

DECLARATION OF PROTECTIVE COVENANTS
FOR ELECTRIC MOUNTAIN RECREATION
SUBDIVISION

NEWTON B. IRVIN is referred to herein as the "Developer" and the "Owner";

TO THE PUBLIC:

This Declaration of Protective Covenants, made this _____ day of _____, 1977, on a tract of land located in Delta County, Colorado, described as follows, to-wit:

Homestead Entry Survey No. 347 in Sections 20, 29 and 30, of Township 11 South, Range 91 West of the 6th P.M., according to government survey dated October 23, 1925, and recorded April 15, 1976 under reception number 356980. EXCEPTING THEREFROM a tract described as beginning at Corner No. 3 of said Homestead Entry Survey No. 347 and thence South 71°22' East 1393.26 feet; thence South 18°38' West 312.65 feet; thence North 71°22' West 1393.26 feet; thence North 18°38' East 312.65 feet to the point of beginning.

NOW, THEREFORE, the Developer and Owner of the real property hereinabove described for the use and benefit of himself and all persons claiming and to claim any part of the hereinafter described real property, by, through or under him, hereby declares, represents, agrees, restricts, and covenants that the use, enjoyment, and ownership of the hereinafter described real property, shall be and the same is hereby restricted, limited, conditioned and protected by the imposition of the following restrictions and limitations, to-wit:

1. GENERAL PURPOSES:

1.1 General Purposes - Owner and/or his assigns, now have title in fee simple, subject to certain liens, reservations, restrictions and easements now of record, to certain real property in Delta County, Colorado, described above. Developer and Owner expects to develop the above described real property as a residential recreational area and it is expected that the owners of the property within this area will have certain common interests. All of said residential and recreational

area will be developed with the objective of establishing the area as a scenic or forested mountain residential area of the highest possible quality, value, desirability and attractiveness where the natural beauty and view and the natural and unspoiled state of the property will be preserved to the greatest extent possible and where persons may reside, subject to the conditions contained herein, and find seclusion and a pleasant environment. All of the said residential area will be developed with objectives designed to enhance the value of and to benefit all property within this area. Because of the lack of certain governmental services such as maintenance of public roads and fire protection, this area may not be suitable as a year-round residential area; rather, it is anticipated that the owners of the real property described herein will use their property only intermittently for purposes such as vacations and other recreational activities.

1.2 Particular Purposes - This Declaration is executed to define and describe certain provisions, covenants, conditions, and restrictions which shall be made applicable to all property within the above-described areas; to establish the manner and extent to which property shall be made subject to all of the provisions, covenants, conditions and restrictions set forth in this Declaration; and to establish the effect of such provisions, covenants, conditions and restrictions set forth in this Declaration.

II. SUBJECTIONS OF PROPERTY TO DECLARATION:

2.1 Property Which Is Covered - Any real property located within the described parcel is subject to all the provisions, covenants, conditions and restrictions contained in this Declaration, unless otherwise provided herein.

III. LAND USE:

3.1 Residential and Recreational Purposes - No part of the subject property shall be used for anything other than residential purposes and such purposes which are customarily incident thereto including recreational purposes. No parcel

shall be improved except with a residential structure or complex designed to accomodate no more than a single family and its servants and occasional guests plus such other improvements and structures as are necessary or customarily incident to a single family resident.

3.2 Minimum Size - No residential dwelling shall be erected or placed on any lot in this subdivision unless said dwelling has a total ground floor area, exclusive of porches or garages, of 600 square feet or more.

3.3 Subdivision of Property - None of the lots in this subdivision shall be further subdivided.

3.4 Governmental Services - Because of the distance of this subdivision from any inhabited area, the government of the County of Delta is not obligated under any circumstances to provide the owner or owners of any of the described property with any of the governmental services ordinarily associated with being a resident of a particular County. Such services would include, but not necessarily be limited to, schools, fire protection, mail service and maintenance of roads to or within the property herein described. Insofar as possible, the County of Delta will endeavor to provide law enforcement services. As the result of the lack of such governmental services, the general location, limited utilities and lack of continuous access, it is anticipated that the usage of this subdivision will be for vacation homes, which usage will be intermittent in nature. These protective covenants do not prevent the usage of the property for a permanent residence, but any such owner must utilize the property as a permanent resident subject to these covenants.

