

RECORDED JUN 24 1974 BY *GR*  
IN BOOK *552* PAGE *385-407* GREEN RIVER, WYO.  
NO. *449103* ALBERT S. VILCO, COUNTY CLERK

385

DECLARATION  
CONCERNING RECREATIONAL AREAS WITHIN  
THE WHITE MOUNTAIN PLANNED  
UNIT DEVELOPMENT

THIS DECLARATION is made and executed this *12<sup>th</sup>* day of *June*, 1974 by TOTAL CONCEPT DEVELOPMENT CORPORATION, a Utah corporation (hereinafter referred to as "Developer").

RECITALS:

A. Upon the filing of this Declaration there is also being recorded a "Declaration of Covenants, Conditions, and Restrictions of the Village at White Mountain Planned Unit Development" and related Plat, both of which affect a certain tract of property situated in Sweetwater County, Wyoming. Said two instruments divide such property into 210 separate Lots and certain Common Areas and subject the same to various covenants, restrictions, easements, charges, and liens designed to provide for preservation of the values and amenities of such property and for maintenance of said Common Areas.

B. Developer is the record owner of that certain Parcel of property more particularly described in Article II of this Declaration. Said Parcel is contiguous with the property covered and affected by the above-referenced "Declaration of Covenants, Conditions, and Restrictions." Developer desires to create on said Parcel certain Recreational Areas and Facilities for the benefit both of Owners of the Lots described on the above-referenced Plat and of Owners of interests in certain other residential Subdivisions which Developer anticipates may in the future be created in the vicinity of said Parcel.

C. Developer desires to provide for the preservation and maintenance of said Recreational Areas and Facilities. To this end and for the benefit of said Parcel and of the Owners who have or come to have the right to use and enjoy the same, Developer desires to subject both the Parcel described in Article II of this Declaration and the various Lots and Subdivisions now or hereafter contained within the Entire Tract described below to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

D. Developer deems it desirable, for the efficient preservation and maintenance of said Recreational Areas and Facilities, to create an entity which possesses the power to maintain and administer the Recreational Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce certain of 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 nonprofit corporation, THE WHITE MOUNTAIN RECREATION ASSOCIATION.

E. Developer anticipates that in the future additional Recreational Areas and Facilities may be created on other Parcels of real property included within the Entire Tract hereinafter described. In such event Developer desires that there exist the right to subject said additional Parcels and Recreational Areas to the terms and provisions of this Declaration.

NOW, THEREFORE, for the foregoing purposes, Developer makes the following declarations respecting the Parcel described in Article II hereof and the various Lots, Subdivisions, and Recreational Areas now or hereafter contained within the Entire Tract referred to below.

#### 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 Concerning Recreational Areas.

2. Entire Tract shall mean and refer to the following-described tract of land situated in Sweetwater County, Wyoming, together with all appurtenances thereto:

That portion of Section 33 (Township 19 North, Range 105 West, 6th Principal Meridian) and that portion of Section 4 (Township 18 North, Range 105 West, 6th Principal Meridian) lying Northwesterly of the Northerly right-of-way line of the existing interstate highway.

The Parcel described in Article II of this Declaration comprises only a portion of the Entire Tract. A description of the Entire Tract is set forth herein solely for purposes of identification. This Declaration is not intended to create and should not be deemed to constitute any lien, encumbrance, restriction, or limitation

upon any real property or interests in real property other than:  
(i) The Parcel which in Article II hereof is expressly subjected to the terms of this Declaration; (ii) Such Parcels as may hereafter be expressly subjected to the terms hereof; and (iii) Such Lots and Subdivisions as may now or hereafter be expressly subjected to the terms hereof.

3. Parcel shall mean and refer to each portion of the Entire Tract which, within 20 years after the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise a portion of the Recreational Areas and Facilities. The real property described in Article II of this Declaration constitutes a Parcel and consists of the tract which is identified as "Parcel No. 3" in "The Village at White Mountain Planned Unit Development, Part I" Plat referred to in Section 4 below.

