

Comprehensive Amendments of  
COVENANTS AND RESTRICTIONS APPLICABLE TO  
TIMBERLINE VIEW ESTATES

PREAMBLE

WHEREAS, Timberline View Estates (hereafter sometimes 'Timberline), located just south of 2000 Florida Road, outside of but near the eastern limits of the City of Durango in La Plata County of the State of Colorado, originally was formed as Timberline Planned Unit Development; and

WHEREAS, the Developer of Timberline duly adopted and declared certain Covenants and Restrictions applicable to Timberline, which Covenants and Restrictions were recorded in the La Plata County records at Reception No. 403617; and

WHEREAS, said original Covenants and Restrictions contained the following provision:

“Sec. 22. Amendment. \* \* \* After three-fourths of all lots have been sold they [the Covenants and Restrictions] may be amended by the recording of an instrument in writing signed by the owners of sixty percent of all lots in the subdivision. No amendment.. may prohibit a then existing and permitted use of the land in the subdivision, unless all owners affected by such an amendment agree to it by joining in the proposed amendment.”; and

WHEREAS, from time to time various amendments to said original Covenants and Restrictions have been duly adopted and recorded in the La Plata County records (see. for example. but not limited to. Reception Nos. 424488. 443235, 462672, 463953, 487305, 624149. and 629340); and

WHEREAS, from time to time various changes have been made in and to the original plat of Timberline Planned Unit Development, making certain alterations in the number, the boundaries, and the prescribed use of certain lots, common areas and roads, such original plat and the changes thereto having been duly recorded in the La Plata County records (see, for example. but not limited to, Reception Nos. 381289 and 403013).

WHEREAS, by documents duly recorded in the La Plata County records at Reception Nos. 627816, 629341, 640706 and elsewhere certain additional adjacent properties known as Songbird 1 and Songbird 2 were annexed to and became a part of Timberline View Estates, adding additional lots thereto; and

WHEREAS, by virtue of the changes referred to in the preceding two paragraphs there now exist in Timberline View Estates 85 lots; and

WHEREAS, more than three-fourths of the original Timberline lots and more than three-fourths of the total present Timberline lots have been sold; and

WHEREAS Timberline Homeowners Association, Inc. has previously been established and exists to manage the business of Timberline View Estates: and

WHEREAS, these Comprehensive Amendments of Covenants and Restrictions Applicable to Timberline View Estates shall take effect only upon their being duly recorded in the La Plata County records after approval of the Owners of sixty percent or more of the 85 Lots in Timberline View Estates;

NOW THEREFORE, all prior Covenants and Restrictions applicable to Timberline View Estates are hereby amended by their repeal and shall hereafter be of no force and effect, subject only to the proviso that all presently existing and permitted use of the land in Timberline View Estates may continue, and the real property in Timberline View Estates is and shall hereafter be held, transferred, sold, conveyed, hypothecated and occupied subject to the following Covenants and Restrictions which shall run with the land for the benefit of all lot owners:

## ARTICE I DEFINITIONS

Section 1. “Association” shall mean and refer to Timberline Homeowners Association, Inc., its successors 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 Subdivision, including contract purchasers. but excluding those having such interest merely as security for the performance of an obligation. Every “Owner” shall thereby also be a “Member” of the Association as defined in Article III.

Section 3. “Subdivision” shall mean and refer to that certain real property known as Timberline View Estates and heretofore described in the various recorded plats and documents referred to or alluded to in the Preamble hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Common Areas” shall mean all real property (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Areas owned by the Association are described on the various plats and documents referred to or alluded to in the preceding Section 3 of this Article I.

Section 5. “Lot” shall mean and refer to any plot of land shown and described upon any recorded and unchanged plat or document referred to in Section 3 of this Article I, but not including roadways and Common Areas.

Section 6. “Public view” shall mean visible to a person riding in a normal passenger car or mini-van on a Subdivision road.

