

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

RETA A. GRAIN
DOUGLAS COUNTY

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THIS DECLARATION is made on the date hereinafter set forth by ROXBOROUGH VILLAGE JOINT VENTURE, a Colorado joint venture, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of Douglas, State of Colorado, which is more particularly described as shown on Exhibit A attached hereto and incorporated herein by this reference, and known as Roxborough Village.

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

DEFINITION OF TERMS

The following terms and words as used hereinafter shall be defined as follows:

Section 1. BUILDING SITE a lot on a recorded plat approved by Douglas County Commissioners.

Section 2. DECLARANT shall mean and refer to Roxborough Village Joint Venture, a Colorado joint venture and its successors and/or assigns.

Section 3. DEVELOPMENT GUIDE shall mean and refer to that document setting forth land uses and development standards for Roxborough Village, and providing regulations for uses permitted therein. The Development Guide may be amended from time to time. The Development Guide as reviewed and approved by the Board of Commissioners for Douglas County is recorded at Book 551, Pages 547 thru 613 in the real property records of Douglas County,

Colorado. When amended evidence of Board of County Commissioners approval and recordation shall be added to these Covenants as provided in Article V, Section II and the Development Guide as amended shall be the Development Guide from the approval date forward. Current and future owners and their assigns shall be required to develop their property in accordance with that document. In case of a conflict between the Development Guide and this Declaration, the Development Guide shall control.

~~Section 4. IMPROVEMENT shall mean the placement or erection of any structure or the digging of a foundation for any structure on any of the real property subject to this Declaration.~~

Section 5. OWNERS ASSOCIATION shall mean the Colorado non-profit corporation to be organized pursuant to Article VI hereof.

Section 6. OWNER shall mean the party or parties holding legal title, title of record, or beneficial title to the real property subject to this Declaration.

Section 7. ROXBOROUGH VILLAGE DESIGN REVIEW COMMITTEE shall mean and refer to the three (3) member committee created by the Declarant for the purpose of establishing architectural control over the property and insuring the proper use and appropriate development and improvement of the land so as to provide a harmonious development thereof.

Section 8. ROXBOROUGH VILLAGE shall mean and include those real properties in the County of Douglas, Colorado, as described above, and all of real property to which these protective covenants may hereafter be extended pursuant to Article V hereof, hereinafter, the "Properties."

Section 9. SUBDECLARANT(S) shall mean and refer to persons or entities that purchase multiple Building Sites for development and who are therefor exempted from certain restrictions set out in this Declaration and in the Development Guide.

ARTICLE II

DESIGN COMMITTEE

Section 1. Establishment. There is hereby established the Roxborough Village Design Review Committee, which shall consist of

three (3) members. The committee shall include either a currently licensed architect, a registered engineer, or a person experienced and currently engaged in land planning, and a representative of the Declarant. The architect engineer or the land planner may, but need not be employed by Declarant. Declarant shall appoint all members and Declarant's real property shall be exempt from any control by the Committee. When Declarant's control of development in Roxborough Village as defined in Article VI, Section 1 terminates, the architectural committee may then be comprised completely of owners without regard to special qualifications.

Section 2. Term of Office. The regular term of office of each member of the Design Committee shall be for three (3) years from January 30 of each year through January 29 of the succeeding year, and until his successor has been duly appointed. Declarant may remove any appointee at any time upon written notice to such appointee.

Section 3. Chairperson. The chairperson shall be designated from among the members of the committee by Declarant or elected by the members of the committee if the Declarant does not or cannot appoint the chairperson. The chairperson shall take charge of and conduct all meetings and shall provide for a reasonable notice to each member of the committee prior to any meeting, setting forth the place and time of said meeting.

~~Section 4. Voting. The vote of a majority of the members of the Design Committee shall constitute the action of the Design Committee on any matter before it. The Design Committee from time to time may designate a single member to act on its behalf on such issues and affairs as routine and not requiring a vote. Should an emergency request for consideration of an action taken by such an appointed member, then an affirmative vote of a majority of the members of the Design Committee should be required to sustain such action.~~

~~Section 5. Control.~~ No improvements shall be made on any parcel of land not defined as a building site in Article I, Section 1. ~~The Committee shall review all preliminary or final development plans or plats or similar instruments prior to their sub-~~

~~plans for review by the Douglas County Planning Department. No~~
~~improvement shall be made on any Building Site or parcel of land~~
~~until plans for such improvement have been approved by action of~~
~~the Design Committee, provided that alterations or remodeling which~~
~~are completely within a building and which do not change the ex-~~
~~terior appearance and are not visible from the outside, may be~~
~~undertaken without such approval. All actions taken by the Design~~
~~Committee shall be in accordance with specific criteria, as delin-~~
~~eated in the Development Guide where applicable. These criteria~~
~~may be amended from time to time by action of the Design Committee,~~
~~that is consistent with and fulfills the purpose of these coven-~~
~~covenants.~~

Section 6. Limitations and Effective Actions. The approval or consent of the Design Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties.