3.5 Access - This property is located in and surrounded by the Gunnison National Forest. Designated forest roads provide access to the property. However, those roads are not maintained by either Delta County or the Forest Service. As a result, access is physically limited by the effects of weather and the conditions of the roads as they exist at any

given time.

IV. NUISANCES:

4.1 Activities - No noxious or offensive activities shall be conducted on any part of the subject property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the area nor shall anything be placed on any property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

4.2 Restriction on Signs - No signs or advertising devices of any nature shall be erected or maintained on any property except as necessary to identify the ownership of the property and its address (in this case a sign of not more than three (3) square feet will be allowed for each site); or to show the property is for sale or rent; or as may be necessary or desirable to give directions or cause or warn of danger; and such signs as may be otherwise required by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the property only with the prior written approval of the Owner and Developer, his successors or assigns, provided which approval shall be given only if such signs shall be attractive in design and in keeping with the scenic and rustic nature of the area and shall be as small in size as is reasonably possible, and shall be placed or located as directed or approved by the Owner and Developer, his successors or assigns.

4.3 No Mining or Drilling - No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring or removing oil, gas or their hydrocarbons, minerals, rocks, stones, gravel or earth. This covenant specifically does not restrict the use of any of the described property for the purposes herein mentioned by any third parties which have been granted leases for any of the purposes mentioned by the Owner and Developer of this property. Any purchaser of

property in the subdivision specifically takes subject to any outstanding mineral reservations or leases, including, but not limited to the following:

Oil and Gas Lease from E.M.D.R. Corporation, a Colorado Corporation to William C. Garrett, recorded April 19, 1972, in Book 436 at Page 244, and any and all assignments thereof or interests therein.

4.4 Storage - Open storage of building materials will be permitted during construction only, for a period not to exceed twelve (12) months. No abandoned vehicles shall be permitted on any lot. A vehicle shall be considered abandoned if it remains non-operative and outside a building for a period of three (3) months.

4.5 No Business or Commercial Activity - No property shall be used at any time for business or commercial activity, provided, however, that the Developer or his nominee may use any property for model homes or real estate sales offices.

4.6 Occupancy Limitations - No residential structure on any parcel of property shall be used for living purposes other than for what it was designed to accommodate comfortably. No portion of any property shall be used as a residence or for living purposes other than the permitted residence structure on a parcel of property.

4.7 Maintenance of Property - All property, including all improvements on any property shall be kept and maintained by the owner thereof in a clean, safe, attractive and slightly condition and in good repair.

4.8 No Hazardous Activities - No activities shall be conducted on any parcel of property and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or be permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except for such campfires or picnic fires or such controlled and attended fires

required for clearing or maintenance of land; provided, however, nothing herein contained shall be construed as authorizing the violation of any Federal, State, County laws or regulations concerning fires.

4.9 No Annoying Lights, Sounds or Odors - No

lights shall be emitted from any property which are unreasonably bright or cause unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying; and no odor shall be emitted on any property which is noxious or offensive to others.

4.10 No Unsightliness - No unsightliness shall

be permitted on any parcel. Without limiting the generality of the foregoing: (a) All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view; (b) Refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure or appropriately screened from view.

4.11 No Hunting - No hunting is permitted upon or within the boundaries of the above-described property.

V. STRUCTURES:

5.1 Exterior - All structures shall have an exterior surface of natural wood (which may have a clear finish or stain), stone, brick, cement block, cinder block or glass or a combination thereof. Other materials may be used for exterior walls, provided that such materials are designed and located in harmony with the surrounding structures and natural land features. No structure shall have an exterior surface of tar paper or asbestos. All buildings must have the outside finish completed within a twelve month (12) period after construction is started.

5.2 Tanks - Any tank for use in connection with any residence on the site, including tanks for storage of gas,

fuel oil, gasoline or oil must be buried or kept concealed.

5.3 Chimney - Chimney design and construction for each dwelling shall be such that it provides for and contains a spark arresting device.

5.4 Temporary Structures - No trailer, mobile home, or basement dwelling, nor any other structure of a temporary nature, may be erected or placed on any lot for use as a permanent or temporary dwelling; provided, however, that camping on a lot by an owner or his guests will be allowed in tents, campers, camp trailers or other similar structures for so long as such structure is not located on the property for a continuous period in excess of sixty (60) days in any one year. Notwithstanding the above, a temporary structure such as a mobile home, trailer, camper or tent shall be allowed on the property for a continuous period of twelve (12) months during the period of time that the permanent structure is being constructed.