Section 7. “Unused motor vehicle” shall mean a motorized vehicle incapable of operation on a public roadway or that has not been operated under its own power for a period of five months or longer, or that is not currently licensed.

Section 8. “Single family.” “immediate family,” or words of similar import shall include live-in domestic or nursing help.

## ARTICLE II OWNER'S AND ASSOCIATIONS RIGHTS

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

- (1) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas.
- (2) The right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any dues or assessments against his Lot remains unpaid, or the Owner remains in violation of these Covenants or any regulation promulgated by the Association.
- (3) The right of the Association to dedicate or transfer all or any part of the Common Areas 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 two-thirds (2/3) of the Members has been recorded.
- (4) Any Lot Owner or his guests may use any of the Common Areas for recreational purposes, subject to similar rights existing in the other Owners and their guests. No use may be made of the Common Areas which would damage them, or which would violate any of the Covenants and Restrictions contained herein, nor may any structure, improvement, or other facility be placed upon the Common Areas by anyone without the written permission of the Association.

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

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Every Owner of a Lot which is subject to assessment shall be a Member of the Association, but only one (1) vote per Lot may be cast on matters concerning the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Multiple unit Lot Owners shall have one vote per unit allowed to be constructed on said Lot or Lots whether said Lot or Lots are developed or undeveloped. If joint Owners of a Lot cannot agree upon their vote, they shall lose their right to vote on the matter in question.

### ARTICLE IV

#### DUES AND ASSESSMENTS

Section 1. Personal Obligation For Dues and Assessments and Creation of a Lien Therefor. Each Lot, and the Owner thereof shall be subject to dues and assessments as provided in this Article and elsewhere in these Covenants and Restrictions. Unless otherwise specifically provided herein such dues and assessments shall be uniform from Lot to Lot. Each Owner of a Lot~by acceptance of a deed therefor, shall be deemed to covenant and agree to pay to the Association all dues and assessments provided for herein, and, in the event of nonpayment, to the creation of a lien upon his Lot (and upon any improvements thereon) for the amount unpaid together with interest costs, and reasonable attorney's fees.

Section 2. Purpose of Dues and Assessments. The dues and assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Subdivision, for the improvement and maintenance of the roads and Common Areas, and for the conducting of all lawful and appropriate business of the Association. The maintenance of the roads within the Subdivision and of the Common Areas and any improvements thereon shall be the obligation of the Association, and the Association may assess charges to each Lot Owner for the costs thereof.

Section 3. Dues. And the Collection Periods Thereof The Board of Directors of the Association shall from time to time determine the anticipated financial needs of the Association for the conduct of its ordinary business, and shall assess dues to Lot Owners sufficient to meet such anticipated needs. Such dues shall be due and payable for such time periods (monthly, quarterly, etc.) as the Board may determine, but no less often than annually. Written notice of such amounts and due dates shall be furnished to all Lot Owners at least 30 days in advance of the due date.

Section 4. Special Assessment For Capital Improvements. In addition to the dues authorized by Section 3 of this Article, the Association may from time to time levy special assessments for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, or replacement of all or any portion of the roads within the Subdivision or of any capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such special assessment exceeding \$500 per Lot in any one calendar year must have the assent of two-thirds of the votes of the Members voting in person or by proxy at a meeting duly called for this purpose, as

provided in Section 3 of Article X hereof. Subject to the same monetary limitation and meeting requirement, the Board of Directors of the Association may estimate costs for future road work and capital improvements and accrue an amount to defray all or a part of said estimated costs by increasing the regular periodic dues provided for in Section 3 of this Article. Funds so accrued need not be segregated from other funds of the Association, but the amount thereof shall be shown as a separately accrued reserve on the Association's financial records.

Section 5. Reconstruction Assessment. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Board of Directors of the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other annual or special assessments made against such Lot Owners. Any such reconstruction assessment shall be subject to the same monetary limitations and meeting requirements as provided for special assessments in Section 4 of this Article IV.

