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ARDIS W. SCHMITT  
EL PASO COUNTY  
CLERK & RECORDER

DECLARATION OF PROTECTIVE COVENANTS  
OF  
SUNSET MESA SUBDIVISION IV, FILING NO. 8  
IN THE CITY OF COLORADO SPRINGS  
EL PASO COUNTY, COLORADO

36  
Filing 8  
7/8/88

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 8th day of July, 1988, by Nor'wood Development Corporation, a Colorado corporation, herein "Developer".

RECITALS

A. Developer is the owner in fee simple of residential property (the "Property") in the City of Colorado Springs, described as follows:

Lots 1 through 6, inclusive, in Block 1, and  
Lots 1 through 17, inclusive, in Block 2,  
all in Sunset Mesa Subdivision IV,  
Filing No. 8, in the City of Colorado Springs,  
El Paso County, Colorado

B. Developer desires to place certain restrictions on the use of the above-described Property for the benefit of Developer and the grantees, successors or assigns of Developer in order to establish and maintain the character, values and amenities of the Sunset Mesa Subdivision.

IN CONSIDERATION OF the mutual covenants and conditions contained herein, Developer, for itself and its grantees, successors and assigns, does hereby impose, establish, publish, acknowledge, declare and agree with the following restrictions, covenants, and conditions, all of which shall be deemed to run with the land and inure to the benefit of and be binding upon Developer, its respective grantees, successors and assigns for the benefit of all persons who may acquire an interest in any of the Property.

1. Land Use, Building Type and Occupancy. All of the Property shall be used for single-family residential purposes only. No more than one dwelling shall be permitted on any lot within the Property as originally platted (a "Lot"). No business, professional or commercial enterprise, whether profit or nonprofit, shall be carried on, conducted or maintained upon, in front of, or in connection with any of the Property. No structure shall be erected within the Property except single-family dwellings, which shall include no less than a two-car attached garage.

2. Continuity of Construction. Construction of all structures commenced on the Property shall proceed diligently to completion and shall be completed within nine months of commencement of construction. The time for completion shall be extended by any reasonable delay resulting from labor unrest, strikes, fire, national emergency or natural calamity. Failure to proceed diligently with construction or to complete within the time permitted shall be deemed a breach of these Protective Covenants.

3. Temporary Structures. No structure of a temporary character, garage, barn, excavation, basement, trailer, tent or other out-building will be permitted on any Lot, except as may be determined to be necessary during construction and specifically authorized by the Architectural Control Committee (described in section 4 below) prior to installation.

4. Architectural Control Committee. To carry out the administration and enforcement of the provisions of these Protective Covenants, there is hereby formed an Architectural Control Committee (the "ACC"). The following named persons are hereby appointed to the initial Committee: David D. Jenkins and Kent A. Petre, of Post Office Box 792, Manitou Springs, Colorado 80829, and Charles R. Shea of 3965 Saddle Rock Road, Colorado Springs, Colorado 80918. Each of these initial members shall serve until his resignation, incapacity or death; provided, however that until December 31, 1995, Developer may remove and appoint any member of the ACC. The ACC shall meet as required to consider and approve or disapprove applications for permission to build in accordance with these Protective Covenants or to approve or disapprove any proposed change, addition or deletion of these Protective Covenants. The majority of the ACC may designate a representative to act for it. In the event of the death, incapacity or resignation of any member of the ACC, remaining members shall have full authority to designate a successor, subject to Developer's rights as provided above. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for services performed pursuant to these Protective Covenants. At any and all times after December 31, 1995, the then record owners of a majority of the Lots subject to these Protective Covenants shall have the power

through a duly recorded written instrument to change the membership of the ACC or to withdraw from the ACC or restore to it any of its powers and duties or to modify its powers and duties. Developer and the members of the ACC shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to a fraud.

5. Architectural Control. No building, structure, fence, landscaping or walls shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and the topography of the Lot have been approved by the ACC as to quality of workmanship and materials, harmony of external design with existing structures, and, as to location with respect to topography and finished grade elevation. In reviewing plans and specifications, the ACC shall consider the following criteria:

5.1. Cost of Construction. It is the intent of the ACC to maintain the integrity and amenities of the subdivision by not granting approval for a dwelling that will cost less than \$100,000.00 as of January 1, 1988. In computing the cost for purposes of this paragraph, the following items shall not be included: cost of the Lot; financing costs and expenses; recording fees; title policy fees; builder profit and administration costs. The "cost of construction" shall be adjusted monthly in accordance with the cost of living index chosen by the ACC which, in its sole discretion, most nearly reflects the increase or decrease in the cost of construction in Colorado Springs, Colorado. Notwithstanding the foregoing, the cost of construction shall not be less than \$100,000.00.

