

**DECLARATION OF PROTECTIVE COVENANTS**

**DEERFIELD PARK PUD**

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 8<sup>th</sup> day of November, 1996 by Deerfield Park L.L.C., a Colorado limited liability company (hereinafter "Declarant"), WITNESSETH:

**INTRODUCTION AND PURPOSE OF COVENANTS**

Declarant is the owner of that certain real property known as the Deerfield Park PUD, a planned unit development located in the City of Rifle, County of Garfield, State of Colorado, as shown on the plat thereof recorded in ~~Plat Book 21407 on Page X~~ <sup>Section 904</sup> of the Records of the Clerk and Recorder of Garfield County, Colorado, which property is hereinafter referred to as the "Subdivision."

Declarant hereby declares that these Protective Covenants shall govern and shall be applicable to the Subdivision and to all real property in the Subdivision owned, transferred, sold, and conveyed by Declarant. These Protective Covenants shall run with the land and shall be binding upon and benefit all parties having title interest in said property, their heirs, successors, assigns.

**ARTICLE I  
DEFINITIONS**

Section 1. "Lot" shall mean and refer to each Lot as shown on the final plat of the Subdivision.

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

Section 3. "Common Areas" shall mean any and all areas that are owned either by Deerfield Park Homeowners' Association ("Association") or that are the obligation of the Association to maintain.

Section 4. The Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. 38-33.3-101 et seq. shall apply in all respects to these covenants.

Return to:  
Leavenworth & Associates  
P.O. Drawer 2030  
Glenwood Spgs CO

**ARTICLE II**  
**SUMMARY OF PROTECTIVE COVENANTS**

**Section 1. Enforcement.** These Protective Covenants shall be binding upon and inure to the benefit of all present and future owners of the real property in the Subdivision, they shall run with the land and may be enforced by the Association or any Owner within the Subdivision by appropriate action in the District Court for Garfield County in Glenwood Springs, Colorado. Failure to enforce any covenant shall not be deemed a waiver of the right to do so thereafter.

**Section 2. Amendments.** A majority of the record Owners of the Lots may amend a particular covenant by entering into a written amendment signed by the President and Secretary of the Association representing that two-thirds of the Owners have voted in favor of the amendment at a regular or special meeting of the Association.

**Section 3. Single Family Use.** Lots shall be used for single family residences only.

**Section 4. Minimum Lot Size.** Upon conveyance of a lot to an owner, there shall be no further subdivision of the lot. Nothing herein shall be construed to prohibit the Declarant, its successors or assigns, from making changes, alterations, or modifications to the Subdivision in accordance with and subject to the provisions of the Site Specific Development Plan and Subdivision Improvement Agreement for Deerfield Park PUD between the City of Rifle and the Declarant, as supplemented or amended from time to time.

**Section 5. Design Guidelines.** Any and all design guidelines shall be governed by the Deerfield Park PUD Design Guidelines, as those guidelines may be amended from time to time. The Design Guidelines may be amended by two-thirds of the record Owners of Lots by a specific vote at a regular or special meeting. The Amended Design Guidelines shall be recorded in the Real Property Records of Garfield County, and shall be kept by the Secretary of the Association and shall be made available to all owners of Lots, their agents and employees.

**Section 6. Easements Established.** Lots within the Subdivision shall be subject to easements and rights-of-way as shown on the final plat of the Subdivision or as otherwise established by recorded instrument.

**Section 7. Alleys.** Alleys designated on the final plat shall be permanent easements for the benefit of all lot owners whose property adjoins the alley, and for the benefit of the City of Rifle for all municipal purposes including but not limited to maintenance and repair, and for emergency access purposes.

The City of Rifle shall have permanent right of access to maintain and repair the alleys; provided, however that its obligations shall extend only to maintaining a driveable surface.

The Association shall have the right to adopt rules and regulations from time to time governing the use and maintenance of alleys by Owners; provided, however, that no rule or regulation of the Association shall interfere with the City of Rifle's access and maintenance rights.