Section 6. Effect of Nonpayment of Dues and Assessments. Remedies of the Association. Any dues or assessments, as well as fines and penalties as set forth in Section 2 of Article IX not paid by the due date shall be considered in default and shall bear interest from the due date at the rate of eighteen percent (18%) per annum or a penalty of \$25 per month from the due date, whichever is greater. If any such debt remains in arrears for more than three (3) months the Association may file a lien upon the defaulter's Lot and any improvements thereon in the amount of the delinquency plus accumulated penalties, interest and costs as provided herein, including a charge of \$50 for the time and costs of filing the lien. Thereafter, the Association may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such delinquency and accumulated penalties, interest and costs all costs and attorneys fees incurred by the Association in foreclosing on the lien or in collecting the amount owing. No Owner may waive or otherwise escape liability for the obligations provided for herein by non-use of the Common Areas or abandonment of his Lot, and no sale or transfer shall relieve such Lot and any improvements thereon from liability for any delinquency, costs, etc. or from the lien thereof

Section 7. Loss of Voting Rights. During the period when an Owner is in default in the payment of any dues, assessment, fine or penalty due to the Association, said Owners voting rights in the Association shall be suspended

## ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. Architectural Control Committee. There shall be an Architectural Control Committee composed of five (5) Members of the Association elected at the Annual Meeting as

provided in the By-Laws of the Association. Their term shall be for one year and shall run concurrently with the terms of the elected Directors. It shall be the responsibility of the Architectural Control Committee to elect a Chairperson from within the Committee by a majority vote of all members of the Committee.

Section 2. Functions of the Architectural Control Committee. The general function of the Architectural Control Committee shall be to administer, control and assist the Directors in the enforcement of compliance with the Covenants and Restrictions contained in Articles VI and VII hereof. In the event of non-compliance with any of said Covenants and Restrictions the Committee shall so notify the Directors in writing as to the specific details of non-compliance. The Directors shall thereupon enforce compliance as provided in Article IX of these Covenants and Restrictions.

Section 3. Non-liability. The Architectural Control Committee, the Board of Directors of the Association, and any member of either of them, shall not be liable to the Association or to any Owner or other person for any loss or damage claimed on account of any act or omission occurring within the scope or course of their official duties and relating to any of the following

- (1) The approval or disapproval of any plans, drawings and specifications;
- (2) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (3) The development, or manner of development, of any property within the Subdivision.

Approval by the Architectural Control Committee of any improvement within the Subdivision refers only to the Timberline View Estates development standards and in no way implies conformance with local government regulations. It shall be the sole responsibility of the Owner to comply with all applicable government ordinances or regulations, including but not limited to zoning ordinances and local building codes.

Section 4. Meetings of the Architectural Control Committee. The Architectural Control Committee shall keep minutes of all meetings thereof and of all action taken at such meetings. No meeting shall be held unless notice has been given to all members of the Committee and unless three or more members of the Committee are present. Action of the Committee shall require the approval of a majority of those present at the meeting where such action is taken. The Committee shall keep on file a copy of all architectural submittals and of all written responses thereto.

ARTICLE VI  
DWELLING DESIGN AND CONSTRUCTION ITEMS

Section 1. Single-Family Use Only. Timberline View Estates is restricted to single-family dwellings of a residential character and other structures related and ancillary to residential use and enjoyment. In addition to the main dwelling there may be one guest house on each Lot which may be occupied by guests of the Owner or occupant of the principal dwelling or by members of such Owners or occupants immediate family.

Section 2. Dwellings and other Structures. All structures placed, maintained, or erected within Timberline shall be of new construction, with not less than 1800 square feet of living area for a free-standing single-family residence and not Less than 1200 square feet for each single-family unit of a multi-family structure. No Structure may exceed 30 feet in height above the main entry level elevation. No occupied basement-like structure, mobile home, travel trailer, trailer house, RV-type vehicle, shanty, or other occupied stnictuxe of a temporary nature shall be kept or erected except as needed temporarily for construction purposes. Storage sheds, temporary or permanent, shall not be permitted An attached or detached pet enclosure and an attached or detached garage for up to three vehicles may be allowed provided their design and construction are equal to and in harmony with the main dwelling All driveways shall be of hard-surfaced materials such as asphalt or concrete.

