

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by OXFORD AVENUE, LTD., a Colorado limited partnership, 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:

Beginning at the Northwest Corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, thence South 00°48'00" East along the East line of the W $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 7 a distance of 1637.56 feet,
thence North 59°11'00" West 269.49 feet, thence South 00°48'00" East 710.75 feet to a point on the Northeasterly right of way of Colorado Highway 340, thence North 59°01'04" West along said Northeasterly right of way a distance of 661.59 feet, thence North 00°43'52" West 1503.51 feet, thence North 72°[sic]31'13" West 112.02 feet, thence North 00°42'31" West 332.52 feet, thence South 89°59'44" East 896.00 feet to the point of beginning.

NOW THEREFORE, Declarant hereby declares that all of the properties 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, the real property and be binding on all parties having any right, title or interest in the described properties, 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 VINEYARD HOME OWNERS ASSOCIATION, its successor and assigns.

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

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

Section 4. "Common Area" shall mean all real property (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

TRACT "A", "B", "C", "D" and "E" OF THE VINEYARD, FILING NO. ONE.

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

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

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchaser who reside on the property.

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 the 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 the Declarant and shall be entitled to three (3) 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, whichever 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 January 1, 1985.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

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

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for:

- (a) The maintenance and improvement of the Common Area.
- (b) The maintenance of the sanitary sewer service laterals from the mains of Mesa County to the individual houses of the Owners.
- (c) The maintenance of the domestic water service laterals from the master meter of the Ute Water Conservancy District to the individual houses of the Owners.
- (d) The maintenance and operation of the irrigation water system.
- (e) The maintenance and improvement of the landscaping located in the several parking plazas and along Arbor Boulevard and East and West Arbor Circle.
- (f) Payment of the billings to the Association for sewer service by the City of Grand Junction, for domestic water service by Ute Water Conservancy District and for the annual assessments for irrigation water by Redlands Water and Power Company.

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 FOUR HUNDRED EIGHTY DOLLARS (\$480.00)

(a) 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 7% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 7% 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.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of 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 requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

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

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

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

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No sale, or transfer, or cancellation or forfeiture of any such executory land sales contract shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from lien thereof.

Section 10. Homestead. The lien of such assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 11. Mesa County. The County of Mesa or its successor in governmental interest, shall be party to this Declaration as it concerns the maintenance of Common Area, and may, if the Owners fail to do so and it seems desirable that action be taken by the County, assess the Properties to provide monies for the maintenance of the Common Area, such assessments having the effect and enforcement characteristics of other assessments referred to in this Declaration.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Use of Sites.

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

(b) No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

(c) The Board may set a fee depending on the nature and extent of the plans for the cost of its examination. The Board shall have the right to refuse approval for construction of any improvement which in its opinion is unsuitable because of aesthetic or other reasons. The fee shall not be refundable.

(d) Storage areas, service yards, trash cans or equipment shall be adequately screened by planting or construction. No radio, short wave or television antenna over five feet above the highest roof line is permitted unless approved by the Association.

(e) No obnoxious, offensive or other activity which would constitute a public or private nuisance or annoyance to the neighborhood will be permitted.

(f) Household pets will be permitted, so long as they remain in direct control of the Lot Owner. Dangerous or wild animals, livestock or poultry will not be kept.

(g) No firearms, fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties.

(h) Maintenance and upkeep of the landscaping on each Lot and the public rights-of-way contiguous to a Lot shall be the responsibility of the Lot Owner. No weeds or trash will be allowed to accumulate in either area.

(i) Vehicle parking within the Properties shall be restricted as follows:

1. Daily-use automobiles and small trucks, on the Lots (driveway or garage) or in the designated parking plaza.

2. Trucks larger than pickup size used by Owners in their jobs, only in the special secured area provided.

3. Limited-use and excess automobiles and small trucks only in the special secured area provided.

4. Travel trailers, campers, jeeps and other such recreational vehicles only in the special secured area provided.

5. Except for short-term overflow situations, parking will not be permitted along the streets of the Properties.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration

thereof in proportion of such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Conflict. In case of conflict between the Declaration and the Articles of Incorporation or the By-Laws, the Declaration shall control. In case of conflict between the Articles of Incorporation and the By-Laws, the Articles of Incorporation shall control.