5.2 Floor Area. Excluding basement, porches, patios, covered but unenclosed areas and garages, a single-story dwelling shall contain not less than 1,600 square feet on the main level, and multi-story dwellings shall have not less than 2,200 square feet of living area. However, the ACC shall have the authority to waive these floor area requirements, in its sole discretion.

5.3 Building Setbacks. Building setbacks must comply with City requirements for front, rear, and side lot lines, as of the date of commencement of construction.

5.4 Materials and Colors. All exterior materials for roofing, siding, windows, doors, screens, and other items visible from the exterior of the dwelling must be approved by the ACC prior to installation, as to quality of workmanship and materials, harmony of external design with the surrounding area and existing structures and compatibility with Sunset Mesa Subdivision.

5.5 Exterior Lighting. Exterior lighting that is subdued and whose light source is not directly visible from adjacent dwellings will be permitted for such purposes as illuminating entrances, decks, driveways and parking areas and other purposes as approved. Exterior lights are subject to the prior approval by the ACC.

5.6 Landscaping. No trees, shrubs or other natural landscaping shall be removed or changed without the express consent of the ACC, which consent shall not be unreasonably withheld when such landscaping would interfere with the construction of a single-family dwelling approved by the ACC, or would interfere with driveways, sidewalks, site requirements or with requirements of the City of Colorado Springs, Colorado. Landscaping shall be completed in accordance with the plans submitted to the ACC as described below, within three (3) months of substantial completion of the single-family dwelling. It is the intent of the ACC to limit the use of gravel, rock or paving as part of the landscaping on the Property.

5.7 Changes or Alterations. No changes or alterations to an improved single-family dwelling, structure or landscaping plan shall be made without submittal of the proposed changes or alterations to the ACC or its consent thereto as if a party were going to build on any of the Property as described in section 6 below.

5.8 Walk-Out Basements. No dwelling on a Lot shall have a walk-out basement unless approved by the ACC.

5.9 Height Restriction. No building or structure located on a Lot at the cul-de-sac at the end of Stirrup Court shall be higher than the ridge which divides the Lots from other property surrounding the said cul-de-sac. The highest point of any building

or structure located on any Lot shall be subject to approval by the ACC.

5.10 Variances. The ACC may, by two-thirds vote, in its sole discretion, allow reasonable variances from the requirements herein. The ACC may consider topography, location of trees, configuration of the Lot, area aesthetic considerations, view or other circumstances, not limited to the foregoing types, in making its decision to allow or disallow a variance.

5.11 Fences. Fences are discouraged and will only be permitted if previously approved by the ACC. The ACC shall review fence requests on an individual basis and its approval or disapproval of such requests shall be within its sole discretion.

6. Procedure. Any party desiring to build on any of the Property, whether owner or builder, hereinafter referred to as "Builder", shall submit two sets of plans and specifications to the ACC showing the nature, kind, shape, height, materials, floor plans, location, exterior color scheme by providing paint chips, alterations, grading, landscaping plans, mailbox design, and a certification by Builder indicating the itemized cost breakdown of construction, square footage of the dwelling unit by story, and an indication of the amount of square feet that shall be finished and the amount that shall be unfinished. In addition, Builder shall indicate an address to which approval or disapproval may be mailed. All the named items shall be submitted at least thirty-five days prior to commencement of construction. The ACC shall have thirty days in which to indicate its approval or disapproval to the Builder at the address provided to the ACC. In the event the ACC fails to give such written notice of approval or disapproval within thirty days after receipt of the items described above, approval shall be deemed granted and specific, written approval will not be required. If the ACC gives written notice, it shall do so by indicating its action in a letter accompanying the return of one set of the plans and specifications submitted by Builder. The other set shall be retained by the ACC, along with a record of its action on the plans and specifications, for a period of three years from the date of submittal. Thereafter, the ACC may destroy such plans, specifications and records without any liability

being imposed on it thereby.

7. Liability. Neither the Developer nor the ACC, nor their successors and assigns, shall be liable in damages to any person or association submitting any plans and specifications or to any owner of all or a portion of the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Builder submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that he will not bring any action or suit to recover damages against the ACC, the Developer, or any other owner of the Property collectively, its members individually or its advisers, employees or agents.

8. Easements and Utility Right of Way. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear seven feet of each Lot. No structures, planting or other materials shall be placed or permitted to remain on or in the easements which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easements are on each Lot and all improvements on or in the easements shall be maintained continuously by the owner of the pertinent Lot, except for those improvements for which a public authority or a utility company is responsible. All boundary fences, when approved, shall be located on the property line or as close thereto as practical.