Section 3. Architectural Control Committee Approval. No building, fence, wall or other structure shall be constructed, erected or maintained upon the Subdivision, nor shall any exterior addition to or change or alteration therein, including changes in existing roof or exterior siding color, be made until plans and specifications showing the nature, kind, shape, height, materials, colors of the structure and roof, and location of the same shall have been submitted to and approved in writing as to compliance with these Covenants and Restrictions by the Architectural Control Committee. At a minimum, the following information shall be submitted to the Committee for its consideration:

- (a) Site plan - showing location of structure, all set-backs, existing vegetation which will be affected, proposed driveways and walkways, etc,
- (b) Floor plans - indicating all levels and the nature of their proposed use.
- (c) Exterior elevations showing locations of proposed windows and doors, proposed grading of grounds, heights of walls and roof lines above existing and graded ground levels, etc.
- (d) Material Samples - showing the colors, texture, and nature of exterior walls, trim and roofs.
- (e) Description (or samples) of materials to be used for exterior doors, windows, walls, trim, and roofs.

- (f) Such other information as the Committee reasonably deems necessary to reach its decision to approve or disapprove.

The Committee shall solicit comments from neighbors who may be affected by the proposed structure, but shall not be bound by such comments. In determining whether to approve or disapprove a submittal, the Committee shall consider, among other things, the following:

- (1) The harmony and aesthetic merits of external design and its compatibility with the natural landscape and with other existing structures nearby.
- (2) The overall appearance.
- (3) The color and texture of roof and exterior materials; the intention is to use colors and textures that would meet the criteria of Subsection (1) above.
- (4) The location of the structure in relation to surrounding structures and topography.
- (5) Such other information as the Committee deems relevant and material.

In the event of disapproval by the Committee, it shall state in writing its reasons and, where feasible, shall state what changes if made, would result in approval. In the event the Committee fails to approve or disapprove a submittal within thirty days after satisfactory plans and specifications have been submitted to it, approval will be deemed to have been given. In the event a neighbor who may be affected by the proposed structure objects to the Committee's proposed approval, or the Committee otherwise deems the submittal to be controversial the Committee shall request the Directors of the Association to review any such submission and the majority of the combined vote of the Committee and the Directors shall prevail.

Section 4. Completion Time. Construction of any building or residence shall commence within 180 days after date of approval by the Committee, and shall be completed within one year after the date such construction is commenced; provided that the exterior of the building or residence shall be completed to a finished state within six months after commencement of construction. Said commencement and completion times may be extended by the Architectural Control Committee in the event unusual weather conditions or other extraordinary circumstances are encountered during construction.

Section 5. Building Location. No building shall be located on any Lot nearer to the lot lines than the minimum building set back line shown on the applicable recorded plat or as specified on an approved Building Permit issued by the La Plata County authorities, whichever is larger. For the purposes of this covenant, measurement of set-back shall be to the eaves, steps, and open porches or decks of the main structure of the building.



Section 6. Fences. No fence may be erected without approval of the Architectural Control Committee. The following types of fences shall not be allowed except for unusual circumstances deemed sufficient by the Committee:

- (a) Fences exceeding six feet in height.
- (b) Solid (or solid-appearing) fences exceeding Three feet in height.
- (c) Fences for the purpose of dividing or separating a lot from roadways, Common Areas, or other Lots.

Certain fences may be allowed for purposes such as creation of an enclosed dog-run or for landscaping purposes within the boundaries of the Lot. Owners of Lots on the perimeter may erect perimeter fences, but the design thereof shall be subject to the approval of the Architectural Control Committee. Existing perimeter fences may remain in place.

Section 7. Spark Arresters. All chimneys for wood, wood pellet or coal burning furnaces, stoves or fireplaces shall be equipped with spark arrestors.