5.5 Out-Buildings - Out-buildings of a permanent nature may be constructed upon the subject property if they are in substantial conformity with the character of the main structure and only if approval for the construction of such out-building has been granted by the Owner and Developer, his successors or assigns.

5.6 Setback - No dwelling shall be constructed nearer than one hundred (100) feet from any public roadway or private roadway or easement for right-of-way purposes maintained by the Association for the use of all its members. No building shall be located closer than twenty (20) feet to any adjoining subdivision lot. *? Setback to be maintained on all lots*

5.7 Animals and Livestock - A) All grazing animals will be permitted, provided that the owner of the land grazed upon shall abide by accepted range management standards

for control of erosion and protection of vegetation, and further provided that such animals are maintained within the confines of the property of their owner, lessee or caretaker unless under the direct control and supervision of such owner, lessee or caretaker. B) Domestic house pets will be permitted so long as they are kept at all times under reasonable control of the owners.

VI. LANDOWNERS ASSOCIATION:

6.1 Formation - Immediately upon the approval of the subdivision of the described property by the proper authorities, The Electric Mountain Recreation Subdivision Landowners Association, Inc., shall be formed and incorporated at the Owners' and Developers' expense, as a Colorado Not-for-Profit Corporation, to be and constitute the Association to which reference is made in the Declaration, to perform functions as provided in this Declaration and to further the common interests of all owners of the property which are subject to any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The Association shall be obligated to and shall assume all and perform all functions and obligations imposed upon it or contemplated for it under this Declaration, its Articles of Incorporation and By-Laws. The Association shall have all powers necessary or desirable to effectuate these purposes. It shall not engage in commercial profit making activity. Until the Association is formed, the Owner and Developer shall assume all responsibilities, duties and obligations of the Association provided by this Article VI. There shall be an automatic membership in the Association for each parcel of the above-described real property held in fee simple title or held by a purchaser pursuant to a contract of sale. If title to a parcel of property, as aforesaid, is held by one or more than one person or entity, the membership appurtenant to that property shall be shared by all such persons or entities

in the same proportionate interest and by the same type of ownership in which fee title or title under contract to that property is held. Upon conveyance of ownership of any parcel, membership in the Association shall automatically pass to the new owner or owners upon transfer of fee simple title to that property or upon transfer of title by means of a contract of sale. Each owner or owners of said parcels shall be at all times entitled to the benefits and subject to the burdens relating to the membership in the Association.

6.2 Board of Directors - Elected by Members

of Association - The affairs of the Association shall be managed by a Board of Directors elected annually by the members of the Association. The number of Directors, election of members of the Board of Directors, their tenure in office and duties and obligations shall be set forth in the By-Laws.

6.3 Rights of the Association - The Association shall have and may exercise, by and through the Board of Directors, the following rights, to-wit:

- a) Any right or privilege given it by this Declaration, the Articles of Incorporation and By-Laws of the Non-Profit Corporation;
- b) Any other right and privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, the Articles of Incorporation and the By-Laws, as permitted by law, including, without limiting the generality of the foregoing, the following:
 - (i) to provide road maintenance, as set forth in Paragraphs 6.5 and 6.7 herein;
 - (ii) to engage necessary labor and required use of or purchase of the necessary property, equipment or facilities to provide said road maintenance;
 - (iii) to obtain, pay for, accounting and other professional services as may be necessary or desirable;
 - (iv) to obtain and pay for such comprehensive liability coverage or other insurance as good business practice may necessitate or require;

- (v) Upon request of any member, to review requests for variances and grant relief from any requirements contained in Sections II, III and V, hereinabove, if the strict enforcement of same would tend to be unfair to or work an undue hardship on any member or members;
- (vi) to establish programs to control pine beetles or other pests, if necessary and desirable, and to establish a Design Control Committee, if necessary and desirable;
- (vii) to provide for the maintenance of the domestic water system which has been installed by the Developer and Owner and to engage the necessary labor and required use of and purchase of the necessary property, equipment or facilities to provide for the maintenance of the domestic water system installed by the Owner and Developer and to further take any steps that may be necessary from time to time to enlarge the present domestic water system and to obtain other sources of domestic water for the benefit of the owners of the above-described property;
- (viii) to adopt and enforce Rules and Regulations to enforce the aforementioned to insure the fullest enjoyment of the area and use of the private roadways by the members of the Association;
- (ix) to make and levy assessments against the members of the Association to enable the Association to perform its duties and responsibilities as provided herein, in the Articles of Incorporation By-Laws and Rules and Regulations.