9. No-Build Areas. No-build areas for protection of natural features are reserved as shown on the recorded plat. No structures, planting or other materials shall be placed or permitted to remain on or in the no-build areas which may damage or interfere with the natural features of the areas. The no-build areas on pertinent Lots shall be maintained continuously by the owner of the pertinent Lot.

10. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor anything done thereon to cause annoyance, embarrassment, discomfort, or a nuisance in the neighborhood. No offensive or hazardous activity shall be permitted on any Lot or in any living unit. No annoying lights, sounds, or odors shall be permitted to emanate from any living unit. No ashes, trash, rubbish, garbage, grass

or shrub clippings, building materials, scrap materials or other refuse containers shall be stored or accumulated so as to be visible from any neighboring properties or street. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. No outdoor clotheslines or poles or other drying facilities will be placed so as to be visible from neighboring properties or adjacent streets. No dog runs, service yards, wood piles or storage areas shall be so located as to be visible from neighboring properties or adjacent streets. All Lots and yards are to be kept free of weeds and insects. No stripped down, partially wrecked, or junk motor vehicles may be stored on the Property, except in an enclosed structure which has been approved by the ACC. No maintenance, servicing, repair, dismantling, or repainting of any vehicle, boat, machine or device may be carried on except in an approved, completely enclosed structure.

11. Signs. No signs, bill boards, poster boards or advertising structure of any kind shall be erected or maintained on any Lot or structure for any purpose whatsoever except for one sign of not more than five square feet advertising the pertinent Property for sale or rent, or one sign for identification of a residence of not more than one square foot. No signs will be permitted within or in view of the area maintained by the Nor'wood Special Improvement District, without prior approval by the District's Advisory Board.

12. Vehicles. No boat, trailer, camper, tractor, commercial vehicle, mobile home, motor home, motorcycle or utility trailer or other tow trailer may be kept on the Property unless enclosed in the structure which has been approved by the ACC. None of these vehicles are to be parked in the street or where visible to the surrounding properties or adjacent streets.

13. Oil and Mineral Operations. No oil drillings, oil development operations or refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or under any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on or in

any Lot.

14. Livestock and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept in reasonable number, provided that they are for personal enjoyment and not for commercial purposes.

15. Towers, Dishes and Antenna. No towers, satellite dishes, antenna or other device for the transmission or reception for radio, television or other signals shall be permitted on any of the Property without the prior written consent of the ACC. No approval shall be granted if such tower, satellite dish, antenna or other device is visible from a street or nearby Lots.

16. Soils, Grading and Maintenance. The soils within the State of Colorado consist of both expansive soils and low density soils which will adversely affect the integrity of the Residence (defined below) if the Residence and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soil grains thereby resulting in consolidation and/or collapse of the soils.

Developer intends to sell Lots to individual purchasers, who shall construct or have constructed a single-family residence on each Lot (a "Residence"). The purchaser, or any successor thereof, of a Lot is referred to in this section 16 as an "Owner". Developer shall require the Owner to have prepared a grading plan for the Owner's Lot or Lots in accordance with specifications of the Veterans Administration or the Federal Housing Administration, which plan shall be submitted to the ACC prior to commencement of construction of a Residence. Each Lot shall be graded by the Owner in accordance with the approved grading plan. No change in the approved grading plan may be made without the prior written approval of the ACC. Anyone desiring to change the grading plan shall prepare, or cause to be prepared, a professionally engineered revised grading plans which must be submitted to the ACC prior to the change of grading. The procedure for approving grading plans shall be the same as the procedure described in section 4 for approval of plans and



specifications. Each Residence shall be located on a Lot in such a way as to be compatible with the approved grading plan and not interfere with drainage patterns established by the grading plan. The final drainage patterns established during grading of a Lot are the sole responsibility of the Owner and neither Developer nor the ACC shall have any liability whatsoever for damage caused by improper grading or drainage on any Lot.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Residence to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water into the soil surrounding the Residence. An Owner shall maintain the grading and drainage patterns of the Property established according to the approved grading plan authorized by the ACC.

An Owner shall not impede or hinder in any way the water falling on his Lot from reaching the drainage courses established for the Lot and the Property.

17. Amendment. Any provision of these Protective Covenants may be waived, amended or terminated at any time on or before December 31, 1995, by a written instrument referring to these Protective Covenants signed by Developer and the then current record owners of at least fifty percent of the Lots within the Property, with all signatures notarized, and recorded with the El Paso County Clerk and Recorder. Any provision of these Protective Covenants may also be waived, amended or terminated with respect to any particular Lot or Lots on or before December 31, 1995, by a written instrument identifying the Lot or Lots affected and signed by Developer and all record owners of the Lot or Lots affected, with all signatures notarized, and recorded with the El Paso County Clerk and Recorder. After December 31, 1995, any provision of these Protective Covenants may be waived, amended or terminated only by a written instrument referring to these Protective Covenants signed by the then record owners of at least seventy-five percent of all Lots within the Property, with all signatures notarized and recorded with the El Paso County Clerk and Recorder.

