

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF COLONIAL HEIGHTS SUBDIVISION**

This DECLARATION is made and entered into this 8 day of April, 2003, by SONSHINE II CONSTRUCTION & DEVELOPMENT, LLC, hereinafter referred to as the "Undersigned."

RECITALS

A. The Undersigned is the owner of certain real property situated in Mesa County, Colorado, known as Colonial Heights Subdivision, according to the plat thereof recorded the 10th day of April, 2003, in Mesa County, Colorado of the real property records of Mesa County, Colorado, including the easements and licenses appurtenant to, or included in the property as shown on the plat.

B. The Undersigned desires to create a planned community upon the real property described on Exhibit "A" attached hereto, as platted at Book 19, Pages 297, 298, 299 Mesa County Records, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act ("Common Interest Act") for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvements, sale and ownership of said property.

NOW, THEREFORE, the Undersigned hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof. However, no property within Colonial Heights Subdivision owned by the City of Grand Junction shall be subject to the covenants hereinafter set forth.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to COLONIAL HEIGHTS HOMEOWNERS ASSOCIATION, INC. its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. Such Common Area shall include the irrigation, drainage and recreational facilities, if any, located in Colonial Heights Subdivision. Common Area excludes any and all tracts or outlots conveyed to the City of Grand Junction in conjunction with the platting of Colonial Heights Subdivision.

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

Section 6. "Declarant" shall mean and refer to Parkerson Brothers, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee set forth at Article VI of this Declaration.

ARTICLE II PROPERTY RIGHTS IN THE LOTS AND COMMON AREAS

Section 1. Title to the Lots. The Declarant, its successors and assigns, shall convey fee simple title to the Lots subject to current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration. No Owner shall be entitled to subdivide a Lot, nor shall any Owner be entitled to sever his ownership interest in a Lot from his membership in the Association, provided that this clause shall not be construed as precluding the Owner of a Lot from creating a co-tenancy or joint tenancy with any other person or persons.

Section 2. Title to the Common Area. The Declarant, its successors and assigns, shall convey fee simple title to the Common Area to the Association, free and clear of all liens and encumbrances, except easements, conditions and reservations then of record, including those set forth in this Declaration. The Association shall be responsible for the maintenance of the Common Area, including but not limited to, the mowing and weed control on Tracts C and D for the portions thereof not improved by the City of Grand Junction.

Section 3. Members' Easements of Enjoyment. Every Member shall have a non-exclusive right and easement in and to the Common Area, including, but not limited to, an easement for

ingress, egress and support over and through the Common Area, and easements for utilities and drainage. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area and for the use, operation and maintenance of the irrigation system.
- b. The Association may borrow money and grant a mortgage or deed of trust on the Common Area or any part thereof for the purpose of improving the Common Area, provided any such mortgage or deed of trust shall be expressly subordinate to the rights of the Members herein;
- c. The right of the Association to suspend a Member's voting rights for any period during which any Assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association;
- d. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance.
- e. The right of Declarant or its designees to enter upon the Common Area for purposes of construction of the development and for purposes of making repairs and remedying construction defects; provided such entry shall not interfere with the use of any occupied Lot unless authorized by the Lot Owner.
- f. The right of the Association to charge reasonable admission and other fees for the use of any storage space and any recreational facility situated upon the Common Area.

Section 4. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his guests and invitees, or his tenants, or contract purchasers who are in possession of such Member's Lot.

Section 5. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot.

Section 6. Parking Plan. Each Lot, when improved, shall provide a minimum of two parking spaces for each Living Unit located upon said Lot.

Section 7. General Restrictions. All future Owners of the Lots by their acceptance of their respective deeds, covenant and agree as follows:

a. That the Common Area shall remain undivided, and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the Property.

b. A perpetual and non-exclusive easement for the purpose of ingress and egress in connection with the maintenance of the Common Area.

c. Perimeter fencing shall be subject to the review and approval of the Architectural Control Committee and issuance of a City of Grand Junction fence permit.

d. Landscaping of each Lot shall include two (2) 1½" Caliper trees in the front yard spaced at least twenty (20) feet apart and located five (5) feet from the front sidewalk. The trees shall be one of the species on the City of Grand Junction approved list for street trees.