Section 5. Management or Maintenance Contracts. Each and every management or maintenance contract made by the Association during the period when the Declarant or other

developer controls, shall terminate no later than thirty days after the termination of control by the Declarant or other developer. The provisions of this paragraph shall be contained in any such management or maintenance contract.

Section 6. Exterior Maintenance. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 7. Sewer and Water Services. In the event the Homeowners Association is dissolved, it is understood that Ute Water Conservancy District may, if it desires, install a separate tap and meter for each Owner, the payment for which would be 20% of the tap fee prevailing on the date of installation. Billing for both sewer and water service would then be directly to the individual Lot Owner at the then prevailing rate for such individual service. At any time the Association or any other party should decide to construct within the Properties a swimming pool, laundromat, club house or similar facility requiring water supply, the Association or other party shall provide and pay for the total costs of the back-flow preventers.

Section 8. Street/Area Lighting. All lots are subject to and bound by Public Service Company tariffs which are now and may in future be filed with Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision (Properties), together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The owner or owners shall pay as billed a portion of the cost of public street lighting in the subdivision (Properties) according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17th day of August, 1981.

DECLARANT:
OXFORD AVENUE, LTD

/s/ Robert H. Gardner
Robert H. Gardner, General Partner

/s/ Roger W. Ladd
Roger W. Ladd, General Partner

ADDENDUM TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS the undersigned Declarants are all the owners of record of the following described real estate located in the County of Mesa and State of Colorado:

The Vineyard Filing No. One

WHEREAS certain Covenants, Conditions and Restrictions have been recorded August 18, 1981 in Book 1329 at pages 55 thru 67 inclusive in the records of Mesa County setting forth the rights, duties and obligations of the Vineyard Home Owners Association, its successors and assigns with respect to the above property; and,

WHEREAS the undersigned desires to supplement those Covenants, Conditions and Restrictions.

NOW THEREFORE, Declarant amends Article IV, Section 2, by the addition of a paragraph (g); and Article IV, Section 3 and paragraph (a); to read as follows:

Article IV, Section 2.

- (g) The maintenance and upkeep of the grass areas of the Lots of the individual Owners, which shall include, but not be limited to irrigation and mowing.

Article IV.

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 Seven hundred twenty dollars (\$720).

- (a) 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 by the Board of Directors, without a vote of the membership, by the amount of any actual increase in sewer and/or water service rates charged by the City of Grand Junction and/or Ute Water Conservancy District, plus a sum not more than 7% above the maximum annual assessment for the year previous.

Dated this 18th Day of March, 1982.

DECLARANT AND RECORD OWNERS

/s/ John A. Baxter Rose Marie Baxter

John A. Baxter & Rose Marie Baxter

/s/ Gary Henderson

/s/ Kathryn A. Henderson

Gary Henderson & Kathryn A. Henderson

/s/ Alan K. Schorfheide

Alan K. Schorfheide

/s/ Michael L. Brach

/s/ Connie K. Brach

Michael L. Brach & Connie K. Brach

/s/ Rev. Robert C. Jacobson

/s/ Muriel M. Jacobson

Rev. Robert C. Jacobson & Muriel M. Jacobson

/s/ Richard D. Wambaugh

Richard D. Wambaugh

/s/ Alvin K. Mayo H. Kenneth Henry
Alvin K. Mayo & H. Kenneth Henry

Oxford Avenue, Ltd., A Limited Partnership

/s/ Robert H. Gardner
Robert H. Gardner, General Partner

/s/ Roger W. Ladd
Roger W. Ladd, General Partner

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 18th day of March,
19 82 by above named Declarant and Record Owners.

Witness my hand and official seal.

/s/ Judith A. Buford
Notary Public

My commission expires: 9/22/82
652 White Avenue
Grand Junction, Co. 81501