Section 7. Reply and Communications. The Design Committee shall reply to all submittals of plans made in accordance herewith in writing within sixty (60) days after receipt. Where prior written consent of approval of the Design Committee is required under this Declaration of Covenants with respect to the making of an improvement, such improvements shall be conclusively deemed to have been made in compliance with this Declaration of Covenants unless a notice of intention to commence legal action challenging and objecting thereto is issued by the committee within a reasonable period of time after completion of such improvement. All communications and submittals shall be addressed to the Roxborough Village Design Review Committee at 6920 South Holly Circle, Englewood, Colorado, or to such address as the chairman of the Design Committee shall hereafter designate in writing addressed and mailed to the owners.

Section 8. Certificate of Compliance. Upon payment of a reasonable fee limited to actual out of pocket expenses and overhead, set from time to time by the Design Committee and upon the written request of, or authorization by, any Owner, the Design

Committee shall issue ~~within thirty (30) days~~ from the receipt of the request, a certificate in recordable form stating whether or not the proposed building and/or proposed improvements are acceptable and not in violation of any of these covenants. Said written statement shall be conclusive upon the Design Committee in favor of the persons who rely thereon in good faith. If the Design Committee fails to furnish such statement within thirty (30) days, it shall be conclusively presumed that the proposed building and/or proposed improvements are in conformance with these covenants.

Section 9. Division or Combination of Building Sites or Parcel of Land. Except with respect to land owned by Declarant, no building site or parcel of land within Roxborough Village may be divided, subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership, nor may any Building Site or parcel of land be combined with any other building site, without the prior written consent of the Design Committee. In connection with the consideration of the request by an Owner, within thirty (30) days of receipt, for consent to one of the above, the Design Committee may request such information as it deems necessary or desirable to properly consider the request. After receipt of such information, the provisions, including the time periods for response and challenge, contained in Section 7 above shall be applicable.

Section 10. New Construction Only. New construction only shall be permitted in Roxborough Village and no structures for occupancy as a residence shall be moved upon lots within the property. No residence built on any lot shall have an initial appraised value of less than Fifty Thousand Dollars (\$50,000.00), including the lot.

Section 11. Power of Appointment. Declarant in its sole discretion may at any time grant the power of appointment of the members of the Design Committee, and the chairman thereof, to any entity succeeding to substantially all of the assets of Declarant, or to the Owners Association. Notwithstanding the above, appointments shall be for staggered terms of a years different in termination so as to provide reasonable continuity to the Design review

process.

ARTICLE III

SUBMITTAL REQUIREMENTS

Section 1. Preliminary Submittal. Plans and specifications, in such form and containing such information as may be required by the Design Committee, may be submitted in writing to the Design Committee at the time of the preliminary architectural design of the improvements.

Section 2. Notice of Decision. Upon final approval or disapproval of the preliminary submittal by the Design Committee, written notice of said approval or disapproval will be given by the Design Committee. Preliminary submittals which have been disapproved may be resubmitted to the Design Committee with necessary modifications or revisions in accordance with the modified submission requirements of the Design Committee under Section 5 herein below.

Section 3. Final Submittal. Final plans and specifications, in such form and containing such information as may be required by the Design Committee, shall be submitted in writing to the Design Committee.

Section 4. Construction Commencement. Subject to the exceptions provided in Section 5 below, no construction shall commence on any building site until the provisions of Section 3 of this Article III have been complied with to the satisfaction of the Design Committee or waived in writing by the Design Committee or by inaction within the limits set forth in Article II, Section 7.

Section 5. Modified Submission Requirements. The Design Committee, at its discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Such modified submission requirements may take the form of "master approvals" of entire filings after the approval by the Committee of typical plot plans and/or house blueprints and landscaping plans and/or fencing plans submitted by a Subdeclarant.

ARTICLE IV

DESIGN CRITERIA AND REQUIRED APPROVALS

Section 1. Criteria and Approvals. No structure of any attachment to an existing structure, whether a residence, any building, fences, walls, canopies, awnings, roofs, solar panels, wind generators, exterior lighting facilities, exterior antennas (including satellite dishes), athletic facilities, or other similar improvements or attachments shall be constructed, erected, placed or installed upon any property in Roxborough Village, and no alteration of the exterior of a residence or other structure shall be made, including but not limited to a change in painting and/or staining of exterior siding, and no change in the final grade, nor the installation of any change in any landscaping, shall be performed, unless complete plans and specifications therefore (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, wind-breaks and grading plan, as well as such other materials and information as may be required by the committee and) shall have been first submitted to and approved in writing by the Design Review Committee. The Design Review Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to residences, other structures, and property within Roxborough Village shall comply with the requirements set forth herein, and in the Development Guide. Approval shall be based upon, but not limited to, adequacy of site dimensions, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of improvements on nearby lots, improvements, operations and uses, relations of topography, grade and finished ground elevation of the lot to that of neighboring property, proper facing of main elevations with respect to nearby streets, preservation of aesthetic beauty, and conformity with the plan specification and

purposes generally set out in the Development Guide.

