



**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
VILLAGE PARK PLANNED UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this 20th day of August, 1980.

RECITALS:

A. Developer is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Developer desires to create on said Property a residential development with permanent park and landscaped areas, open spaces, and other Common Areas.

B. Developer desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Developer desires to subject the Property described in Article II of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Developer deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Wyoming, as a not-for-profit corporation, VILLAGE PARK HOMEOWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

RECORDED SEP 12 1980 AT 4:20 P.M.
IN BOOK 714 PAGE 444-62 GREEN RIVER, WYO.
NO. 830134 CLERK & REC'D, COUNTY CLERK

445

2. Plat shall mean and refer to the subdivision plat covering the property contained in that set of documents entitled "Village Park Development Plan", executed and acknowledged by Developer on the 25th day of March, 1988, prepared and certified to by Thomas W. Harvey (a duly registered land surveyor of the State of Wyoming holding Registration No. 602), consisting of one (1) sheet, and filed for record in the office of the County Clerk of Sweetwater County, Wyoming, concurrently with the filing of this Declaration.

3. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article II of this Declaration.

4. Lot shall mean and refer to any of the 100 separately numbered and individually described parcels of land shown on the Plat, numbered "1" through "100".

5. Common Areas shall mean and refer to that part of the Property which is not included within the Lots, or Limited Common Areas, including all improvements other than utility lines now or hereafter constructed or located thereon.

6. Limited Common Area shall mean and refer to any of the 100 separately numbered and individually described parcels of land shown on the Plat, numbered "1A" through "100A".

7. Living Unit shall mean and refer to a portion of a structure which is designed and intended for use and occupancy as an individual residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

8. Owner shall mean and refer to the person who is the owner of record (in the office of the County Clerk of Sweetwater County, Wyoming) of a fee or an undivided fee interest in any lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceedings in lieu thereof.

9. Association shall mean and refer to Village Park Homeowner's Association, a Wyoming nonprofit corporation.

10. Member shall mean and refer to every person who holds membership in the Association.

II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Sweetwater County, State of Wyoming:

A parcel or tract of land situated in the Northwest Quarter of the Southwest Quarter (NW/4SW/4) of Section 26, Township 18 North, Range 107 West of the Sixth Principal Meridian, Sweetwater County, Wyoming, being more particularly described as follows:

Beginning at the West Quarter corner of said Section 26, said point being located on the Easterly right-of-way line of Hitching Post Drive of the City of Green River, Wyoming; thence North 88°09'33" East along the center section line of said Section 26 for a distance of 260.00 feet, said point being also the intersection of the Southerly right-of-way line of Monroe Avenue and the beginning of a non-tangent curve; thence along said curve to the left, whose radius is 330.0 feet, whose central angle is 35°05'47" and whose long chord bears South 74°17'35" East for a distance of 199.0 feet, for an arc distance of 202.14 feet to a point of tangent; thence North 88°09'13" East along the Southerly right-of-way line of Monroe Avenue for a distance of 234.04 feet, said point being also the Northwesterly corner of that parcel of land heretofore conveyed to Alan F. Scott, et al.; thence South 2°32'46" West for a distance of 689.13 feet, to the point of intersection of the Northerly right-of-way line of Shoshone Avenue and the Southwesterly corner of that parcel of land heretofore conveyed to Alan F. Scott, et al.; thence North 70°00'00" west along the Northerly right-of-way line of Shoshone Avenue for a distance of 74.11 feet to a point on a curve to the left, the radius of which is 713.26 feet; thence along said curve through a central angle of 15°01'51" a distance of 187.12 feet; thence North 85°01'51" West along the Northerly right-of-way line of Shoshone Avenue for a distance of 53.04 feet, said point being also the intersection of the Northerly right-of-way line of Shoshone Avenue and the Southeasterly corner of that parcel of land heretofore conveyed by the

1447

City of Green River to the Board of American Missions of the Lutheran Church in America; thence North 2°32'46" East along the Easterly boundary of the said Lutheran Church tract for a distance of 304.27 feet; thence South 88°09'33" West along the Northerly boundary of the said Lutheran Church tract for a distance of 380.00 feet, to a point of intersection of the Easterly right-of-way line of Hitching Post Drive, also being the Westerly line of said Section 26; thence North 2°32'46" East along the Westerly line of said Section 26 for a distance of 344.79 feet, to the point of beginning. Contains 7.30 acres.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities (to the extent they are located outside the Lots) included within the above-described tract.

RESERVING UNTO DEVELOPER, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Developer or for any assignee of Developer (in a manner which is reasonable and not inconsistent with the provisions of this Declaration: (i) To construct a Living Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, walkways, and various landscaped areas) designed for the use and enjoyment of all the Members as a private; (ii) To create and construct, such Recreational Areas and Facilities as Developer or as such assignee may reasonably determine to be appropriate; and (iii) To develop and improve, as Developer or as such assignee may in its sole discretion determine to be appropriate, each and every portion of the Entire Tract described in Plat, irrespective of whether or not the particular portion of such Entire Tract developed or improved is or is to be part of the Village Park Planned Unit Development. If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 20 years after the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming.

