintenance and operation of the Common Areas and Facilities, which sum may include, but is not limited to, expenses of operation, management, taxes and special assessments until separately assessed, insurance premiums on Common Areas and Improvements thereon (including fire insurance with extended coverage, vandalism and malicious mischief insurance, public liability and other insurance), landscaping and care of grounds, repairs and renovations, trash and garbage collections, wages, common water and sewage service operating expenses and other common utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent, or Board of Managers, under or by reason of this Declaration, the payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the Common Areas and Facilities. Assessments shall also include the costs of exterior maintenance of an Owner's Site if such maintenance is undertaken by the Association pursuant to Article XI hereof. The omission or failure of the Board to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. The assessments for estimated Common Expenses shall be due as prescribed in each budget and the Board of Managers or Managing Agent shall prepare and deliver or mail to each Owner an itemized statement showing the estimated or actual expenses for the assessment period and the proportionate amount due by such Owner. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Site.

7.6 Lien for Assessments. The Association shall have lien rights against any Site to collect delinquent assessments and fines under this Declaration, in the manner and to the extent provided by Colorado Revised Statutes §38-33.3-316, effective the date hereof, which provision is adopted and incorporated herein by reference thereto, as though restated herein. In the event that such statute may hereafter be amended or rescinded, then notwithstanding such action the said provisions shall continue to define and control the Association's lien rights with respect to this Declaration, except to the extent limited or precluded by Colorado law.

The Association may, by appropriate Bylaw provision, adopt a regimen of fees, charges, late charges, attorney's fees, fines and interest, as permitted by law, which shall be enforceable as assessments under this provision.

7.7 Personal Obligation of Owner. The amount of the Common Expenses assessed against such Site shall also be a personal obligation of the Owner thereof at the time the assessment is due. Suit to recover a money judgment for unpaid assessments, and any penalties thereon shall be maintainable without foreclosing or waiving the lien securing same.

7.8 Payment by Encumbrancer. Any encumbrancer holding a lien on a Site may pay any unpaid assessment payable with respect to such Site, and upon such payment such encumbrancer shall have a lien on such Site for the amounts paid of the same priority as the lien of his encumbrance.

7.9 Status of Delinquent Owner and Site. Any Owner more than thirty (30) days delinquent shall be suspended from membership in the Association and shall not be entitled to participate in Association matters. Neither the Owner nor his Site shall be entitled to use any of the Common Areas or Facilities until the delinquency and penalties shall be fully made up; the Association shall have the right to discontinue water and sewerage service, road access or access to any of the other Common Areas and Facilities, to any Owner suspended from membership for the period of suspension. In the event that a Site for which any Common Expenses or charges have not been paid is conveyed or transferred to another by operation of law, then such Site shall continue in the status of suspension until all delinquencies are fully made up by the new Owner.

ARTICLE VIII - LIMITATIONS ON LAND USE

8.1 General. No construction of Improvements within a Site, no activities within a Site, or use of land within a Site by an Owner, his guests, invitees, agents or lessees, shall be permissible unless expressly permitted hereunder, or incidental to a permitted use or activity.

8.2 Single Family Use. Except as provided in Sections 7.3 and 7.4 each Site will be limited to residential use by a single family, and domestic employees and no Improvement inconsistent with such limited use shall be erected, and placed within such Site, either temporarily or permanently. Domestic employees, including caretakers, may be housed within a Site, as part of the single family use, provided that not more than 1,000 square feet of living space shall be devoted thereto per Site.

8.3 Multi-Family Use. Declarant may designate on a Plat one or more Sites within the Subject Land as "Multi-Family Sites", and such designation shall permit residential use by more than one family. Such Sites may be subdivided by the Owners thereof into multiple ownership, whether condominiums, congregate residences, town houses, time-shared interests, undivided interests in common property, or by any other means permitted by law. The number and manner of such subdivision shall not be limited by these covenants, but shall be subject to the limitations of the Declarant's master plan approved by Gunnison County, or by any subdivision plan, herein approved by Gunnison County, which may modify the Declarant's master plan. For the purposes of this paragraph, the term "residential use" shall include the housing of domestic employees, including caretakers, as may be permitted by the Committee.