Section 2. Expense of Review. In its review of such plan specifications and submittals, the Design Review Committee may require that the applicant(s) reimburse the committee for actual expenses incurred by it in its review and approval process.

Section 3. Soils Testing. Each applicant shall provide the Design Review Committee with the result of soils tests conducted on the applicant's property by a qualified licensed engineer. The committee shall require that the grading plan for the building site and the design of the structure and foundation shall be based upon the results of such soils tests and that the recommendations of the soils engineer be followed. The committee or its appointed agents shall have the power to review and inspect all aspects of foundation, structural and exterior construction on the lot of each applicant, including but not limited to the grading and preparation of the site, foundation, and the structure itself, however, any Subdeclarant may be granted "master approval" for homes to be built on Building Sites where the requisite soils testing has been performed.

Section 4. Variances. The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or by the Development Guide in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in the development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose of these Covenants and of the Development Guide. In the event that the request for a variance is disapproved by the Design Review Committee, the applicant shall have the right of appeal to the Board of Commissioners of Douglas County, Colorado.

Section 5. Waivers. The approval or consent of the Design Review Committee, or appointed representative thereof, to any application for design approval shall not be deemed to constitute

a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent pursuant to these covenants or the development guide.

Section 6. Liability. The Design Review Committee and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 7. Records. The Design Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 8. Enforcement and Attorneys Fees. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Roxborough Village Design Review Committee and any interested owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this section, the Design Review Committee shall be entitled to recover its costs and reasonable attorneys fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Design Review Committee or of any owner to enforce any covenant or restriction herein contained, or any provision of the Development Guide, shall in no event be deemed a waiver of the right to do so thereafter.

Section 9. Development Guide. The design criteria and control provisions of the ~~Development Guide, Sections III through XI,~~ are expressly incorporated herein by this reference.

Section 10. Separability. Invalidation of any of these covenants or any part thereof by judgments or court order shall in no way affect any of the other provisions which shall remain in

full force and effect.

ARTICLE V

FURTHER RESTRICTIONS SUBSEQUENT TO CONSTRUCTION

The Roxborough Village Design Review Committee, or its successors and assigns, shall have the power to enforce the following restrictions, as they may apply, subsequent to the sale of any lot to any owner thereof, including Declarant.

Section 1. Lots to be Maintained. Each lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any lot so that the same are visible from any neighboring lot, or any street, except as necessary during the period of construction. Nor shall weeds or grasses over twelve (12) inches in height be allowed to remain on any lot. Declarant, its agents and assigns shall have the authority to enter and clean up lots which do not conform to the provisions of this Section 1, and to charge and collect from the Owners thereof all reasonable costs related thereto.

Section 2. Declarant's Use. Notwithstanding anything to the contrary contained in this declaration, it shall be expressly permissible for Declarant and Subdeclarants, their employees and agents, to perform such reasonable activities, and to maintain upon portions of the property such facilities as they deem reasonably necessary or incidental to the construction and sale of lots in the development of the property, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 3. Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the property; provided, however, that the owners of each lot may keep a reasonable number of dogs, cats, fish or other domestic

animals which are bona fide household pets, so long as such pets are not kept for any commercial purposes and are not kept in such number or in such manner as to create a nuisance to any residents of the properties. The Design Review Committee shall have, and is hereby given, the right and authority to reasonably determine that dogs, cats, or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to any residents of the properties, or that an owner is otherwise in violation of the provisions of this Section 3, and to take such action or actions as it deems reasonably necessary to correct the same. An owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets.

Section 4. Restrictions on Grading. Each owner shall be responsible for the continual maintenance of his lot in order to insure that the grading of the lot does not substantially differ from the final grade originally established by the Declarant and/or Subdeclarant and/or by the Design Review Committee.

Section 5. Restrictions on Landscaping. There shall be no planting by anyone on any lot within three (3) feet of the residence. Only landscaping requiring drip irrigation shall be permitted within the area of at least three (3) but not more than five (5) feet from the foundation of any residence. No sod or other landscaping requiring extensive irrigation shall be permitted within five (5) feet of any residence. Each owner shall use all due care to prevent damage to the foundation of his residence as a result of watering and other maintenance of grass, trees and shrubbery located on his property.