Section 8. Contractor Regulations. All building contractors, remodelors, painters, roofers, landscapers or other tradesmen must comply with these Covenants and Restrictions during their operations within the Subdivision. The Member for whom the operations are being performed shall be responsible for any violations by his contractor(s) and the Member shall be subject to the enforcement and penalty provisions contained herein..

## ARTICLE VII LAND USE AND NON-DWELLING DESIGN ITEMS

Section 1. Building and Rental Restrictions. No additional multi-family building units shall be permitted within the Subdivision or upon any land annexed thereto. Owners may rent their homes for long-term single family residential use (minimum duration of one month) but may not rent individual rooms or other portions of less than the entire single-family unit for any period of time. Guest houses (see Article W, Section 1) may not be occupied as rental property separate from the main dwelling.

Section 2. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the applicable plats. Around these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Owners are cautioned that landscaping or improvements which they place upon easement areas may be subject to disturbance by the easement beneficiaries. The easement area of each Lot and all improvements on it shall be maintained by

the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 3. Nuisances. No nuisance or offensive activity shall be carried on upon any Lot; nor shall anything be done thereon which may endanger the health of any person or pets using the areas or may become an annoyance or nuisance to the neighborhood.

No noxious weeds, as defined by applicable State or County laws or regulations, shall be permitted to grow or remain upon the premises. and no refuse pile, unused motor vehicles or portions thereof, or unsightly objects shall be placed or allowed to remain anywhere on the premises. In the event that any Owner of any Lot within the Subdivision shall fail or refuse to keep his premises free from noxious weeds, unused motor vehicles or portions thereof or other unsightly objects, then the Association may enter upon the lands and remove the same at the expense of the Owner and such entry shall not be deemed a trespass. In the event of such removal, the cost thereof including costs to obtain a court order if that should be necessary, shall be assessed against the Owner and that amount shall be due and payable within thirty (30) days after billing. In the event of non-payment the Association may file a lien against the Owner's Lot and proceed thereafter as provided in Section 6 of Article IV hereof.

No continuous loud or raucous artificially created or reproduced noise or music shall be allowed within the Subdivision, including the Common Areas. Music, live or recorded, that can be heard by neighbors is permitted for private parties or gatherings no oftener than once per month per Lot, provided the volume is not excessive and the duration is limited to a portion of one day and shall not continue after 10:00 p.m. Sunday through Thursday or 11:30 p.m. Friday or Saturday.

No soliciting within the Subdivision shall be permitted without permission of the Directors.

Section 4. Signs. No sign shall be displayed to the public view on any Lot except one sign advertising the property for sale or rent, or a sign used by a builder to advertise the property during the construction and sale, neither to exceed nine square feet. Small signs identifying the owner of a Lot or temporary signs used for garage sales, or signs required by legal proceedings are permitted. Upon written request the Board may permit other signs if deemed appropriate.

Section 5. Oil, Gas, and Mineral Development. No oil or gas drilling oil or gas development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon any Lot, nor shall oil or gas wells, tanks, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in drilling for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 6. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that generally recognized household pets such as dogs and cats, or other household pets, may be kept provided that they are not kept, bred, or

maintained for any commercial purpose. No more than three outdoor pets such as dogs or cats shall be maintained on any Lot. Unconfined pets outside the owner's Lot shall at all times be kept under control on a leash. Animals shall not be permitted to roam at Will, and at the option of the Association steps may be taken to control any animals not under the immediate control of their owners, with the right to impound any animal not under such control and to charge appropriate fees and costs to the owner for their return. Natural noises created by household pets such as dog barking, bird screeching, cat meowing etc. that are of such duration and volume as to create a nuisance to neighbors shall not be permitted. Owners of such offending household pets shall keep them inside their dwellings or inside properly soundproofed exterior enclosures. All pets shall be kept inside their owner's dwelling or inside properly soundproofed exterior enclosures from 10:00 pm until 6:00 am. Occasional pet sounds made while the animals are under the control of their owners shall not generally be considered a nuisance.