8.4 Commercial Use. Declarant may designate on a Plat one or more Sites within the Subject Land as "Commercial Sites" within the Subject Land. Commercial use within those Commercial Sites shall be limited to uses that are consistent with the residential development of the balance of the Sites, as follows:

- A. Retail businesses which will serve the residential Sites, such as gas stations, convenience stores, restaurants and the like.
- B. Lodges or other businesses offering short-term room rentals.
- C. A guest ranch, including the rental of horses to the public.
- D. Airport services, such as flight and soaring instruction, hangar use, fuel storage and fuel sales, and other aviation related uses.

8.5 Specific Restrictions. In addition to the foregoing, the following restrictions on use of the Land are imposed:

A. In General. No noxious or offensive activities shall be conducted on any Sites nor shall anything be done or be caused to be done to any of said Sites that shall become or be an unreasonable annoyance or nuisance to any Owner, or in the case of multiple ownership of a Site, then to any other property Owner within the Site.

B. Animals. No animals shall be kept or maintained on the Land, except the usual domestic household pets; and in such case, such household pets shall be kept confined to the Owner's Site or attached to a leash so as not to become a nuisance. No animals may be raised for commercial purposes; provided, however, that the General Common Areas may be utilized by the Association for riding stables and bridle paths.

with landscaping plans approved by the Committee. Lawn watering may be restricted or suspended by the Association under Article V hereof.

K. Maintenance. All Sites, including all Improvements, shall be kept and maintained by the Owner thereof in a clean, safe, attractive, and sightly condition and in good repair. An Owner shall do no act or work that will impair the structural soundness of any Improvement or impair any easement.

L. Light, Sounds and Odors. No light shall be emitted from any Site which is unreasonably bright or causes unreasonable glare, no sound shall be emitted on any Site which is unreasonably loud or annoying, and no odor shall be emitted on any Site which is noxious or offensive to others.

M. Refuse. No refuse, including without limitation trash, garbage, lumber, grass, shrub or tree clippings, plant waste, compost, ashes, metals, bulk materials, and scrap materials shall be allowed to accumulate on any Site. Each Owner shall provide suitable covered noiseless receptacles for the collection of such refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in an approved structure so as to be screened from public view and protected from disturbance. No refuse may be thrown or dumped on any of the Land. The burning of refuse out-of-doors shall not be permitted. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed, or used by any person except as approved by the Committee and Gunnison County. All trash receptacles shall be constructed to prevent any animals, including wild animals such as bears, from gaining access thereto.

N. Parking and Storage. Parking of vehicles on any Site is permitted only within parking spaces constructed pursuant to approval by the Committee, except that vehicles may be parked in other areas while loading and unloading. Except for airplanes, automobiles, station-wagon-type vehicles, jeep-type vehicles, pickup trucks and bicycles, other vehicles and all articles and implements, including without limitation trailers of all types, other types of trucks, self-powered or other mobile homes, boats, tractors, campers not counted on pickup trucks, snow removal equipment, and garden maintenance equipment, shall be parked or stored on the Land only in an enclosed structure approved by the Committee.

O. Restrictions on Burning. No burning of trash, lawn clippings or any other materials shall be permitted by any Owners. Such fireplaces and woodstoves as may be permitted by governmental regulation and the Committee may be used by Owners; none may be installed without prior approval by the appropriate governmental agency and the Committee. In the event of degradation of air quality within the Land resulting from use of fireplaces and woodstoves, the Association may impose reasonable rules and regulations limiting the use of such within the Land.

P. Hazardous Activities. No activities shall be conducted on any Site, and no Improvements shall be constructed on any Site, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within any Site. No open fires shall be lighted or permitted within a Site except in a contained barbecue unit while attended and in use for cooking purposes or except in a safe and well-designed interior fireplace or except such controlled and attended fires as are required for clearing or maintenance of Land. No hazardous materials as defined by Federal or State law shall be permitted within the Land. No storage of fuels shall be permitted within the Land, except within Commercial Sites, or in the event that no fuel storage is provided within the Commercial Sites, then the Committee may issue annual permits to store fuels within other Sites, on such terms and conditions as may be appropriate, assume proper health, and safety to the Owners.