448

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way of record.

III. PARTY WALLS

1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots 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 liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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.

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.

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.

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.

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 shall be by a majority of all the arbitrators.

IV. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the beneficial interest and shall not be separated from the Lot to which it appurtenes.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners, but excluding the Developer until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.

(b) The expiration of twenty (20) years after the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

V. PROPERTY RIGHTS IN COMMON AREAS

1. Easement Concerning Common Areas. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall

7450

be separated therefrom. Any Member may delegate the right and enjoyment of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

2. Exclusive Easement Concerning Limited Common Area. Each Member shall have an exclusive right and easement of use and enjoyment in and to that Limited Common Area defined on the Plat and which corresponds to his Lot by numerical identification. Such exclusive right and easement shall be appurtenant to and shall pass with title to the Lot with which it is associated and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

3. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ contained within the Village Park Unit Development, as the same is identified in the Plat recorded in Book _____ at Page _____ and in the "Declaration of Covenants, Conditions, and Restrictions of the Village Park Planned Unit Development" recorded in Book _____ at Page _____ TOGETHER WITH: (i) a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions; and (ii) an exclusive right and easement of use and enjoyment in and to the Limited Common Area associated with the aforesaid Lot, as provided for in said Declaration of Covenants, Conditions, and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4. Transfer of Title. Developer agrees that it shall, at or prior to the time the Class E membership is converted to Class A membership, convey to the Association title to the Common Areas and Limited Common Area free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities.)

5. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

451

(a) The exclusive right and easement of use and enjoyment concerning Limited Common Areas which appertains to individual Members and Lots;

(b) The right of the Association to suspend a Member's right to the use of any amenities (other than such Member's Limited Common Area) included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(c) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas.

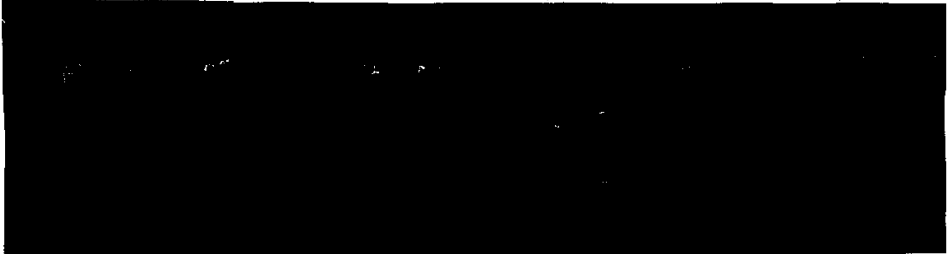
(d) The right of the City of Green River, the County of Sweetwater, and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(e) The right of the Association to dedicate or transfer any part of the Common Areas (other than Limited Common Areas) to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

6. Encroachments. If any portion of a Living Unit constructed by Developer, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Developer, encroaches upon the Common Areas, there shall exist an easement for such encroachment.

VI. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in



a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; maintenance and repair of the exteriors of Living Units; establishing and funding a reserve to cover major maintenance or repair of the exteriors of Living Units; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. **Maximum Monthly Assessment.** As of the date set under Section 7 of this Article each Lot shall be subject to a monthly assessment of not more than \$50.00. From and after December 1, 1980, the maximum monthly assessment may be increased or decreased, so long as the change is assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Board of Directors of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. **Special Assessments.** From and after the date set under Section 7 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas or the exteriors of Living Units. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by

453

proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Living Unit and occupied for the first time for residential purposes the monthly assessment applicable to such Lot shall be 5% of the monthly assessment fixed for other Lots.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Nonpayment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose

the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. The lien of such assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Wyoming law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer or cancellation or forfeiture of executory land sales contract. No sale or transfer, or cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any such charges thereafter becoming due or from the lien thereof.

VII. OPERATION AND MAINTENANCE

1. Operation and Maintenance by Owner. Each Owner shall have the right to landscape his Lot. Each Lot shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any Lot or Living Unit. Except to the extent that the Association is responsible therefor under Section 2, below, each Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Living Unit.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas and Limited Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall also provide for such maintenance and repair of fences surrounding Lots and of the exteriors of Living Units (including resurfacing of roofs and repainting, but not including replacement of glass) as may be necessary or desirable to keep them attractive and generally in good condition and repair. In performing its obligations concerning maintenance of fences and Living Unit exteriors, the Association shall employ materials of the same kind and

quality, and colors the same, as those which were used in connection with original construction of the item concerned.