Defecation and/or urination by household pets, even while under the control of their owners, shall not be allowed other than on the owner's property. An accidental defecation by a pet on a neighbor's property or on the roads or Common Areas shall be removed and properly disposed of by the pet's owners.

Animals not allowed to be kept on lands in Timberline shall not be ridden or brought into the Subdivision.

Section 7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. During construction, contractors must remove all construction debris as it accumulates and thoroughly clean up the site at the completion of construction. Concrete trucks may not be washed out in the Subdivision.

Section 8. Water Supply and Sewage Disposal. No individual water supply or sewage disposal systems shall be permitted on any Lot. Every Lot Owner shall be obligated to connect to the water and sewer service provided through the City of Durango.

Section 9. Parking.

(1) Street Parking. On-street parking shall be allowed for private social events, either by Lot Owners, their guests, or the general public. No long-term or overnight on-street parking shall be allowed. Street parking during the winter snow season shall not be permitted when said parking interferes with snow plowing and snow removal operations,

(2) Lot Parking. Non-garage parking on any Lot shall be confined to driveways and clearly delineated parking areas, and is not permitted on lawns and other landscaped areas. No parking of the following types of vehicles shall be allowed on any Lot; driveway or parking area for a period or periods totalling

more than seven (7) days in any calendar month without written consent of the Association: trailers of any kind, motor homes, or other recreational vehicles, unless such vehicles and/or the items thereon (boats, gliders, motorcycles, APIs, etc.) are out of public view.

(3) Construction Parking. During construction on any Lot, contractors' vehicles may park on-street and on-Lot during regular business days and hours.

Section 10. Exterior Maintenance. Each Owner of a Lot in the Subdivision shall maintain the premises and the improvements situated thereon in good condition and good repair, and shall keep up the general appearance of the Lot, its improvements and its landscaping. Porches and deck areas in public view shall be kept neat and tidy. All clotheslines, yard equipment, trash cans, wood storage piles, and other unsightly things shall be kept shielded from neighboring Lots and from public view.

Section 11. Use of Motorized Vehicles. Motorized vehicles (including but not Limited to, automobiles, trucks, motorcycles, motorbikes, trail bikes, all-terrain vehicles, snowmobiles, etc.) shall not be allowed on vacant Lots or on Common Areas, unless necessary for construction or maintenance purposes.

Section 12. Hunting and Trapping. There shall be no hunting or trapping within the Subdivision. No firearms shall be discharged within the Subdivision except in self-defense.

Section 13. Destruction or Alteration of Natural Vegetation or Topography. There shall be no cutting of trees, bushes, or vegetation or destruction or alteration of natural topography or landmarks except as required for the construction of dwellings and normal Landscaping and as permitted by the Architectural Control Committee by the approval of plans and specifications, or as recommended by the Fire Department or Fire District having jurisdiction over the Subdivision.

Section 14. Ban of Fires. Open bon-fires, leaf or rubbish burning and the use of fireworks of any type are not permitted within the Subdivision. Outdoor barbecue equipment may be used by Owners provided such use would not endanger or be a menace to the structures and Lands in the Subdivision, During construction, contractors may use blow torches, welding equipment and kerosene-fired heaters, as required by normal construction standards.

Section 15. Business Activities. No business activity shall be conducted on any Lot, except that, with permission of the Association's Board of Directors, a business may be permitted if the following conditions are met:

(1) It is carried on entirely within the residence by persons living at the residence;