Q. Occupancy. No portion of any Site shall be used for residence, living, or sleeping purposes other than rooms designed for such purposes in a completed structure. No living or sleeping room in any structure shall be used for living or sleeping purposes by more persons than it was designed to accommodate.

R. Mining and Drilling. No Site shall be used for the purpose of mining, quarrying, drilling, boring, exploring for, or removing water, oil, gas, other hydrocarbons, minerals, rocks, stones, gravel or earth.

S. Aerial Activity. Aerial activity, including but not limited to, powered flight, soaring, hang gliding, parachuting or ballooning shall not be permitted except in the Common Area designated as the airport and then only in conformity to the Rules and Regulations of the Association controlling such activities.

C. Limited Access. There shall be no access to any Site on the perimeter of the Land except from platted roads within the Land.

D. Fences. No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating Site boundaries. Other fences may be permitted by the Committee. The Association will maintain an adequate boundary fence around the Land in order to assure that neighboring landowners will not suffer interference in their land use by reasons of activities of Owners.

E. Drainage. Since the Land is situated in mountainous terrain, there will be a substantial amount of natural surface water drainage and runoff flowing over the area. No Owner or other persons shall interfere with or redirect the natural course of any such drainage and runoff so as to cause an unnatural flow onto or across the land of another. All drainage easements shown on the Plat(s) shall be observed and structures and water courses therein shall not be inspected, changed or eliminated by any Owner.

F. Temporary Structures. No temporary structure, excavation, basement, trailer, or tent, shall be permitted within a Site, except as may be necessary during construction and as authorized by the Committee.

G. Water and Sewage. Each structure designed for occupancy or use by humans shall connect with the central water and sewage facilities provided by the Declarant and the East River Regional Sanitation District and no undivided or separate water or sewage facilities shall be permitted within the Land. No private well shall be permitted on the Land, nor shall any facility be used for the private disposal of sewage. Mechanical garbage disposal facilities shall be provided and maintained in each kitchen or food preparing area.

H. Un sightliness. No unsightliness shall be permitted on any Site. Without limiting the generality of the foregoing:

- i. All unsightly structures, facilities, equipment, objects, and conditions shall be enclosed within a structure approved by the Committee.
- ii. Repairs of equipment, vehicles and airplanes must be conducted within a structure and no dismantled equipment, airplanes or vehicles may be kept, except within a structure.
- iii. Service areas and facilities for hanging, drying, or airing clothing or fabrics shall be enclosed by a structure approved by the Committee.
- iv. Pipes and/or tanks for water, gas, oil, sewer, drainage, or other purposes; wires, poles, utility meters, and other utility facilities shall be enclosed by a structure approved by the Committee or shall be below the surface of the ground. If, at the time of the occupancy of any structure, connections to nearby underground electric lines or telephone lines are not available, then temporary poles or wires for electric or telephone service, as the case may be, may be installed to a reasonably necessary height provided that they shall be promptly removed at the expense of the Owner after such connections become available.
- v. The size and location of any exterior television or radio antenna or satellite dish shall be subject to approval by the Committee which may, in its discretion, forbid the installation of any such exterior antenna.

I. Signs. No signs or advertising devices of any nature shall be erected or maintained within any General Common Area, or within a Site except as permitted by the Committee, which shall adopt uniform rules with respect to signs within the Land, including signage for the development, road and other warning or informational signs, and signage for commercial uses. Signs shall be placed or located as directed or approved by the Committee. One criterion which shall be considered by the Committee in determining approval shall be whether the names and logograms selected lend identity to a particular facility and will be easily susceptible to graphic treatment and promotional efforts. Neon or brightly lighted signs or self-lighted signs shall not be permitted.

J. Lawn Watering. In order to conserve water and to maintain the rustic nature of the Land, watering of lawns or gardens shall only be permitted in conformity

T. Sprinkler Systems, Fireplaces and Stoves. All structures within the Subject Land designed for human occupancy, shall be constructed with inside sprinkler systems meeting the requirements of the Uniform Fire Code, or any applicable local fire code. All structures within the Subject Land proposed to include fireplaces or stoves, must construct or install the same in conformity with any applicable state or local law or regulation governing their type, construction or installation; in the event that such laws or regulations re enacted following initial construction or installation, then such fireplaces or stoves must be brought up to the requirements of such laws or regulations within a reasonable time after such enactment.