18. Enforcement. Enforcement of these Protective Covenants, special conditions, stipulations, and agreements shall rest with the

Developer and the ACC. If any person shall violate or threaten to violate any of the provisions of these Protective Covenants, the Developer, the ACC or any owner of any of the Property, in addition to all other available remedies, may enforce the provisions of these Protective Covenants by instituting such proceedings at law or in equity as may be appropriate to enforce the provisions of these Protective Covenants, including a demand for injunctive relief to prevent or remedy the threatened or existing violation of these Protective Covenants and for damages. In the event of any litigation to enforce these Protective Covenants, the prevailing party shall be entitled to recover all costs and attorneys' fees incurred by such party. In the event of any violations, and in addition to any remedies available, Developer or the ACC shall have the right of entry on the Property owned by the party in violation, and may cure any deficiency or violation, without jeopardy of any claim of trespass, at the expense of the party in violation. Developer or ACC may order any work necessary to cure the deficiency or violation, without being guilty of or liable for trespass, at the expense of the party in violation. Developer or the ACC may order any work necessary to cure the deficiency or violation.

19. Penalties and Expenses of Enforcement; Liens for Nonpayment. If any person shall violate any of the provisions of these Protective Covenants or of the rules and regulations promulgated by the ACC pursuant to these Protective Covenants, or causes expenses to Developer or the ACC as a result of such violations, including the expenses incurred in curing any violation or deficiency, and fails to or refuses to pay such expenses, then such expenses shall be chargeable to the owner of the Property on which the work has been done, including interest from the date of billing at the highest permitted rate for a consumer loan or sale in the State of Colorado, and shall constitute a lien thereon superior to all other liens or encumbrances except (a) tax and special assessment liens in favor of any assessing unit and (b) all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrances and including additional advances made thereon prior to the creation of such a lien pursuant to this section 19.

To evidence such a lien, Developer or ACC shall prepare a written notice setting forth the amount of the unpaid indebtedness, the name of the owner of record of the Property subject to such lien, and the legal description thereof. Such notice shall be signed by Developer or by a member of the ACC and shall be recorded in the office of the Clerk and Recorder of the County of El Paso, State of Colorado. Such lien shall attach from the date of the failure of payment of such assessment of expenses and may be enforced by foreclosure on the defaulting owner's property. In the event of such foreclosure, the owner of the Property subject to such foreclosure shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice for claim of lien and all attorneys' fees incurred by Developer or the ACC. The grantor hereunder shall have the power to bid in on the Property at any foreclosure sale and shall have the right to acquire and hold, lease, mortgage or convey it.

The amount of any such expense as assessed against the Property shall also be a personal debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid expenses may be maintained without foreclosing or waiving the lien securing the debt, and shall include all costs and expenses thereof, including all attorneys' fees incurred to obtain such judgment.

Any mortgage holder or similar encumbrancer holding a lien on the subject Property, may pay any unpaid expenses created hereunder with respect to the Property, and upon such payments such encumbrancer shall have a lien on the Property for the amounts paid, the lien to be of the same priority as the lien of his respective encumbrance.

20. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and Covenants contained herein shall be for the benefit of and be binding upon each Lot described herein and each owner of the Property, their respective successors, representatives and assigns, and shall continue in full force and effect for a period of twenty-five years from the date they are recorded, after which time said Protective Covenants shall be automatically extended five successive terms of ten years each.

21. **Waiver.** Failure to insist upon the enforcement of any one or more of the Covenants or restrictions contained herein shall not constitute a waiver of that covenant or of any of the remaining covenants or restrictions. The granting of a waiver by the ACC shall be applicable only to the specific matter waived, and shall not be deemed a waiver of any lien or subsequent request.

22. **Severability.** Invalidation of any one of these Covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.



8<sup>th</sup> day of July, 1988

Attest

NORWOOD DEVELOPMENT CORPORATION  
a Colorado Corporation

BY: Mary R. Decker  
Mary R. Decker, Secretary

BY: Kent A. Petre  
Kent A. Petre, President

STATE OF COLORADO )  
                              ) SS.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of July, 1988, by Kent A. Petre as President and Mary A. Decker as Secretary, respectively, of Norwood Development Corporation, a Colorado corporation.

Witness my hand and official seal.

My commission expires July 30, 1991



Marlene M. Harrison  
Notary Public