Section 6. Nuisances. No nuisance shall be permitted on the properties, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any residents of the properties or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of the properties, or any portion thereof by its residents. As used herein, the term nuisance shall not include any activities of Declarant which are reasonably necessary to the

development and construction of the properties; provided, however, that such activities of the Declarant shall not reasonably interfere with any owner's use and enjoyment of his lot, or any owner's ingress and egress to or from his lot and a public way. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the properties or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the properties or a portion thereof shall be observed.

Section 7. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon the Properties nor shall oil wells, tanks tunnels, mineral excavations or shafts be permitted upon or within the Properties. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted upon the Properties.

Section 8. Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, motordriven cycle truck (larger than 1 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, and no commercial vehicle, with words or pictures primarily for the purpose of advertising a business or service displayed thereon, may be parked or stored on the Properties unless such parking or storage is done wholly within the enclosed garage, if any, located on a Lot, or within any area which may, from time to time, be designated by the Design Review Committee for the parking or storage of such vehicles, except that any such vehicle may be otherwise parked as a temporary expedience for loading, delivery of goods or services, or emergency. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Properties which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvement located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on the Properties. An "abandoned or inoperable vehicle"

shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, housetrailer, self-contained motorized recreation vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on the Properties, unless it is done within completely enclosed structures which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.


Section 9. Annexation. Additional property contiguous to Roxborough Village may be annexed by the Declarant until that date which is twenty (20) years after the date of recording of this Declaration of Covenants in Douglas County, Colorado, without the consent of any other persons or entities. For the purpose of this Section 9, "contiguous" shall mean any area touching or sharing a common boundary with Roxborough Village as its boundaries exist on the date of recording of this Declaration of Covenants, Conditions and Restrictions or as they may exist subsequent to future annexa-

tions thereto. Property separated from Roxborough Village by any public land or public right of way shall be considered contiguous to Roxborough Village. Each such annexation shall be effected, at all, by recording a document entitled "Annexation of Additional Land" in the office of the Clerk and Recorder of the County of Douglas, Colorado, which document shall provide for annexation to this Declaration of the property described therein, and may include such other provisions as deemed appropriate by the Declarant. All provisions of this Declaration of Covenants, and of the Development Guide shall apply to annexed property immediately upon recording the Annexation of Additional Land, as aforesaid.

Section 10. Duration, Revocation, and Amendment. Each and every provision of this Declaration of Covenants shall run with and bind the land for a term of twenty (20) years from the date of recording of this instrument, after which time this Declaration of Covenants shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than seventy-five percent (75%) of the Owners. Notwithstanding anything to the contrary contained in this Declaration of Covenants, any amendment hereto proposed for adoption while any of the Properties are owned by the Declarant must be approved by the Declarant in writing prior to adoption, and any amendment to the Development Guide as provided in Article I, Section 3 shall be added to the Covenants forthwith and without vote of the Owners.

Section 11. Rules and Regulations. In furtherance of the provisions of this Declaration, and the Development Guide, rules and regulations concerning and governing the properties or any portion thereof may be adopted, amended, or repealed, from time to time, by the Roxborough Village Design Review Committee, or its successors and assigns. The Design Review Committee may establish and enforce penalties for the infraction thereof.

ARTICLE VI
OWNERS ASSOCIATION



Section 1. Creation of Owners Association. Declarant's control of the development of Roxborough Village shall terminate upon the sale of ninety percent (90%) of the Building Sites to the first Owners thereof including Subdeclarants. Until such time, or until such earlier time as Declarant assigns, by written instrument, its powers of control to a third party, Declarant shall maintain complete control of the development of Roxborough Village in accordance with the Development Guide therefor. Upon the sale by Declarant of ninety percent (90%) of the Building Sites in the development to the first Owners thereof, Declarant shall take the following steps:

(a) Declarant shall send written notice to all of the Owners, announcing a meeting to be held within thirty (30) days;

(b) The purpose of such meeting shall be to create a non-profit corporation consisting of all Owners of lots in Roxborough Village. The function of such non-profit corporation shall be to assume the responsibilities of the Design Review Committee, and to provide for the creation, maintenance and enforcement of all covenants, rules and regulations pertaining to Roxborough Village.

(c) Declarant shall preside at such meeting, until such time as the Owners elect a chairman thereof.

(d) Declarant shall act as the incorporator for the Owners Association and shall convey to said organization all of its right, power and authority to maintain and enforce these Covenants and the provisions of the Development Guide. The Association shall function through its elected Board of Directors as set out in its Articles of Incorporation and Bylaws, as determined at the time the Association is first created.

