

DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
CIMARRON NORTH SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by GREAT HOMES, LTD., hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Mesa, State of Colorado, which is more particularly described as:

Lots 1 through 19, CIMARRON NORTH SUBDIVISION, all a part of the SW 1/4 NE 1/4, SECTION 3, T.1S. R.1W, UTE MERIDIAN, AS RECORDED AMONGST THE PUBLIC RECORDS OF MESA COUNTY, COLORADO

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, and be appurtenant to, the real property and be binding on all parties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Cimarron North Homeowners Association, its successors and assigns.

Section 2. "Declarant" shall mean and refer to GREAT HOMES, LTD., its successors and assigns if such successors or assigns should acquire more than two undeveloped Lots from the Declarant for the purpose of development.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of

an obligation.

Section 5. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II HOMEOWNERS ASSOCIATION

Section 1. Declarant shall hereafter organize a Homeowners Association under the Non-Profit Corporation Act of the State of Colorado. In accepting a deed or contract for any Lot, the Grantee therein agrees to and shall be a member of the Association and shall be subject to the obligation upon such members, and agrees to abide by the provisions of the Association Articles of Incorporation, Bylaws, rules and these restrictions, covenants and conditions.

Section 2. The Association shall be responsible for maintaining and operating the irrigation system and regulating the water rights attributable to the Property and other acts as follows:

2.1 Be responsible for the operation and maintenance of the detention facility constructed on the property.

2.2 The Association will control the fencing along F ½ Road, which said fencing must meet the requirements of the zoning and development code of the City of Grand Junction. Fencing along F ½ Road will be a subdivision perimeter fence and must be built as one unit. Individual fencing of yards along F ½ Road will not be allowed. There shall be a landscaping area between the fence and sidewalk. Said area will be maintained by the Homeowner's Association. The fencing along F ½ Road will be built as one unit all at the same time at the cooperative expense of all of the homeowners abiding F ½ Road. Said fence will be maintained on the interior by such homeowner whose lot the fence is on and the exterior shall be maintained by the Homeowner's Association.

2.3 Act to enforce the provisions of this Declaration or any part thereof, and

In addition, the Association may, upon an affirmative vote of two-thirds (2/3) of each class of members, assume responsibility for any common community service for the subdivision not provided by some other organization.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be Declarant and, Declarant shall be entitled to nineteen (19) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, which ever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on March 1, 2084.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- 1.1 Annual assessments of charges, and
- 1.2 Special assessments for capital improvements, with such assessments to be established and collected as hereinafter provided, and
- 1.3 Any other charges properly assessed hereunder.

No transfer of title to the Property by any means shall extinguish this lien. All such assessments,

together with interest, and all costs and reasonable attorney's fees incurred by the Association in enforcing its rights under this Article IV and for any other Article of this Declaration, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees as herein provided, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents on the Property and for the improvement and maintenance of the irrigation system.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Forty-five Dollars (\$45.00) per Lot.

- 3.1 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
- 3.2 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased more than 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- 3.3 The Board of Directors may fix the annual assessment of an amount not in excess of the maximum, plus increases as permitted above.

**Section 4. Declarant's Assessment Obligations.** The owners, except Declarant, shall be obligated to pay the assessment imposed by the Association on Lots owned by Declarant. Declarant agrees to pay to the Association a sum equal to the difference between the cost of operating and maintaining the irrigation system, exclusive of reserves, and the amount of funds payable to the Association by other Owners. This obligation of Declarant to subsidize the operations of the Association shall terminate when Declarant ceases to be an Owner.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, pre-construction, repair or replacement of a capital improvement to the irrigation system, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Reserve.** The Association may establish a reserve fund for the maintenance, repair, and replacement of any part of the irrigation system that must be replaced periodically, and such reserve fund shall be funded through the annual assessments and not by extraordinary special assessments.

**Section 7. Notice and Quorum for any Action Authorized Under Sections 3 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 5 shall be sent to all members not less than 10 days nor more than 40 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 8. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, except for Declarant.