- (2) It does not generate vehicular traffic or parking around the residence in addition to that normally associated with the use of the residence as a dwelling
- (3) It utilizes the same outside entrance as is used for the residence as a dwelling;
- (4) There are no sales directly to the public from the residence, other than by telephone, fax, mail, and the like;
- (5) There is no storage of materials or displays of merchandise visible from the outside of the residence;
- (6) There is no storage of materials or products which are explosive, flammable, toxic or otherwise hazardous to persons living within the residence, or others;
- (7) No activity is performed outside of the residence which is not normally associated with the use of the residence as a dwelling and no activity is performed inside or outside the residence that is illegal or in violation of any public ordinance;
- (8) No equipment is used in the conduct of the business which can be heard outside the exterior walls of the residence;
- (9) The address of the residence is not listed on any vehicles, or on any public advertising such as newspaper, radio, television, yellow pages, billboards, etc.;
- (10) No sign is erected at the residence indicating a business is being conducted within the residence;
- (11) No external structural alterations which are not customary in residential buildings are made; and
- (12) The conduct of the business does not produce offensive noise, vibrations, fumes, smoke, dust or other particulate matter, odors, heat, humidity, glare, electrical interference or other objectionable effects that can be experienced outside of the exterior walls of the residence.

A written request to operate a business on a Lot shall be made to the Association. Approval or disapproval of the request will depend on compliance with the above terms and conditions, but even if full compliance with these terms and conditions is met there may be other circumstances which, in the sole opinion of the Board, may be cause to deny the request.

## ARTICLE VIII INSURANCE

Section 1. Casualty Insurance on Insurable Common Areas and Liability Insurance. The Directors of the Association shall keep all insurable improvements and fixtures of the Common Areas insured against loss or damage by fire for the full insurance replacement cost thereof; and may obtain insurance against such other hazards and casualties as they may deem desirable. The Directors of the Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as they may deem desirable, with the Association as owner and beneficiary of such insurance. The insurance coverage shall be written in the name of; and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. A sufficient level of liability insurance shall be carried to protect the Association and its Directors, Officers, and Architectural Control Committee from any liability claims brought against them based upon actions taken by any of them in their official capacity for or on behalf of the Association. Premiums for all insurance carried by the Association are ordinary expenses of the Association to be included in the computation of Dues as provided in Section 3 of Article IV hereof

Section 2. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed and to cover any liabilities against the Association, its Directors, its Officers, and members of its Architectural Control Committee.

## ARTICLE IX ENFORCEMENT

Section 1. Enforcement. These Covenants and Restrictions are for the benefit of the Association and its Members. 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 these Covenants and Restrictions. 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. Enforcement Procedure. A determination of non-compliance with any provision of these Covenants and Restrictions may be established by:

- (1) The Directors in the process of running the business of the Association and observing obvious non-compliance of any provision hereof; or
- (2) Notice of non-compliance to the Directors by the Architectural Control Committee as provided in Article V, Section 2; or

(3) Written complaint or notice to the Directors signed by any Member of the Association (such Members are urged to first try directly and informally to work out any differences they may have with their neighbors). Anonymous complaints will not be accepted by the Directors.

The Directors shall review any non-compliance as defined above and shall rule on the validity of the non-compliance based on the evidence presented. If a majority of the Board concludes that non-compliance exists, the Board may proceed in any or all of the following ways in attempts to bring about compliance:

(1) Attempt through persuasion and negotiation to bring about compliance.

(2) Bring suit in court to enforce compliance.

(3) For non-compliance with the provisions of Article IV, proceed as set forth in that Article. For non-compliance with other provisions of these Covenants and Restrictions, proceed as follows:

(a) Notify the violator in writing and request compliance within a stated period of time. If compliance is not effected within the stated period, the Board, after notice and an opportunity for the Member to be heard, may assess a penalty of not less than fifty dollars (\$50.00) and not more than two hundred fifty dollars (\$250.00) against the Member involved. Notice of a penalty shall be in writing and the penalty shall be due and payable on the date of the notice. Payment of the penalty, however, shall not excuse or avoid compliance.

(b) Continued failure of the Member involved to pay the penalty may result in the filing of a lien against the Member's Lot and any improvements thereon in the amount of the penalty, plus interest at 18% per annum from the due date. The enforcement of this lien shall be implemented as provided in Section 6 of Article IV.