ARTICLE IX - DESIGN REVIEW

9.1 Establishment of Committee. In order to achieve the objects and purposes of the Declarant as set forth in the Preamble of this Declaration, the construction of any and all Improvements within the Land, including alterations and additions to any existing Improvements, and including those owned or proposed by Declarant (excepting only Common Facilities) or the Association, may not occur, or be instituted in any fashion unless and until written approval thereof has been obtained from the Design Review Committee. Specifically, and without limitation, the Committee must give prior written approval to the exact location of all Improvements and the exterior building materials therefor; the ground floor area, the height, the size and exterior aspect and the number of rooms and of units in all structures; the landscaping plan for all unimproved areas of the Site; and the number of, and the arrangement of, parking spaces as well as the design of vehicular access thereto.

9.2 Membership. The Committee shall consist of three members of the Association or designated representatives of a member of the Association of which no less than two must be members of the board of directors thereof. An architect or engineer may be employed by the Committee on a limited basis to assist in its consideration of architectural control. The Committee shall initially be appointed by the Declarant, but successor Committee members shall be selected by the board of directors of the Association. One or more alternate members may be designated to act in place of an absent member. The first Committee shall consist of the following persons:

<u>Name</u>	<u>Office</u>	<u>Address</u>
Richard Landy	Chairman	10700 East Bethany Drive, #210 Aurora, Colorado 80014
Marlene Landy		10700 East Bethany Drive, #210 Aurora, Colorado 80014
Warren Rosenberg		7501 East Jarvis Street Denver, Colorado 80237

Committee members shall remain in office until their resignation, their termination as an Owner* or designated representative of an Owner, or their removal by the board of directors of the Association.

9.3 Rules and Procedures. The Committee may in its discretion set forth guidelines for the assistance of Owners regarding particular aspects of the architectural control to be exercised through design review under this Article. Further, the Committee shall adopt and reduce to writing a uniform set of rules and procedures for processing the materials submitted to it for approval. It will also list the items which will be required to be submitted to the Owner for any proposed Improvements and the time(s) for such submissions. Such guidelines, rules, procedures, and lists shall be made available to all Owners and prospective Owners through the secretary of the Committee.

9.4 Submissions to Committee. The Committee may require any Owner or prospective Owner to submit any or all of the following material. This list shall not be deemed to limit the Committee in requiring any other materials.

A. A preliminary report indicating the general nature of the proposed project. This report must specify with particularity the intended use of the Site and Improvements.

B. Preliminary plans and specifications for the proposed Improvements, sufficient to permit the Committee to review all aspects of the proposal in light of each consideration designated to the Committee by the provisions of this Declaration.

C. Depiction of a horizontal plan view, whether by drawing or model, of the proposed Improvement, so as to determine the over-all effect of the proposed Improvement with respect to height, view, and general harmony.

D. A detailed survey with contour intervals of not less than two feet, showing the location of proposed Improvements, including without limitation, all structures, drives, and parking. The survey shall show all trees exceeding four inches in diameter or eight feet in height and any general wooded area, all substantial shrubs, the larger rocks, and such other detail as the Committee may require.

E. Detailed working drawings prepared by a licensed architect or engineer to such scale as requested by the Committee and with such elevations as the Committee may deem necessary.

F. A list of exterior materials to be used and the proposed exterior colors.

G. Plans of any proposed fireplaces or wood-burning stoves or other burning devices to be included within the Improvements. No such plans shall receive approval unless they meet building code or other applicable governmental requirements which affect the Sites.

9.5 **Committee's Decision.** The Committee shall have a period of thirty (30) days, except such period shall be fourteen (14) days for any period starting in the months of March through August of each year, from the submission to it of the last material which it may request within which to approve or disapprove the proposed Improvements, whether in part or in whole; provided however, that in the case of commercial or multi-family developments, wherein the Committee finds that the proposed development will substantially impact upon surrounding Owners, the Committee may set a hearing, with notice to affected Owners, to consider the proposal, and in such event the periods set forth herein for Committee approval shall be increased by a factor of two. The Owner or proposed Owner, his architects, engineers, and/or contractors, shall meet with the Committee, upon reasonable notice of such meeting, in order to facilitate the processing and approval of Improvement plans. The failure of the Committee to approve or disapprove plans within the period described in this paragraph shall constitute evidence of Committee approval. Any approval or disapproval by the Committee shall be in writing.