**Section 9. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the transfer of the property constituting the irrigation system to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge (not to exceed \$100,000.00), furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 10. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the property and/or the Owner(s) thereof to collect any monies due hereunder and not paid. In addition to recovery of the monies due, the Association shall also recover all costs of litigation including a reasonable attorney's fee. No Owner may waiver or otherwise escape liability for the assessments provided for herein by non-use of the irrigation system or abandonment of a Lot.

**Section 11. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be superior (prior) to all other liens and encumbrances, except the lien of

any first mortgage on the Lot, and except for tax and special assessment liens in favor of a governmental assessing entity. Each Owner hereby agrees that such Association assessment lien shall be superior to any homestead exemption provided by state, federal law, and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot shall signify such assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V RESTRICTIONS

Section 1. No portion of any Lot shown on any recorded plat of any filing or phase of the Subdivision approved by the governmental authority having jurisdiction over such approval process shall be used other than for residential purposes or home occupations. No residence shall be occupied by more than one family. No agricultural or commercial use shall be permitted, except home occupations. For purposes of this section, "home occupations" shall mean an occupation by the Resident conducted totally within the Residence which does not entail the employment of third persons on the premises.

Section 2. The following building restrictions will apply to the Lots:

- 2.1 The total finished living area of any Residence of one level shall be not less than one thousand (1,000) square feet. The total finished living area of any Residence having more than one level shall not be less than twelve hundred (1,200) square feet. The square footage shall be determined by using outside measurements for finished living area totally above ground, such that garages, porches, patios, basements, and garden levels shall be excluded.
- 2.2 No Residence shall exceed twenty-nine (29) feet in height measured from original grade to the highest part of the roof.

Section 3. Parking is limited to those areas adjacent to the residence and on the driveway of said residence. All trailers, boats, snowmobiles, recreational vehicles, and trucks over 3/4 ton, which are not kept in the garage, must be parked in the side yard or rear yard of the residence. Any such vehicles may only be parked in the street or driveway temporarily while loading or unloading. On street parking of such vehicles is prohibited. No boats, trailers, buses, recreational vehicles, inoperative private automobiles or inoperative vehicles of any kind, camper rigs off trucks, or boat rigs, or other similar items shall be parked or stored permanently on any public

street, right-of-way, or driveway within the subdivision. Permanent or semi-permanent storage for such vehicles or items must be screened from public view, either in a garage or behind a screen or fence, of at least six feet in height, not farther forward than the front building line of the dwelling unit. All screens for above named items must be approved in advance by the Architectural Control Committee.

Section 4. Except for construction and marketing facilities of Declarant, its successors and assigns, no structure of a temporary nature, tent, garage, trailer house, barn or other out building or basement shall be used on any Lot at any time as either a temporary or permanent residence. All structures shall be of new construction.

Section 5. No Lot shall be re-subdivided unless approved in writing by the Homeowners representing a majority of the Lots in Cimarron North Subdivision. One single family Residence may be built on any two lots in the subdivision.

Section 6. No planting or fence shall be placed on any Lot so as to obstruct the view of any street at any intersection.

Section 7. Except for the benefit of Declarant, its successors and assigns during its construction and marketing period, no Lot shall be used or maintained as a dumping ground or as a storage area. Trash, garbage or other waste must be kept in sanitary containers properly screened in accordance with the standards established by the Architectural Control Committee. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood or a neighbor.

Section 8. No oil, natural gas, mining, quarrying or other similar development of any kind shall be permitted within the subdivision nor shall survey stakes pertinent to these operations be permitted on any portion of the platted area.

Section 9. No sign of a promotional nature shall be displayed to the public view except that one sign of no more than six square feet may be used to advertise property for sale or rent, and except for signs of any dimensions used by Declarant, its successors and assigns, for marketing purposes during its development, construction and sales period, and further except for street signs at the entrances to the Subdivision which may be of any design not prohibited by Mesa County, Colorado.

Section 10. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Household pets must be kept fenced in or on a leash at all times and must not be allowed to run loose. All feces of any pet shall be removed and placed in a sanitary receptacle immediately upon deposit.