(c) A member violating the same Covenant or Restriction again, whether or not the first penalty has been paid, may be assessed three times the penalty for all repeat violations of the same Covenant or Restriction. Such additional penalty may be enforced by any of the procedures set forth above.

The purpose of these enforcement procedures and penalties is to provide an opportunity for the Association to encourage compliance by a Member without the necessity to resort to expensive litigation. At any point, however, the Board may, if it wishes, file suit against the Member to enforce compliance, and to collect any applicable fines, penalties, interest, and costs, plus all litigation expenses including attorneys' fees.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Non-Liability and Indemnification. No member of the Board, no officer of the Association, no member of the Architectural Control Committee, and no person acting under the direction or on behalf of any of them, shall be personally liable to any Lot Owner or to any Member of the Association or to any other person for any error, omission, or action by or on behalf of the Association, the Board, or the Committee if such person has acted in good faith based upon such information as may have been possessed by him at the time. Each member of the Board, each officer of the Association, and each member of the Architectural Control Committee, whether or not then in office, and the personal representatives, successors, and assigns of each of them, shall be indemnified by the Association against all costs and expenses, including reasonable attorneys' fees reasonably incurred by or imposed upon him in connection with or arising out of any action, suit or proceeding in which he may be involved or to which he may be made a party by reason of his being or having been, such member or officer (such costs and expenses to include the costs of reasonable settlements made with a view towards curtailment of the costs of litigation), except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to have acted in bad faith in the performance of his duty as a member of the Board or Committee or as an officer of the Association, and the foregoing right of indemnification shall not be exclusive of other rights to which he may be entitled as a matter of law.

Section 2. Annexation. Additional residential property and Common Areas may be annexed to the Subdivision only by the written assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. The process of notice, quorum, and action on this proposal shall be as provided in Section 3 of this Article X.

Section 3. Notice and Quorum for Any Action Under Article IV. Sections 4 and 5. and Article X Section 2. Written notice of any meeting called for the purpose of taking any action under Article IV. Sections 4 and 5, and Article X, Section 2, shall be sent to all members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all votes of the 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 (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4. Amendment. The covenants and restrictions contained herein shall run with and bind the land for a term of twenty-five (25) years from the date this document is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless they are terminated or amended. These Covenants and Restrictions may be terminated or amended only by the recording of an instrument in writing signed by Owners of sixty percent (60%) of all Lots in the Subdivision. No such amendment may prohibit a then existing and permitted use of the land in the Subdivision, unless all Owners affected by such an amendment agree to it by joining in the proposed amendment.



Section 5. Severability. Invalidation of any portion of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. Governing Law. These Covenants and Restrictions shall be subject to and interpreted in accordance with applicable Colorado law. In particular, the provisions herein for fines or penalties, liens, and related enforcement procedures shall be governed by the applicable provisions of the Colorado Common Interest Ownership Act, including more particularly (but not limited to) Sections 38-33.3-302(1)(k) and 33-33.3-3 16 thereof.

IN WITNESS WHEREOF, the undersigned, being current Directors of the Association, have hereunto set their hands and seals this 12<sup>th</sup> day of January, 1996.

**TIMBERLINE HOMEOWNERS ASSOCIATION,  
INC**

BOARD RESOLUTION

The undersigned, having been duly elected as the new Board of Directors of Timberline Homeowners Association at the Association's Annual Meeting on February 15, 1996, do hereby:

1. Ratify the action taken on January 12, 1995 by the preceding Board of Directors approving the foregoing Comprehensive Amendments of Covenants and Restrictions Applicable to Timberline View Estates;
  
2. Certify that said Comprehensive Amendments have been approved in writing by the owners of at least sixty percent of all lots in the Subdivision, as evidenced by the foregoing signed approvals;  
and
  
3. Direct that said Comprehensive Amendments, the signed approvals thereof, and this Board Resolution, all be duly recorded in the La Plata County records.

Unanimously resolved this 21 day of February 1996.