4. Plat shall mean and refer to any subdivision plat, any plat or survey map of a condominium project, any plat of a planned unit development, any plat of a mobile home park, or any plat or map similar to any of the foregoing: (i) which covers a portion of the Entire Tract; (ii) which describes or creates one or more Lots; (iii) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise a part of the Development; and (iv) which is filed for record in the office of the County Clerk of Sweetwater County, Wyoming within 20 years after the date on which this Declaration is so filed. Recorded concurrently with this Declaration is a subdivision plat of "The Village at White Mountain, a Planned Unit Development, Part I," executed and acknowledged by Developer on January 8, 1974, and creating 210 separately numbered Lots. Said subdivision plat constitutes a Plat.

5. Property shall mean and refer to all of the real property which is covered by a Plat, but excluding any Parcel.

6. Lot shall mean and refer to one of the separately numbered and individually described plots of land or (in the case of a condominium project) cubicles of airspace described on a Plat: (i) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of one or more Living Units, whether the Living Unit(s) concerned are designed to be Owner-occupied or are designed to be rented to third parties.

7. Living Unit shall mean and refer to a compartment, structure, or portion of a structure which is designed and intended

for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

8. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat, but excluding any Recreational Areas. "The Village at White Mountain Planned Unit Development, Part I," referred to in Section 4 above, constitutes a Subdivision.

9. 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 proceeding in lieu thereof.

10. Recreational Areas and Facilities or Recreational Areas shall, at any point in time, mean, refer to, and consist of the Parcel described in Article II hereof, all improvements on said Parcel, all other Parcels which theretofore have been subjected to the terms of this Declaration, and all improvements on such other Parcels.

11. Undeveloped Land shall, at any point in time, mean, refer to, and consist of such portion of the Entire Tract as is then neither included within any Property or any Parcel nor improved with the completed above-ground residential or commercial structures and related on and off site improvements ordinarily in existence when a tract of land is considered to be fully developed. So long as it is not arbitrary, Developer's determination as to what constitutes the Undeveloped Land shall be conclusive.

12. The White Mountain Planned Unit Development or the Development shall, at any point in time, mean, refer to, and consist of all Recreational Areas and all Subdivisions then in existence.

13. Recreation Association shall mean and refer to THE WHITE MOUNTAIN RECREATION ASSOCIATION, a Wyoming nonprofit corporation.

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

## II. PROPERTY DESCRIPTION

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

A piece, parcel, or tract of land lying in the East half of Section 33, Township 19 North, Range 105 West of the 6th P.M., Sweetwater County, Wyoming and being more particularly described as follows:

Beginning at a point on the North line of Section 33, Township 19 North, Range 105 West, that lies N. 87° 35' 49" W. at a distance of 2,193.77 feet from the Northeast corner of said Section 33; thence from the point of beginning, S. 13° 56' 43" W. for a distance of 590.86 feet; thence S. 0° 00' 38" E. for a distance of 235.00 feet; thence S. 24° 30' 38" E. for a distance of 995.08 feet; thence S. 7° 18' 22" E. for a distance of 264.72 feet; thence West for a distance of 823.60 feet to a point on the North-South centerline of Section 33; thence S. 1° 01' 28" E. for a distance of 953.86 feet; thence N. 55° 23' 33" E. for a distance of 562.68 feet; thence S. 35° 39' 42" E. for a distance of 233.33 feet; thence N. 54° 20' 18" E. for a distance of 1,418.10 feet; thence N. 34° 36' 27" W. for a distance of 649.23 feet; to the point of beginning of a curve to the right whose radius is 869.0 feet; thence Northwesterly along the arc of said curve to the right for a distance of 403.39 feet and through a central angle of 26° 35' 49" to the point of beginning of a curve to the left whose radius is 931.0 feet; thence Northwesterly along the arc of said curve to the left for a distance of 1,172.56 feet and through a central angle of 72° 09' 42"; thence N. 13° 56' 43" E. for a distance of 285.71 feet to a point on the North line of Section 33; thence N. 87° 35' 49" W. along the North line of said Section 33 for a distance of 40.82 feet to the point of beginning.