The City of Rifle shall be construed as a third party beneficiary of these Covenants with respect to the rights of access and maintenance provided herein.

Section 8. Common Areas / Islands. A Landscaping Plan for Deerfield Park PUD is attached hereto and incorporated herein by this reference. The islands shown on the plat shall be irrigated with a timed underground sprinkler system and planted by the Developer with specified native grasses and trees. The islands shall be dedicated by the Declarant to the Association and maintained by the Association as a visually pleasing natural area as contemplated by the Landscaping Plan.

To the extent that an island serves as a drainage retention pond, the Association shall not permit alteration of drainage systems or grades that would inhibit the function of the area as a drainage facility.

In view of the visual importance of these areas to the regional park and surrounding neighborhoods, the City of Rifle shall have the following rights as a third party beneficiary of these Covenants with respect to the islands:

- a) Should the Association fail to adequately maintain the islands, the City of Rifle, after providing the Association notice of and opportunity to cure the failure, may maintain the islands and bill the costs thereof to the Association in accordance with the provisions of the Site Specific Development Plan and Subdivision Improvement Agreement for Deerfield Park PUD between the City of Rifle and the Declarant.
- b) The City of Rifle, in its sole discretion, shall have the right to require conveyance of ownership of the islands to the City, in which case the City shall assume all obligations of maintenance of the islands.

Section 9. Pedestrian Easement. Lots 96 and 97 shall each be subject to the pedestrian easement shown on the final plat. The owner or owners of such Lots shall maintain the walkway as constructed within the easement by the Declarant in a clean and sightly condition free of weeds and other unsightly materials, and free of any fence or other obstruction that would interfere with its designated purpose.

Section 10. Lot Landscaping / Maintenance. That portion of any lot not covered by a structure shall be fully landscaped by the lot owner with grass sod or other ground covering served by an automatic sprinkler irrigation system adequate to irrigate such landscaped area. Such landscaping shall be in compliance with the Landscaping Plan and approved by the Architectural

Control Committee of the Association as hereinafter provided, and shall be completed within one year of building permit. Such landscaping shall be maintained in a visually attractive condition at all times. This landscaping and maintenance obligation shall include all easement areas within any lot and shall include the unpaved portion of any public right-of-way which adjoins any lot, including the strip between the street and sidewalk.

Landscaping in drainage swales along lot lines shall not alter the grades established for drainage purposes, and no fences, landscaping materials, or other obstructions shall be constructed in a manner that would prevent the flow of water or inhibit the function of the drainage swales.

Section 11. Fencing / Exterior Lighting. All fences and exterior lighting shall strictly comply with the fencing and lighting standards as established by the Architectural Control Committee.

Section 12. Temporary Structures Banned. No used or temporary structure or mobile home shall be permitted on a temporary basis on a Lot, except for a construction trailer approved by the Architectural Control Committee.

Section 13. Business Restrictions. No business activities of any kind whatsoever shall be conducted within the Subdivision; provided that this restriction shall not prohibit an owner or occupant from carrying on any of the following activities if such activity is entirely within a residence and such activity cannot be detected by any of the senses from the exterior of such residence, to wit:

- a) Maintenance of a personal or professional library;
- b) Maintenance of personal business or professional records or accounts;
- c) Personal business or professional telephone calls or correspondence; or,
- d) Conduct of a home occupation; provided that home occupation shall not include a bed and breakfast operation, a day care service or any other use which shall generate third party pedestrian or vehicular traffic, which uses are hereby specifically prohibited. This section shall not apply to Declarant's business activities during the original construction and sales period.

Section 14. Nuisances Banned. No nuisance or unsightly object shall be allowed within the Subdivision nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of any Lot. In accordance with the provision regarding pets it shall be a nuisance for anyone to keep a dog or other animal that barks, howls, or makes other noise that interferes with the peace of neighboring

Lots. No immoral, improper, offensive, or unlawful use shall be made of the property nor any part thereof.