Section 11. Except for temporary lines installed for construction and marketing purposes, all electrical services and telephone lines shall be placed underground.

Section 12. In the event of any damage, or interference with the operation of the irrigation system which occurs from any act or omission of an Owner, such Owner shall be responsible for the attributable costs of restoring the irrigation system. At the election of the Board of Directors of the Association, such Owner may be assessed for such costs in the same manner as provided in Article IV hereof.

Section 13. Each Owner shall have a right to use only his pro-rata share of available irrigation water, as determined by the Irrigation District having authority over Cimarron North Subdivision and the Board of Directors of the Homeowner's Association. Charges for available water shall be assessed against each Lot.

Section 14. The Association shall have the right to monitor, regulate, and limit the use of water by each owner, within the limits of each Owner's pro-rata share, as the Association may determine necessary based upon lot area.

#### ARTICLE VI ARCHITECTURAL CONTROL

Section 1. An Architectural Control Committee (the "Committee") is hereby established which shall consist of three or more persons to be designated by Declarant, and who shall serve subject to the pleasure of Declarant until issuance of a Certificate of Occupancy for the last Lot in the Property by the appropriate governmental body in Mesa County having proper jurisdiction therefore. Thereafter, the Committee members shall be chosen as set forth in the Articles of Incorporation or By-laws of the Association. Committee members may resign in writing at any time, and acceptance of the Association shall not be required for such resignation to be effective. A majority of the Committee may act for the whole Committee.

Section 2. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved as to the harmony of external design and location in relation to surrounding structures and topography by the Committee. Two complete sets of plans and specifications (which shall include the proposed location of any structure upon any Lot with respect to other structures upon such Lot and those upon adjacent Lots) shall be submitted to the Committee and approval shall be evidenced by written endorsement on such plans and specifications signed by at least two members of the Committee. No changes or deviations in or from of such plans and specifications, as approved, shall be made without the prior written consent of the Committee. In reviewing submittals, the Committee shall consider the nature and use of the proposed installation, construction, remodeling or use, together



with its shape, dimensions, location, color(s), cost and the materials to be utilized. Neither the Committee nor any member thereof shall be responsible for any structural defects in such plans or specifications, nor for actions taken in good faith pursuant to the authority granted them. The Committee shall have thirty (30) days in which to respond to any request. If the Committee shall not have issued its response within such thirty-day period, the plans and specifications shall be deemed to have been approved. The Committee shall not be liable for damages to any person submitting requests for approval or to any owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests. The Committee shall record from time to time at a notice of the current address to which submittals shall be delivered.

## ARTICLE VII ASSOCIATION WATER

**Section 1. Management of Association Water.** The Association shall have the exclusive authority to allocate, deliver, manage, and control the use of Association Water. Further, the Association shall have the exclusive authority to own, operate, repair, and maintain the Irrigation Facilities. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand.

**Section 2. Easements for Ingress and Egress.** All Irrigation Facilities shall be owned, operated, and maintained by the Association. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on any recorded plat of any portion of the Subdivision for the purpose of operating, repairing, or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, and maintenance of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which shall interfere with the ownership, operation, and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure.

**Section 3. Flow Restriction.** The Association shall install and maintain flow restrictor valves on the irrigation pipelines delivering irrigation water to each Lot. So long as the amount of Association Water is no more than 46 shares of Grand Valley Irrigation Company stock, those flow restrictor valves shall permit delivery of no more than 15 gallons per minute to each Lot.

ARTICLE VIII  
GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all or any restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision(s) which shall remain in full force and effect.

**Section 3. Notice.** Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the Secretary of the Association. If the Owner fails to provide an address to the Secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the Mesa County, Colorado real estate records by which that Owner took title and to the street address of that Lot, if any.

**Section 4. Section Headings.** The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration.

**Section 5. Binding Effect.** The provisions of this Declaration shall be binding upon and for the benefit of Declarant and each and all of his heirs, successors in interest, and assigns.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 29 day of May, 1997.

GREAT HOMES, LTD.

Declarant

By: 

Bret D. Seligman, President