LESS the following:

A piece, parcel, or tract of land lying in the East half of Section 33, Township 19

North, Range 105 West of the 6th P.M., Sweetwater County, Wyoming and being more particularly described as follows:

Beginning at a point that lies the following two courses and distances from the Northeast corner of Section 33: N. 87° 35' 49" W. a distance of 2,152.95 feet; thence S. 13° 56' 43" W. 347.88 feet to the true point of beginning; thence from the true point of beginning, S. 13° 56' 43" W. for a distance of 246.25 feet; thence S. 0° 00' 38" E. for a distance of 221.42 feet; thence S. 24° 30' 38" E. for a distance of 992.45 feet; thence S. 7° 18' 22" E. for a distance of 618.00 feet; thence N. 55° 23' 33" E. for a distance of 841.08 feet; thence N. 34° 36' 27" W. for a distance of 442.0 feet to the point of beginning of a curve to the right whose radius is 931.0 feet; thence Northwesterly along the arc of said curve to the right for a distance of 432.17 feet and through a central angle of 26° 35' 49" to the point of beginning of a curve to the left whose radius is 869.0 feet; thence Northwesterly along the arc of said curve to the left for a distance of 1,098.93 feet and through a central angle of 72° 27' 22" to the point of beginning.

THE NET AREA of the above-described tract of land is 25.166 acres.

TOGETHER WITH a nonexclusive road easement for ingress and egress over and across the following-described premises: A piece, parcel, or strip of land approximately one hundred (100) feet in width: (i) lying in the East half of Section 33, Township 19 North, Range 105 West of the 6th P.M., Sweetwater County, Wyoming; (ii) the centerline of which begins at a point approximately 49.93 feet Southeasterly of the Easterlymost point of the above-described tract; (iii) the centerline of which runs approximately parallel to the Southeasterly boundary of the above-described tract for the length of said boundary and then curves through an arc to the left; and (iv) the centerline of which ends at a point on the Northerly right of way line of Interstate 80 and Access Ramp located approximately South 33° 32' 55" West 3,787.21 feet from the Northeast corner of said Section 33.

ALSO, an additional tract of reasonable size situated adjacent to or partially on the above-described easement tract for use as a traffic circle. THE LOCATION of said easement is shown generally on the "Plat Boundary and Location Map" appearing on Sheet 1 of that certain subdivision plat of "The Village at White Mountain, a Planned Unit Development, Part I," recorded concurrently herewith and is subject to more specific description pursuant to that certain "Easement" dated September 24, 1973 between Willamette Development Corp., as Grantor, and Total Concept Development Corporation, as Grantee, and recorded in the records of Sweetwater County, Wyoming on October 10, 1973 as Entry No. 434401 in Book 535 at Page 598. Said easement shall TERMINATE upon dedication of said easement tract as a public road or upon dedication of another tract or creation of another easement furnishing comparable access.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities which are located within the above-described Parcel.

RESERVING UNTO DEVELOPER, however, such easements and rights of ingress and egress over, across, through, and under the above-described Parcel 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, of any Plat, or of any Declaration of Covenants, Conditions, and Restrictions related to a Plat): (i) To construct or place a Living Unit on or with respect to each and every Lot and to improve portions of the Property within each Subdivision with such structures and facilities designed for the use and enjoyment of all Owners of Lots within such Subdivision as Developer or as such assignee may reasonably determine to be appropriate; (ii) To improve the above-described Parcel with such structures and facilities (including, but not limited to, a swimming pool, a clubhouse, one tennis court, a children's play area, and arterial roads) as Developer may reasonably

determine to be appropriate; (iii) To improve Parcels hereafter becoming a part of the Recreational Areas with such structures and facilities as Developer or as such assignee may reasonably determine to be appropriate; and (iv) 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, irrespective of whether or not the particular portion developed or improved constitutes or is to constitute a Parcel or a Property. If, pursuant to the foregoing reservations, the above-described Parcel 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 foregoing reservations 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.

ALSO RESERVING such rights of ingress and egress over any roads comprising a part of the above-described Parcel as may be necessary to enable access to each and every portion of the Entire Tract, irrespective of whether or not the particular portion constitutes or is to constitute a Parcel or a Property.

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 Parcel or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.



### III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Recreation Association. Membership in the Recreation Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. Neither membership in the Recreation Association nor any of the votes attributable to a membership shall be separated from the Lot to which the same appertain. Until the first to occur of the following events, Developer shall be a Member whether or not it is an Owner:

(a) When Developer ceases to hold an equitable or legal ownership interest or the right to acquire an equitable or legal ownership interest in any Undeveloped Land.

(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.