Section 15. Waste. Subject specifically to the rules and regulations regarding alleys and the like, all trash and waste shall be kept in sanitary containers and receptacles out of sight and on the individual Lots, not in the alleys. Trash containers shall be placed in the alleys solely for trash pickup.

Section 16. Pets. Only household-type pets shall be kept on any Lot. This shall include dogs, cats, birds, and the like. Dogs shall be restrained on the Lots unless on a leash and accompanied by a person, and all pets shall be subject to the ordinances of the City of Rifle, Colorado, and the rules and regulations of the Association. No pets shall be kept on a Lot that cause a nuisance to neighboring Lots.

Section 17. Building Approval. All residences, garages, and other improvements shall be subject to being first approved by the Deerfield Park architectural control committee as hereinafter specified.

Section 18. Vehicles. Only operable automobiles, pickups and vans not exceeding three-quarter ton in size, bearing a current license, shall be kept or maintained on any Lot. No vehicle maintenance shall be carried on any Lot unless such maintenance is fully contained within the garage out of the view of other Lots. No motor homes, boats, snowmobiles, or similar recreational vehicles and no trailers shall be parked on the public streets within the Subdivision or otherwise on the property unless in full compliance with the rules and regulations of the Association.

Section 19. Signs. No signs, billboards or other such media shall be created, placed, or permitted to remain on any Lot in the Subdivision or within the easements, rights-of-way, or dedicated areas within the Subdivision; provided that this restriction shall not apply to the Declarant's activities during the original construction and sale period. There shall not be a restriction for reasonably sized and placed "for sale" or "for rent" signs on an individual Lot.

Section 20. Completion of Construction. All buildings or structures erected upon the property shall be of new construction and the construction of any building or structure and landscaping shall be completed, without interruption, within a reasonable time and, in any event, within one year of the commencement of construction, unless the Architectural Control Committee expressly approves a longer time period.

### ARTICLE III HOMEOWNERS' ASSOCIATION

Section 1. Membership. All persons or other entities (hereinafter referred to as "Owner") who own or acquire the title in fee to any Lots in the Subdivision by whatever means

acquired, shall automatically become members of the Deerfield Park Homeowners' Association (hereinafter the "Association"), a Colorado non-profit corporation, in accordance with the Articles of Incorporation of Deerfield Park Homeowners' Association, which shall be filed with the Colorado Secretary of State and recorded in the Real Property Records of Garfield County, Colorado and as the same may be duly amended from time to time and also filed with the Colorado Secretary of State and recorded in the Garfield County Clerk and Records. There shall be one (1) vote per Lot in the Association.

**Section 2. Purpose.** The Association shall be authorized and empowered to take each and every step necessary or convenient to the implementation and enforcement of these covenants. The Association shall have the right and responsibility to maintain, preserve, repair, insure, and otherwise protect and promote the interests of the Owner with respect to all common properties, easements, and interests of the Owner and the Association, including the adoption of rules and regulations with respect thereto. The Association shall be authorized to enter into agreements with third parties for the maintenance, repair, and upkeep of its common areas and easements. All costs and expenses associated with the operation of the Association and its rights, duties, and obligations, shall be borne by the Owner and shall be assessed, in accordance with the Articles of Incorporation, By-Laws, and as otherwise set forth herein.

**Section 3. Lien for Non-Payment of Assessments.** All sums assessed by the Board of Directors, including without limitation, the share of common expense assessments chargeable to any Owner, any fines which may be levied on an Owner and unpaid common utility fees and assessments charged to an Owner shall constitute a lien against such Lot superior (prior) to all other liens and encumbrances, except only:

- a) Tax and special assessment liens on the Lots in favor of any governmental assessing unit; and,
- b) All sums unpaid on a first mortgage of record, including any unpaid obligatory sums as may be provided by encumbrance.