9.6 **Majority Approval.** Committee approval shall be by a majority of the Committee. The Committee may withhold approval of any submissions which do not include a complete plan of construction of all Improvements to be located within a Site, and shall not be required to approve preliminary construction, or further stages of development of a Site.

9.7 **No Construction Without Approval.** No work with respect to the construction of Improvements shall be commenced unless and until written approval of the Committee has been given or through the lapse of time following submission of material as above provided. Either the Committee or the Association or the Declarant shall have the further right to enforce compliance with this Declaration or the Committee's rules and procedures by the filing of documents affecting title to any particular Site; by requesting that the appropriate governmental authorities not grant building or other required permits or licenses; by court action for a prohibitive or mandatory injunction; or by such means as it may deem necessary or advisable. Any violation of this provision by an Owner, which requires action by either the Committee or the Association, permitted hereunder, shall subject such Owner to the personal obligation to pay all of the costs of such action, including court costs and attorneys fees incurred by the Committee or Association, which obligation shall be secured by a lien against the Owner's Site, in the same manner and effect as the lien for unpaid Association dues under paragraph 6.5 hereof.

9.8 **Variance.** The Committee, for good cause, may waive any of its rules and regulations and may permit a variance from any of the terms of this Declaration, provided that it must make written findings that such waiver or variance is consistent with and in furtherance of the overall objects and purposes of this Declaration.

9.9 **Liability.** The Committee and its members shall not be liable for any action taken by it in good faith and shall be held harmless by all Owners dealing with it, by the Declarant, and by the Association for any actions, except gross negligence or willful misfeasance or malfeasance.

ARTICLE X - CONSTRUCTION OF IMPROVEMENTS

10.1 **Period of Construction.** All Improvements constructed within a Site shall be completed within nine months from the date of Site preparation or excavation (which preparation shall not be unreasonably begun) unless written permission granting an extension of time is obtained from the Association or unless construction is delayed by strikes, war, riot, or acts of God. In order to assure compliance with the provisions hereof, the Committee may require such assurances as it may deem advisable from the Owner, from the general contractor and/or subcontractors, and/or from the interim or permanent lender financing the cost of any improvements. At the discretion of the Committee, such assurance may be a completion and construction bond with the Declarant named as

an obligee thereunder, a per diem dollar amount of penalty for failure to make timely completion, or any other device or method commonly used to assure completion of Improvements.

10.2 Waiver. During the period of construction of Improvements, the restrictive provisions of this Declaration will be waived only to the extent necessary to permit completion of construction and only upon the assurance that there will be no such violation of any provision of this Declaration following completion of construction.

ARTICLE XI - PARTY WALLS

11.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of an Improvement within a Site and placed on the dividing line between the Sites shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

11.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

11.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

11.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

11.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Land and shall pass to such Owner's successors in title.

11.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE XII - ENFORCEMENT

12.1 By Whom. The provisions of this Declaration may be enforceable by the Declarant, by the Association, or by any Owner or by Gunnison County. An Owner or Gunnison County shall have the right to enforce the provisions of this Declaration only after giving the Declarant and the Association notice of an alleged violation of the provisions hereof and upon failure of the Declarant or the Association to initiate remedial action as hereinafter provided within thirty days after receipt of such notice. The right of enforcement conferred upon the Owner and Gunnison County shall not be effective as to any waiver granted by the Declarant, the Association, or the Architectural Control Committee under the provisions of this Declaration.

12.2 Enforcement by Correction. The Declarant or Association shall have the right to enforce all of the conditions of this Declaration relating to appearance and maintenance of any Site or of the Improvements thereon by going upon the Site and correcting any violation. Any such action shall be taken in the following manner:

A. Upon receiving notice of any violation, the Declarant or Association shall verify the fact by an inspection of the Site.

B. Upon verification of a violation, notice in writing shall be given to the Owner(s) of such Site, which notice shall identify the Site and the Owner thereof and shall describe the violation and shall require the Owner to correct such violation or commence correction activities reasonably leading to prompt correction, within ten (10) days following such notice.