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

Class A. Each Owner, other than the Developer until the Class B membership ceases, shall be a Class A Member. Class A Members shall, with respect to each Lot in which the interest required for membership is held, be entitled to that number of votes which is equal to the number of Living Units intended for such Lot. In no event, however, shall there exist with respect to any Lot more than that number of votes which is equal to the number of Living Units intended for such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to the following votes: (i) With respect to each Lot in which it holds the interest required for membership in the Recreation Association, six (6) times that number of votes which would exist in connection with such Lot if the Owner thereof were other than the Developer; and (ii) With respect to each acre of Undeveloped Land in which it holds an equitable or legal ownership interest or the right to acquire an equitable or legal ownership interest, fifty (50) votes. 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 or votes relating to such Lot shall be exercised as such Owners may determine among themselves. A vote or votes cast at any Recreation Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote or votes 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 or votes attributable to such Lot shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

IV. PROPERTY RIGHTS IN RECREATIONAL AREAS

1. Easement of Enjoyment. Each Owner shall have a right and easement of use and enjoyment in and to the Recreational Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner 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 Owner's Lot.

2. 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 \_\_\_\_\_

(Part \_\_\_\_\_ of the White Mountain Planned 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 \_\_\_\_\_"

\_\_\_\_\_ 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; (ii) \_\_\_\_\_

\_\_\_\_\_ ; and (iii) a right and easement of use and enjoyment in and to the Recreational Areas and Facilities described, and as provided for, in that \_\_\_\_\_

certain "Declaration Concerning Recreational Areas Within the White Mountain Planned Unit Development" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_.

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.

3. Transfer of Title. Developer agrees: (i) that it shall, on or before two (2) years from the date on which this Declaration is filed for record in the office of the County Clerk of Sweetwater County, Wyoming, convey to the Recreation Association title to the Parcel described in Article II hereof 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); and (ii) that it shall, on or before two (2) years from the date on which each additional Parcel is subjected to the terms of this Declaration, convey or cause to be conveyed to the Recreation Association a similar title to such Parcel.

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

(a) The right of the Recreation Association to suspend a Member's right to the use of any amenities included in the Recreational 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 Recreation Association;

(b) The right of the Recreation Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Recreational Areas;

(c) The right of the City of Rock Springs, the County of Sweetwater, and any other governmental or quasi-governmental body having jurisdiction over the Recreational Areas to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Recreational Areas for purposes of providing police and fire protection.

transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Recreation Association to dedicate or transfer all or any part of the Recreational 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 relating only to roadways included in the Recreational Areas may be accomplished without the vote or consent of the Members. Any other such dedication or transfer must 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.

#### V. 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 Recreation 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 Recreational Areas or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Recreation Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Development, to the extent such matters relate to the Recreational Areas. The use made by the Recreation Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Recreational Areas; maintenance, repair, and improvement of the Recreational Areas; management and supervision of the Recreational Areas; establishing and funding a reserve to cover major repair or replacement of

improvements within the Recreational Areas; and any expense necessary or desirable to enable the Recreation 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 \$20.00 times the number of Living Units intended for the Lot concerned. From and after December 1, 1974 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 Recreation 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 Recreation 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 Recreational Areas. 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 proxy are entitled to cast at a meeting duly called for the 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 Assessments. Both monthly and special assessments shall be fixed in such a way that the amount of the

assessment on a given Lot divided by the number of Living Units intended for such Lot is equal to the amount of the assessment on any other Lot divided by the number of Living Units intended for such other Lot; provided, however, that until a Lot has been fully improved with all Living Units intended therefor and all such Living Units have been occupied for the first time for residential purposes the monthly assessment on such Lot shall be equal to: (i) 100% of the monthly assessment attributable to a Lot intended for only one Living Unit, multiplied by the number of Living Units which at the point in time concerned and with respect to the particular Lot involved have actually been both completed and occupied for the first time for residential purposes; plus (ii) 5% of the monthly assessment attributable to a Lot intended for only one Living Unit, multiplied by the difference between: (A) the total number of Living Units intended for the Lot concerned; and (B) the number of Living Units which at that point in time have actually been both completed with respect to such Lot and occupied for the first time for residential purposes.

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 the last to occur of the following: (i) Substantial completion of the improvements described in Article VIII, Section 5 below which are intended to be constructed on the Parcel described in Article II above; or (ii) The date on which sales by Developer have been closed with respect to at least 25% of the 210 Lots described on the Plat referred to in Article I, Section 4 above. 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 Recreation 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 Recreation 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 Recreation 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 Recreation Association shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Recreation Association in enforcing its rights.