If any assessment shall remain unpaid after thirty (30) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the maximum rate of interest permitted by law, or at such rate as is determined by the Board of Directors, and the Board of Directors may impose a late charge on such defaulting Owner as may be established by the Board. In addition, the Board of Directors shall be entitled to collect reasonable attorneys' fees and costs incurred in connection with any demands for payment and/or collection of delinquent assessments. To evidence such lien, the Board of Directors shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and its legal description. Such a notice shall be signed by one (1) of the Board of Directors and shall be recorded in the Real Property Records of Garfield County, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, upon the recording of a notice of claim thereof. In any such foreclosure, the Owner shall be



required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice of claim of lien and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association any additional assessments against the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Board of Directors, for the Association, shall have the power to bid on the Lot at foreclosure sale and acquire and hold, lease, mortgage, and convey same. The Association, at its election, and in addition to any other remedies it may have at law or in equity, may also sue an Owner personally to collect any monies owed the Association.

- c) Each Owner hereby agrees that the Association's lien on a Lot for assessments as hereinabove described shall be superior to the Homestead Exemption provided by C.R.S. § 38-41-201, et seq., and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within the Subdivision shall signify such grantee's waiver of the homestead right granted in said section of the Colorado Statutes.
- d) Any recorded lien for non-payment of the common expenses may be released by recording a release of lien executed by a member of the Board of Directors.

#### ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

Section 1. Jurisdiction of Committee. The Architectural Control Committee (hereinafter the "Committee") as herein established shall have the authority as herein provided.

Section 2. Composition of Committee. The Committee shall consist of three persons, one of which shall be the Declarant, and two of which shall be appointed by the Declarant so long as Declarant owns more than seventy-five percent (75%) of the Lots within the Subdivision. Within sixty (60) days after Declarant's conveyance of twenty-five percent (25%) of the Lots, at least one member of the Committee shall be elected by the majority vote of the Lot Owners other than the Declarant. Within sixty (60) days after the Declarant's conveyance of seventy-five percent (75%) of the Lots or two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, whichever shall first occur, all of the members of the Committee shall be elected by vote of the Lot Owners, including the Declarant on the basis of one vote for each Lot owned. A majority of the Committee may designate a representative to act in its behalf on any matter, and any reference to the Architectural Control Committee in this Declaration shall be deemed to include its designated representative.

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Section 3. Review by Committee. No fence, wall, building, or other structure or any attachment to or addition to or change or alteration in an existing structure shall be commenced, erected, constructed, or maintained upon any Lot until the plans and specifications therefore (which plans and specifications shall show the nature, kind, shape, design, height, foundation elevation, drainage plan, roof pitches, materials, color and location of such structure, attachment or addition, plotted horizontally and vertically and landscaping plan) shall have been first submitted to and approved by the Committee. Such submittal shall include a landscaping plan demonstrating compliance with the general intent of the Landscaping Plan for Deerfield Park. The Committee shall apply the Deerfield Park PUD Design Guidelines (Exhibit A hereto) for the review and approval of requests submitted to it, which standards may include the identification of permitted and unpermitted materials to be used within the Subdivision, including materials for driveway and walkway surfaces.

Section 4. Tree Removal. No tree shall be removed from any Lot unless such removal is first approved by the Committee.

Section 5. Procedure. The Committee shall approve or disapprove all plans and requests within thirty (30) days of submission. If the Committee fails to approve or disapprove any plan or request within thirty (30) days after a complete plan or request (including all matters required by the Committee) has been submitted to it, the Committee will be deemed to have given its approval. Decisions of the Committee shall be by majority vote, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control. The Committee shall maintain written records of all applications submitted to it and all actions taken by it.

Section 6. Liability. Neither the Committee nor any member or representative thereof shall be liable in damages to any person submitting requests for approval by reason or any action or failure to act in regard to any matter within its jurisdiction.

Section 7. Exemption of Declarant. Declarant need not seek nor obtain Committee approval of any improvement constructed or placed by Declarant on any Lot so long as the improvement constructed or placed by Declarant does not substantially deviate from the Design Guidelines and does not unreasonably interfere with the rights of other Lot owners. Declarant's rights hereunder and elsewhere in this Declaration may be assigned by Declarant.