6.4 Road Maintenance Function - The Association

shall be obligated to and shall provide for the best and highest quality care, operation, management, maintenance, repair and replacement of all private or public roads, streets, lanes, drives or easements established or provided for all owners of any property which may be subject to this Declaration. Maintenance shall include the removal of snow to the extent necessary to insure full use of any of the above-described private or public roads and easements. These obligations shall be the obligations of the Association without regard to whether or not the Association has any right, title or interest in any of the foregoing. The required road maintenance herein contemplated shall not extend to maintenance of any roads, drives or lanes

within the boundary lines of any of the lots in the subdivision or outside of the outer boundaries of the Subdivision.

6.5 Member's Obligation to Pay Assessments and Other Amounts - Every person or entity who is a record owner of a fee or undivided fee interest or is the purchaser under a contract of any parcel which is subject to this Declaration is subject to assessment by, and hereby covenants with each owner of any such property or any right, title or interest therein, whether or not it be so expressed at the time of acquisition of such right, title or interest shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments required by this Declaration, by the By-Laws and by the Rules and Regulations of the Association, including but not limited to all assessments levied for road maintenance, as provided hereinbelow.

6.6 Road Maintenance Agreement - Each individual member of the Association having direct access from his parcel to any private or Association roadway or roadway dedicated to the public within the boundaries of the above-described property and maintained by the Association for the benefit of all its members, their families and invitees, shall be obligated to pay and shall pay his share of the total road maintenance assessment when levied, from time to time, by the Board of Directors. The total assessment shall be divided by nineteen (19). The result will be the amount of the total assessment attributable to each parcel of property in the subdivision. The assessment attributable to each parcel shall then be paid by the owner or owners of each parcel in proportion to his or their respective ownership interest in the parcel.

All Assessment Notices shall be in writing and sent by registered or certified mail to the individual member's last-known address. All members shall be required to advise

the Association of all changes of address. All assessments shall be payable to the Association within thirty (30) days from the date of mailing of notices as above provided.

6.7 Lien for Assessments and Other Amounts -

The Association shall have a lien against each parcel of property which may be subject to this Declaration to secure payment of any assessment charges, fine, penalty or other amount due to the Association from the owner of that property not paid, plus interest from the date of demand for payment at the rate of twelve percent (12%) per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable Attorneys fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

VII. GENERAL PROVISIONS:

7.1 Duration and Terms - The restrictions and limitations herein set forth are to be construed as covenants running with the land and shall be binding on all parties and all persons claiming any part of the hereinafter described real property for a period of twenty (20) years from the date first recorded in the Office of the Clerk and Recorder of the County of Delta, State of Colorado, after which time they shall be automatically extended for successive periods of ten (10) years unless after the first recording of these Covenants an instrument is signed by at least fifty-one percent (51%) of the property owners and recorded before the County Clerk and Recorder agreeing to change the restrictive covenants in whole or in part.

7.2 Severability - Invalidation of any of the restrictions, limitations or covenants herein set forth by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

7.3 No Waiver - Failure to enforce any provisions, restrictions, covenants or condition in this Declaration or in any supplemental Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

7.4 Enforcement - The owner or owners of any of the hereinafter described real property, including the Developer and Owner and/or his assigns, if he is an owner of any part or portion of said real property or the Landowners Association, as hereinbefore provided, or any of them may enforce the restrictions and limitations herein set forth by proceedings at law, or in equity against any person or persons violating or attempting to violate any of the said restrictions and limitations either to recover damage for such violation or to restrain such violation or attempted violation. If Court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable Attorneys fees.

7.5 Successors and Assigns of Developer and Owner - This Declaration and all the rights, powers and duties thereunder shall be binding upon and inure to the benefit of the successors and assigns of the Developer and Owner whether voluntary or involuntary, by operation of law or otherwise.

IN WITNESS WHEREOF, Newton B. Irvin and lien holders against the property have executed this Declaration the day and year first above written.

DEVELOPER AND OWNER:

NEWTON B. IRVIN

By Newton B. Irvin
Newton B. Irvin

LIENHOLDERS:

FEDERAL LAND BANK ASSOCIATION

By IRETA M. IRVIN
Agent

IRETA M. IRVIN

By Ireta M. Irvin
Ireta M. Irvin