10. Collection by Homeowners Associations. It is recognized that in connection with at least some of the Subdivisions in the Development there will exist a homeowners association or similar body (a "Homeowners Association"), distinct from the Recreation Association, authorized to levy assessments for the purpose of operating certain common areas or amenities contained within the particular Subdivision. With respect to Lots included within a Subdivision having such a Homeowners Association, the Recreation Association shall be authorized to utilize the Homeowners Association for purposes of collecting from the Owners, enforcing liability for the payment of, and remitting to the Recreation Association, assessments levied pursuant to this Declaration.

#### VI. OPERATION AND MAINTENANCE

1. Maintenance of Subdivisions. The Recreation Association shall have no obligation regarding maintenance or care of any Lot, Living Unit, Property, or Subdivision.

2. Operation and Maintenance by Recreation Association. The Recreation Association shall provide for such maintenance and operation of the Recreational Areas as may be necessary or desirable to make them appropriately usable by the Owners and to keep them clean, functional, attractive, and generally in good condition and repair.

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

(1) 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 Recreational Areas. The name of the insured under each such policy shall be in form and substance similar to: "The White Mountain Recreation 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 Recreation Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Recreational Areas which may arise among themselves, to the public, and to any invitees or tenants of the Development 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 Recreation 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 Recreational Areas 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 Recreation Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Recreation 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 Recreation 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 Recreation Association or of any director, officer, agent, or employee of the Recreation 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.

4. Manager. The Recreation Association may carry out through a 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 Recreation Association, shall be responsible for managing the Recreational Areas for the benefit of the Recreation Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Recreation Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Recreation Association itself. It is anticipated that the Recreation Association and Total Concept Development Corporation (a Utah corporation and the Developer hereunder) 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.

#### VII. USE RESTRICTIONS

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

2. Exception for Developer. Notwithstanding the restrictions contained in Section 1 above, 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 and any assignee of Developer shall have the right to use any part of the Recreational Areas reasonably necessary or appropriate in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate creation and improvement of each and every part of the Development and sale of all Lots owned by Developer or by such assignee.

#### VIII. EXPANSION OF DEVELOPMENT

1. Additions to Recreational Areas. The Recreational Areas may be expanded by the recordation of an instrument: (1)

which either is executed by Developer or is executed by another party and consented to in writing by Developer; (ii) which refers to and identifies this Declaration; (iii) which describes the additional Parcel concerned; (iv) which describes, in general, the improvements situated or to be situated on such Parcel; and (v) in which is specifically expressed the intention that such Parcel shall comprise a portion of the Recreational Areas. The instrument accomplishing the foregoing may be a Plat, a Declaration of Covenants, Conditions, and Restrictions related to a Plat, or a separate map or other instrument. From and after the recordation of such an instrument the Recreational Areas shall include the Parcel involved and all improvements located thereon and thereafter such Parcel shall be subject to all of the provisions of this Declaration.

2. Addition of Subdivisions. The Development may be expanded by the recordation of a Plat and related instrument: (i) which either are executed by Developer or are executed by another party and consented to in writing by Developer; (ii) which refer to and identify this Declaration; and (iii) in which there is specifically expressed the intention that the Subdivision created by the Plat shall comprise a part of the Development. From and after the recordation of such a Plat and related instrument the Development shall include the Subdivision involved and thereafter the Property and all Lots contained therein shall be subject to all of the provisions of this Declaration.

3. Limitation. The right to expand the Development through the addition of Parcels or Subdivisions shall be limited as follows: (i) The Parcel or Property involved must be contained within the Entire Tract; (ii) The nature and total number of Lots included in all Subdivisions must be such that the total number of Living Units intended therefor does not exceed 3,500; and (iii) Any instrument adding a Parcel or a Subdivision to the Development must be filed for record in the office of the County Clerk of Sweetwater County, Wyoming within 20 years after the date on which this Declaration is so filed.

4. No Obligation to Develop. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Developer or any assignee of Developer any obligation respecting, or to restrict Developer or any such assignee in any way with regard to: (i) The submission of any portion of the Entire Tract to the provisions of this Declaration; (ii) The creation, construction, or addition to the Development of any Recreational Areas or Subdivision; (iii) The carrying out in any particular way or within any particular time of any developmental activities which may be undertaken; or (iv) The taking of any particular action with respect to the Entire Tract, the Development, any Parcel, or any Subdivision.