3. **Utilities.** The Association shall pay for all utility services furnished to each Lot except telephone and any other services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

4. **Insurance.** The Association shall secure and at all times maintain the following insurance coverages:

(i) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in a form and substance similar to: "The Village Park Homeowners Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."

(ii) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$200,000.00 for any one person injured, \$500,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(c) The Association shall have the authority to adjust losses.

456

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; That it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; That it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any Director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

5. Manager. The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. It is anticipated that the Association and the Developer will enter into a Management Agreement on a month-to-month basis to begin on or about the date this Declaration is filed for record.

VIII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into by the Association with respect to any portion of the Common Areas.

2. Use of Lots, Living Units, Limited Common Areas. All Lots are intended to be improved with Living Units and are restricted to such use. Each Living Unit shall be used only as a single-family residence. Each Limited Common Area shall be used only for parking by the Owner of the appurtenant Lot and Living Unit. No Lot, Living Unit, or Limited Common Area shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

457

3. Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot it shall be kept on a leash or in a cage.

4. Exception for Developer. Notwithstanding the restrictions contained in this Article VII, for the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming, Developer shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Developer.

IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas, landscaping which is visible from the Common Areas, or other improvement of a Lot which is visible from the Common Areas shall be constructed or accomplished, and no alteration or refurbishing either of the exterior of any Living Unit or of any fence surrounding a lot shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to assure that all improvements, construction, landscaping, and alteration respecting Lots or Yard Areas within the Property conform to and harmonize with existing surroundings and structures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary

to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas in the vicinity of the activity.

6. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

7. Exception for Developer. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming.

8. Developer's Obligation. Developer hereby covenants in favor of each Owner: (i) that all Living Units erected by it and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and (ii) that no later than eighteen (18) months after the date on which a prospective Owner contracts with Developer for the purchase of a Lot, there shall be substantially completed and usable as part of the Common Areas all roads and landscaping, approximately in the locations shown on the Plat, necessary to enable full use and enjoyment of such Lot.

X. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions; or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of

459

the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Developer if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same lot are secured, the consent of none of such Members shall be effective.

5. **Mortgage Protection.** In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Lot.

The lien for unpaid assessments provided for under Article V shall be subordinate to any first mortgage (or trust deed) affecting a Lot, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of first mortgages (or trust deeds) on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

(a) Alter the provisions of Section 6 of article V hereof (pertaining to uniform rate of assessment);

(b) Partition or subdivide any Lot or the Common Areas or dedicate or transfer (pursuant to Section 5(a) of Article IV hereof) all or any part of the Common Areas; or

(c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

6. **Developer's Rights Assignable.** All or any portion of the rights of Developer under this Declaration or in any way relating to the Property may be assigned.

7. **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration has been prepared in conjunction with that certain "Declaration Concerning Recreational Areas Within the Village Park Planned Unit Development" recorded concurrently herewith and should be read and construed in light of that fact and liberally so as to effect all of the purposes of both instruments.

8. **Property Part of Development.** The Property shall comprise a part of the Village Park Planned Unit Development which is described in the above-referenced "Declaration Concerning Recreational Areas."

461

9. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Clerk of Sweetwater County, Wyoming.

EXECUTED the day and year first above written.

"Developer":

BRADSHAW-FERRIN DEVELOPMENT CO., INC.
a Utah corporation,

BY Ronald Ferrin
Title: President

ATTEST:

Doreen C. Bradshaw
Title: V.P.

PENGUIN INVESTMENT, INC.
a Nevada Corporation

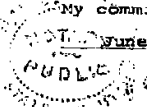
BY Richard J. Hannas
TITLE: Vice President

462

The State of Utah)
County of Salt Lake) ss.

On this 20th day of August, 1980, 1979, personally appeared before me Ronald Ferrin and Douglas C. Bradshaw, who being by me duly sworn, did say that they are the President and Vice President, respectively, of BRADSHAW-FERRIN DEVELOPMENT CO., a Utah corporation, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of Village Park Planned Unit Development was signed on behalf of said corporation by authority of its By-laws or a resolution of its Board of Directors, and said Ronald Ferrin and Vice President, Douglas C. Bradshaw acknowledged to me that said corporation executed the same.

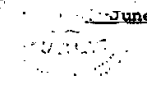
My commission expires: June 25, 1981



Buelah L. Witterbach
Notary Public
Residing in Salt Lake City, Utah

On this 5th day of September, 1980, personally appeared before me, Richard E. Harris, who being by me duly sworn, did say that he is the Vice President, of PENGUIN INVESTMENT CORPORATION, a Nevada corporation, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of Village Park Planned Unit Development was signed on behalf of said corporation by authority of its By-laws or a resolution of its Board of Directors, and said Richard E. Harris acknowledged to me that said corporation executed the same.

My commission expires: June 25, 1981



Buelah L. Witterbach
Notary Public
Residing in Salt Lake City, Utah