C. Upon failure to correct any violation or to assure the Declarant or Association that such violation will be corrected, the Declarant or Association may cause the violation to be corrected. Such correction may include, but shall not be limited, to, decorating or repairing Improvements, removal of unsightly objects, landscaping, and

removal of any vehicle or object violating the parking or storage restrictions under paragraph 7.5.N hereof.

D. The correction of any violation made by the Declarant or Association in accordance with these provisions shall be at the expense of the Owner. The expense shall be deemed to include not only costs actually expended, but also a normal percentage for overhead and any and all other costs of management, including reasonable attorney's fees.

E. The Owner shall be personally obligated for all expenses incurred by the Declarant or Association and as security for such obligation the Declarant or Association shall have a lien for any amounts expended hereunder, which lien may be filed and enforced in a manner similar to the lien of the Association for unpaid assessments as provided in paragraph 6.6 hereof.

12.3 **Enforcement by Law.** The enforcement of the provisions of this Declaration may also be by a proceeding in law for a prohibitive or mandatory injunction or by a suit or action to recover damages. A judgment in any action at law or in equity shall include reasonable attorney's fees. In addition thereto, the Declarant may exclude any Owner or the guests of any Owner from the use and enjoyment of the General Common Areas and any facilities thereon.

ARTICLE XIII - MAINTENANCE AND REPAIR OF IMPROVEMENTS

13.1 **By Owner.** An Owner shall maintain and keep in good repair all Improvements contained on such Owner's Site not required to be maintained and kept in good repair by the Association. It is the responsibility of each Owner to keep adequate fire, casualty and public liability insurance coverage on his Site and Improvements.

ARTICLE XIV - MISCELLANEOUS

14.1 **Effect and Duration of Covenants.** The provisions of this Declaration shall be for the benefit of and binding upon the Subject Land, each Site, each Owner, and his successors, heirs, representatives, and assigns. Such provisions shall continue in full force and effect until January 1, 2010, and may be extended for successive ten (10) year periods upon affirmative vote of the Owners of four-fifths of the Sites made, at a meeting of the Association members duly called for such purpose. At any such meeting, each Site shall have one vote.

14.2 **Estoppel Certificate.** Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any person with any right, title or interest in a Site, or intending to acquire any right, title or interest in a Site, the Association shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines, or penalties, if any, due or accrued under this Declaration with respect to any Site or portion thereof. Such statement shall, with respect to the party to whom it is issued be conclusive against the Association and all other parties that no greater or other unpaid amounts were then due or accrued.

14.3 **Limited Liability.** Neither the Declarant or Association nor any agent or employee thereof shall be liable to any party for any action or for any failure to act with respect to any matter under this Declaration if the action taken or failure to act was in good faith or was without malice.

14.4 **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of any provision.

14.5 **No Waiver.** Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision nor of any other provision hereof.

14.6 **No Partition.** The General Common Areas and Facilities shall be owned by the Declarant and the Association in trust for all of the Owners of the Sites and shall remain undivided and no Owner shall bring any action for partition or division of the General Common Areas. In the event that the Association becomes defunct or is dissolved voluntarily or by operation of law, then the General Common Areas and Facilities shall become the property of all the Owners in common.

14.7 **Mechanic's Lien Rights and Indemnification.** No labor performed or materials furnished and incorporated on a Site with the consent or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against any other Site not expressly consenting to or requesting the same, or against the General Common Areas. Each Owner (indemnitor) shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the land of any other Owner or against

the General Common Areas for construction performed or for labor, materials, services or other products.

14.8 Right to Mortgage. Any Owner shall have the right from time to time to mortgage or encumber his site by deed of trust, mortgage or other security instrument. Nothing in this Declaration should be construed to mean that any Owner holds an interest in the Common Areas or Facilities, except his rights as a member of the Association, and no purported encumbrance of the Common Areas or Facilities shall be effective as against the Declarant or the Association.

14.9 Assignment. The Declarant may from time to time transfer, assign, and/or delegate its powers, rights, and obligations under this Declaration to the Association, except as otherwise specifically provided herein. The Declarant shall be deemed to have assigned such powers, rights, and obligations to the Association upon its bankruptcy, or dissolution. Such transfer, assignment, and/or delegation shall be effected by the recording with the Clerk and Recorder of Gunnison County a notice identifying this Declaration and specifically describing the provisions thereof affected by such transfer.