Section 8. Irrigation and Water Rights.

a. Declarant shall construct a pressurized irrigation system for the use and benefit of the Common Area and each Lot.

b. Every Owner shall have a right to tap into such system and to the use and benefit of any and all irrigation water, subject to all rules and regulations for the use of water adopted by the Association.

c. The Declarant, its successors and assigns, shall transfer ownership to the entire irrigation system, free and clear of all liens and encumbrances to the Association.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have one class of voting membership, being all Owners of Lots within the Subdivision who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Assessments shall only apply to Lots used for the construction of residential units thereon.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide and maintain the Common Area, irrigation, drainage and recreational facilities, if any, at Colonial Heights Subdivision.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment shall be One Hundred Dollars (\$100.00) per Lot.

a. From and after January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area and facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the

assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purposes of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to a nondeclarant Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the irrigation water delivery system or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE V
USE RESTRICTIONS**

- A. No rear yard fencing may be erected or maintained in excess of six (6) feet in height.
- B. No obnoxious, offensive or other activity which would constitute a public or private nuisance or annoyance to the neighborhood will be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.
- C. Dangerous or wild animals, livestock, including rabbits or poultry, will not be kept. A reasonable number of household pets will be permitted so long as they remain in control of the Lot Owner.
- D. No firearms, fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties.
- E. No advertising signs, billboards or unsightly objects shall be maintained or erected.
- F. No junk or trash, including inoperable automobiles, will be allowed to accumulate and the same must be regularly removed.
- G. The Association or Declarant upon the failure of the Owner or tenant of any site to maintain his site and improvements, including the payment of any taxes assessed thereon, in a reasonable satisfactory manner as determined by the Association, may enter upon the site and repair, maintain, rehabilitate, and restore the premises and/or improvements or abate the improper use or pay the taxes thereon and any costs shall be charged against the Owner or tenant of said site and collected in the manner set forth in Article IV hereof.
- H. Recreational vehicles, boats and trailers shall not be parked on the streets adjacent to each Lot.

**ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Appointment of Architectural Control Committee. The Architectural Control Committee shall consist of three (3) persons to be appointed by the majority of the Board. The initial Architectural Control Committee is chaired by John Davis, 1023 24 Road, Grand Junction, CO 81505. Review by the Architectural Control Committee is in addition to any review required by the City of Grand Junction for issuance of a building permit.

Section 2. Submission of Plans. Duplicate copies of plans and specifications relating to an improvement, including, but not limited to residences, fences, garages, and outbuildings, shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks,

flow and manner of surface, drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvement. The Architectural Control Committee shall have the authority to impose a reasonable fee for the review of any submittal.

Section 3. Matters Considered. The Architectural Control Committee shall consider the aesthetic and functional design of any Improvement as to the quality of workmanship and materials, harmony of exterior design with existing Improvements, location with respect to topography and finished grade elevation, and the preservation and enhancement of the value and the visual appearance of existing Improvements.

Section 4. Approval. The Architectural Control Committee shall approve or disapprove all written plans within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within such thirty (30) day period, the proposed Improvement shall be deemed approved. The majority of vote of the Architectural Control Committee shall be required for the approval or disapproval of any proposed Improvement. Approval does not negate the need for a building permit acquired from the City of Grand Junction.

Section 5. Limitation on Liability. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

ARTICLE VII GENERAL PROVISIONS

Section 1. Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere in this Declaration, and without limiting the generality thereof, the Association shall have the obligation, subject to and in accordance with this Declaration, to perform each of the following duties for the benefit of each Lot as follows:

a. To accept delivery of and exercise dominion over all real property, improvements thereon, and interest therein conveyed to the Association by Declarant with Title to said real property or interest therein being conveyed free and clear of all liens and encumbrances, which real property and/or interests therein shall include, but not be limited to, the Common Area, and easements for operation, maintenance and access purposes.

b. To accept delivery of and exercise dominion over all personal property transferred and assigned to the Association by Declarant, free and clear of all liens and encumbrances, other than any personal property taxes not delinquent.