5. Required Method of Development. The improvements to be situated on the Parcel described in Article II hereof consist of a swimming pool, a clubhouse, one tennis court, a children's play area, arterial roads (the Easterly branch of the arterial road system may, at Developer's option, be improved only to the extent of one-half of its 62-foot width), and such related structures and facilities as Developer may reasonably deem to be appropriate. Developer intends and hereby obligates itself: (i) To substantially complete construction of such improvements no later than March 1, 1976; (ii) To substantially complete or cause to be substantially completed construction of the improvements to be situated on any additional Parcel within two (2) years after the date of recordation of the instrument which adds the Parcel concerned to the Recreational Areas; (iii) To conduct or cause to be conducted development of the Entire Tract in such a manner that the ability to use and enjoy the Development as it exists at any point in time shall not be dependent upon the inclusion of any additional Parcel or Subdivision; and (iv) To design or cause to be designed any Recreational Areas in such a way that they are architecturally compatible with the Development as it previously existed and to construct the same or cause the same to be constructed in a good and workmanlike manner.

6. Developer's Right to Amend. Until all portions of the Entire Tract are included in the Development, or until the right to enlarge the Development through the addition of Parcels or Subdivisions terminates, whichever event first occurs, Developer shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable: (i) To more accurately express the intent of any provision of this Declaration in light of then existing circumstances or information; (ii) To better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (iii) To facilitate the practical, technical, administrative, or functional integration of any additional Parcel or Subdivision into the Development.

#### IX. 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 Recreation Association at the time of mailing.
2. Rules and Regulations. The Recreation Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable

to aid the Recreation Association in carrying out any of its functions or to insure that the Recreational Areas are maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Subject to the provisions of Article VIII, Section 6 above, 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 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 Recreation Association (and by the Developer if the Class B membership then exists). In such instrument an officer or director of the Recreation 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 one hundred eighty (180) 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) A change in ownership rights or status respecting a portion of the Undeveloped Land which occurs prior to the date on which the last consent is signed shall be effective to change the total number of Class B votes outstanding and shall entitle any Owner of a Lot created from such portion to give or withhold his consent.

(d) 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.

(e) 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 Recreation 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 the Recreational Areas;

(c) Dedicate or transfer (pursuant to Section 4(d) of Article IV hereof) any part of the Recreational Areas other than roadways included therein; or

(d) 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 Entire Tract, the Development, or the Recreational Areas may be assigned. Developer anticipates that in the future it may sell or transfer portions of the Entire Tract to one or more third parties who themselves desire to create and develop Subdivisions or Recreational Areas from those portions of the Entire Tract involved. It is Developer's intention to make such third-party developments permissible under the terms of this Declaration. It is also Developer's intention to assure that, in the event and to the extent that such third-party developments occur, Developer itself will retain both such basic controls respecting resultant Subdivisions or Recreational Areas and such voting power concerning the Recreation Association as may be necessary or desirable to provide for a well integrated and smoothly functioning Development. With respect to any instances in which third parties create and develop either Subdivisions or Recreational Areas, the provisions of this Declaration shall be read and construed in light of the foregoing portion of this Section 6.

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 of Covenants, Conditions, and Restrictions of the Village at White Mountain 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. 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, in a Subdivision, in a Parcel, or in the Development, 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, in all Subdivisions, in all Parcels, and in the Development 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, in a Subdivision, in a Parcel, or in the Development, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9. 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":

TOTAL CONCEPT DEVELOPMENT CORPORATION

ATTEST:

[Signature], Secretary By [Signature] Richard S. Prows, President

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 12 day of June, 1974, personally appeared before me RICHARD S. PROWS and [Signature], who being by me duly sworn, did say that they are the President and Secretary, respectively, of TOTAL CONCEPT DEVELOPMENT CORPORATION, a Utah corporation, and that the foregoing Declaration Concerning Recreational Areas Within the White Mountain Planned Unit Development was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Richard S. Prows and [Signature] acknowledged to me that said corporation executed the same.

My Commission Expires: [Signature]  
Notary Public  
Residing at: [Signature]