14.10 Amendment. The Declarant shall have the right to amend, delete, or supplement any provision of this Declaration at any time prior to the sale of 75% of the Sites contemplated to be included within the Land, provided that any such amendment, deletion, or supplement shall not have a materially adverse effect upon the vested property rights of any of the then Owners. The Owners shall have the right to amend, delete, or supplement any provision of this Declaration by means of affirmative vote given by the Owners of four-fifths of the Sites. Such right to amend shall include the right to effectively transfer to the Association any powers, rights, or obligations granted to the Declaration under the Declaration. Such vote shall be taken at a meeting called for such purpose. The Owner of each Site shall have one vote.

14.11 Colorado Common Interest Ownership Act. The State of Colorado has enacted the Colorado Common Interest Ownership Act, Colorado Revised Statutes, §38-33.3-100 et seq., which affects the relationships between the Declarant, Association and Owners. That Act requires certain statements and disclosures to be contained within this Declaration. Certain of the terms used hereinafter are defined by that Act.

A. The name of the common interest community is the AVION CLUB and the name of its association is THE AVION CLUB OWNERS ASSOCIATION. The AVION CLUB is a planned community; but multi-family units (Sites), therein may be subjected to condominium regimens at the option of the unit (Site) Owners.

B. The AVION CLUB is situate wholly within Gunnison County.

C. The legal description of the AVION CLUB is set forth in the Preamble.

D. The maximum number of units that the Declarant reserves the right to create is 421.

E. Description of the boundaries of each unit (Site) will be contained in the Plats to be subjected to this Declaration.

F. The Common Areas and Facilities are described in the Plats; however, generally, they consist of the airport runway, the roads, the recreational bike paths and pond areas and the water system.

G. No limited common elements are planned for the AVION CLUB.

H. Development rights and other special declarant rights reserved by the Declarant, all of which apply to the Land, and which may be exercised for a period not to exceed ten (10) years from the date hereof, are as follows:

i. The Declarant has reserved the right to add real estate to the Land, and to subject such added real estate to this Declaration. If this right is exercised in the future the total units (Sites) within the AVION CLUB may exceed 421 units (Sites) by reason of such addition.

ii. The Declarant has reserved the right to create units (Sites) and common elements (Common Areas and Facilities) as part of Declarant's staged platting process.

iii. Any Owner, including the Declarant as to unsold units (Sites) has the right to subdivide units (Sites) under the terms and conditions of this Declaration.

iv. The Declarant is not obligated to subject all of the Land to this Declaration, and therefore has reserved the right to withdraw any part thereof from its plan of development which has not become Subject Land.

v. The Declarant has reserved the right to complete improvements indicated on the Plat or Plats to be filed for the AVION CLUB, to maintain a sales and management office, and signs advertising the AVION CLUB, to use easements through the Common Areas for the purpose of making improvements within the AVION CLUB or real estate which may be added to the AVION CLUB.

i. Development rights described in subsection H above may be exercised with respect to any parcel of real estate within the Land at any time, without limitation.

J. Notices to Owners which are required or permitted under this Declaration may be given by depositing the notice in the U.S. mails, postage prepaid, first class mail, addressed to the address for Owners contained in their deed to a Site, or the address maintained for such Owner by the Gunnison County Treasurer, whichever is more current.

Signed and dated at Gunnison, Colorado, as of the date first above written.

BRUSH CREEK AIRPORT LIMITED LIABILITY COMPANY, a Wyoming limited liability company

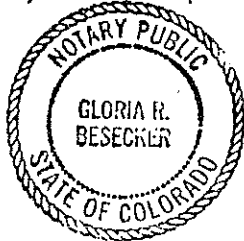
By: Richard A. Landy
Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

The foregoing Declaration of Restrictions, Covenants, Easements, Reservations, and Architectural Control was acknowledged before me this 20th day of April, 1994, by Richard A. Landy as Mg. Member of Brush Creek Airport Limited Liability Company, a Wyoming limited liability company.

Witness my hand and official seal.

My commission expires: Sept. 4, 1994



Gloria R. Beisecker
Notary Public