Section 8. Variances. The Committee may, by an affirmative vote of a majority of the members of the Committee, allow reasonable variances as to any of the covenants, restrictions, and Design Guidelines governing architectural control contained in this instrument and/or policies or rules promulgated by the Committee, on such terms and conditions as it shall require. No variance shall be granted which contravenes any provisions of these covenants required by any approvals obtained by Declarant from the City of Rifle for Deerfield Park PUD or which violate the City of Rifle Land Use and Building Codes. No variance shall be granted without written notice of the request for such variance provided ten (10) days prior to the hearing for such variance to all Lot Owners. Notice to such Lot Owners shall be deemed complete when placed in the United States mail, first class postage prepaid, to the last known address for each Lot Owner as provided to the Association.



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## ARTICLE V CHANGES TO THE PUD

**Section 1. Multifamily Option of Declarant.** Lots 1 through 13 of the Subdivision may be converted to multifamily units from single family lots, at Declarant's option, in which case the Design Guidelines shall not apply; provided, however, that the resulting density for the entire Subdivision shall not exceed 125 residential units. Should Declarant determine to convert these lots to multifamily, then each unit shall be treated the same as a Lot in the Subdivision for purposes of voting and assessments. The multifamily units shall create their own homeowners' association for the purpose of operating and maintaining the multifamily residences and common areas, but the homeowners' association shall otherwise be subject to these covenants.

**Section 2. Development in Phases / Changes.** The Declarant, its successors or assigns, has the right to develop Deerfield Park PUD in three phases, and to make changes, alterations, or modifications to the PUD in accordance with and subject to the provisions of the Site Specific Development Plan and Subdivision Improvement Agreement for Deerfield Park PUD entered into between the City of Rifle and the Declarant, as supplemented or amended from time to time. The Declarant, its successors or assigns, shall have the right, upon substantial completion of a new phase in accordance with said Agreement, to submit such new phase to this Declaration by the execution of an amendment to this Declaration, and such amendment shall not require the execution of consent of any owner other than the Declarant, its successor or assign. Each owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any lot within the Deerfield Park PUD shall signify such grantee's waiver of any right to object to the implementation of any subsequent phases, or changes, alterations or modifications to the PUD contemplated by said Site Specific Development Plan and Subdivision Improvement Agreement.

## ARTICLE VI GENERAL PROVISIONS

**Section 1. Severability.** Invalidation of any covenant shall not affect or limit any other covenant which shall remain in full force and effect.

**Section 2. Amendment and Duration.** This Declaration shall not be modified, amended, or terminated except by an instrument approved in writing by the Owners of at least two-thirds (2/3) of the Lots within the Subdivision and such instrument shall be effective when duly recorded in the Real Property Records of Garfield County, Colorado. Such instrument shall be signed by the President and Secretary of the Association certifying the affirmative vote of two-thirds (2/3) of the Owners. Any provision herein to the contrary notwithstanding, so long as the Declarant remains the owner of any Lot, the Declarant shall have the absolute right to amend this Declaration in order to comply with any standard, guideline, rule, or requirement now or hereafter established in connection with the financing requirements of any entity or agency regularly engaged in making home loans or guaranteeing home loans made by financial institutions.

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Section 3. Notices. Any notice required to be sent hereunder shall be deemed to have been given when mailed, postage prepaid, certified return receipt requested, to the address appearing in the records of the Association at the time of such mailing, and in the absence of such address to the address of such person as contained in the records of the Assessor of Garfield County, Colorado, until such address is changed by a notice of change of address mailed to each owner.

Executed the day and year first above written.

DEERFIELD PARK L.L.C.

By W. Ray R. Allen  
Manager

STATE OF COLORADO )  
                  Garfield )  
COUNTY OF PITKIN )

Subscribed and sworn to before me this 8th day of November, 1996,  
David R. Steman as manager-Of Deerfield Park Subdivision.

Witness my hand and official seal.

My commission expires: 10-31-99

Rebecca L. Brock  
Notary Public