- c. To convey, upon dissolution of the Association, the assets of the Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Association was created, or to a nonprofit corporation, association, trust or other organization organized and operated for such similar purposes.
- d. To maintain and otherwise manage, or to provide for the maintenance and management, of all of the Common Area and all facilities, improvements and landscaping thereon, and all property acquired by the Association.
- e. To maintain, repair and operate the irrigation system for the benefit of the Common Area and each Lot.
- f. To have the authority to enter upon and landscape, maintain or improve any Lot that Owner fails to landscape or maintain in accordance with this Declaration and to levy a Special Assessment against such Lot for all expenses incurred including court costs and attorney's fees for the collection of such Special Assessment.
- g. To grant easements where necessary for utilities, on-site storm drain system, drainage, public services and sewer facilities over the Common Area to serve the Common Area and the Lots.
- h. To obtain and maintain such policy or policies of insurance as the Board deems necessary or desirable to further the purposes of and protect the interest of the Association, its Members or any Mortgagees, including the policies set forth in Article VIII hereof.
- i. To have the authority to employ a manager or other persons and to contract with an independent contractor or a professional managing agent to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall be limited to a duration of one (1) year, except with approval by vote of written consent by Members entitled to exercise not less than a majority of the voting power of the Association; any agreement for professional management of the planned development project shall be terminable with or without cause or thirty (30) days written notice.
- j. To have the power to establish and maintain a working capital and contingency fund from Regular Assessments in an amount to be determined by the Board.
- k. To have the responsibility and duty to maintain in a neat, safe, attractive and orderly fashion, and in good order and repair, the Common Area and all facilities and improvements thereon or thereto, including without limitation, providing for trash collection areas and containers and exterior security lighting.
- l. To have the power and duty, subject to the rights of the Declarant as provided herein, to enforce the provisions of this Declaration by appropriate means, including without

limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement of actions.

m. To appoint and remove members of the Architectural Control Committee, and to ensure that at all reasonable times there is available a duly constituted and appointed Architectural Control Committee.

n. To levy and enforce collection of the Assessments as provided in Articles IV and V of this Declaration.

Section 2. City of Grand Junction. In order to prevent the diminution in the enjoyment, use or property value of the development, thereby impairing the health, safety and welfare of the Owners therein, the City of Grand Junction by and through its duly authorized officers and employees is hereby granted the right to take such action as the City may deem necessary to enforce the covenants, conditions or restrictions contained in this Declaration with respect to the use of the Lots and parking on the Property for the purpose of ensuring the Association's and the Lot Owners' compliance with the zoning and other applicable ordinances of the City of Grand Junction and to ensure adequate maintenance of the Common Area. The Association shall not be dissolved without the consent of the City of Grand Junction. The City of Grand Junction is not a member of the Association and any property in Colonial Heights Subdivision is exempt from the provisions of this Declaration.

Section 3. Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant to maintain during the period of construction and sale upon such portion of the properties as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 4. Owner's Use. In addition to the duties stated elsewhere in this Declaration each Owner shall have the duty and obligation to perform and comply with the following restrictions to preserve the overall value of the entire property:

a. Use of sites is restricted to high quality, single family, subject to the terms and provisions hereof relating to architectural control. No store, office or other place of business of any kind and no hospital, sanatorium, or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon or other place or entertainment, nor any church, club, fraternal association or other association normally or regularly involving the gathering of people in groups larger than the family will be erected or permitted upon the sites, and no business of any kind or character whatever shall be conducted thereon or in or from any building thereof.

b. Maintenance, upkeep and repairs of any residence or other improvements of each Lot shall be the sole responsibility of the individual owner thereof. All landscaping shall be subject to review and approval by the Architectural Control Committee and shall be aesthetically

pleasing and reasonably consistent with the landscaping of the adjacent Lots. Weather permitting, all Lots shall be reasonably landscaped within one (1) year after the residence on the Lot is occupied. Upon a showing of good cause the Architectural Control Committee shall have authority to issue an extension to the one (1) year deadline.

c. All utilities, fixtures and equipment installed within the perimeter of any Lot commencing at a point where the utility lines, pipes, wires, conduits or systems enter the perimeter lot line, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

d. Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the properties. All receptacles or other equipment for the storage or disposal of refuse materials shall be kept in a clean and sanitary condition.

Section 5. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. Declarant reserves the right to make technical, corrective amendments at any time during Declarant's ownership of five or more lots.

Section 8. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of the members. Future Filings of Colonial Heights Subdivision shall be annexed and made a part of the Association upon the recording of the plat for each future filing.

