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Silvia Barlow by J. S. S.  
Recorder

DECLARATION OF RESTRICTIONS

PAGOSA

THIS DECLARATION, made this 13th day of March, 1970, by TRANSAMERICA TITLE INSURANCE COMPANY, a California corporation, being the owner in fee, as Trustee for NAVAJO TRAIL CORPORATION, an Arizona corporation, and acting pursuant to directions from NAVAJO TRAIL CORPORATION, as Trust beneficiary, herein referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of all the real property set forth and described on those certain plats (herein collectively called "the plat") entitled Lake Pagosa Park, a subdivision of Pagosa, and Pagosa in the Pines, a subdivision of Pagosa, which plat is recorded in the Records of Archuleta County, Colorado, and is made a part hereof and incorporated herein by reference; and

WHEREAS, the real property described in the plat has been subdivided into numbered or lettered parcels identified on the plat as Lots, Tracts or Blocks (herein collectively called "Lot" or "Lots"), which lots comprise in the aggregate two subdivisions (herein called "Subdivision"), which are two of several subdivisions in the Pagosa general development (herein called "Development"), which shall be subject to the terms of these or similar restrictions in the manner provided in Paragraph 15 hereof; and

WHEREAS, Declarant is about to sell and convey said lots and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions and charges, hereinafter collectively referred to as "Restrictions," under a general plan or scheme of improvement for the benefit and complement of all of the lots in the Subdivision and the future owners of said lots;

NOW, THEREFORE, Declarant hereby declares that all of said lots are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the plat and of the Development as a whole. All of the Restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to such Restrictions.

1. APPLICABILITY

These restrictions shall apply to subdivided lots and are specifically excluded from application to other lands shown on the plat which are intended for recreational use.

2. TERM

A. These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2000, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time before January 1, 1985, these Restrictions may be amended by the vote of the then record owners of two-thirds (2/3) of such lots and thereafter by a majority of such owners.

B. Declarant reserves to itself, its successors and assigns the right to revoke at any time prior to the sale of any lot within the Subdivision all or any of these Restrictions and further to vacate any or all of the streets, parks, recreational facilities and any other amenity shown on the recorded plats, provided, however, that Declarant will not prevent access to or installation of utilities to lots in any other Subdivision of the Development.

3. MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owner of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the Subdivision and their respective owners.

4. ENVIRONMENTAL CONTROL COMMITTEE

A. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any lot shall be subject to and shall require the approval in writing before any such work is commenced of the Environmental Control Committee (herein called "Committee"), as the same is from time to time composed.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment of Declarant, or in the event of Declarant's failure to so appoint within two (2) months after any such vacancy, then by the Board of Directors of the Pagosa Property Owners Association, Inc. (herein called "Association"); provided, however, that at any time hereafter the Declarant may, at its sole option, relinquish to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant. Such transfer of power must be evidenced in writing.

C. There shall be submitted to the Committee a building application on forms approved by Declarant together with two (2) complete sets of plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the schemes for roofs and exteriors thereof and proposed landscape planting. A filing fee of \$30.00 shall accompany the submission of such application and plans to defray Committee expenses. No additional fee shall be required for resubmission of plans revised in accordance with Committee recommendations.

D. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the person submitting them and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the provisions of these Restrictions; if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Committee shall be final.

F. Neither the Committee nor any architect or agent thereof or of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

G. The Committee shall have the authority to set up regulations as to the height and size requirements for all other types of outbuildings and structures, including fences, walls, copings, etc.

H. Whenever the Committee shall approve plans and specifications for a pier or similar structure on or extending into any waterway, such approval shall constitute a mere revocable privilege from Declarant or its successor or successors in interest for the construction, placement and maintenance of the proposed structure.

##### 5. LAND USE AND IMPROVEMENTS

The following are the various land uses anticipated in the Development. This list is not intended to be all inclusive and additional land use classifications may be added from time to time by the Declarant or by the Pagosa Property Owners Association, Inc. These land use classifications, as hereinafter described, limit and prescribe the use of each lot to the uses permitted under the classification shown on the plat. Any use not specifically permitted in any use classification is hereby declared to be prohibited.

## A. R-1-75 Single Family Residential District

## (1) Uses Permitted

- (a) One single family dwelling per lot
- (b) Use, buildings and structures customarily incidental to single family dwelling
- (c) Golf courses and country clubs
- (d) Public parks, playgrounds and community centers

## (2) Minimum Lot Size

7,500 square feet; no lot shall be divided into smaller lots or parcels.

## (3) Set-Back Requirements

- (a) Front yard—No building or structure shall be located within twenty-five (25) feet of the front property line.
- (b) Rear yard—No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
- (c) Side yard—There shall be a side yard set-back of not less than seven and one-half (7½) feet from the side property lines to the nearest building or structure, and on corner lots, the set-back on the street side shall be not less than ten (10) feet, or ten (10) per cent of the lot width at its widest point whichever is greater. No eave or overhang of any roof shall be closer than three and one-half (3½) feet from any side lot line.

## (4) Minimum Living Area

No dwelling shall be constructed on any R-1-75 lot in the Subdivision having less than the following minimum square footage of living space, exclusive of porch and garage:

One-story houses shall have a minimum of 850 square feet of living space.

Multiple-story houses shall have a minimum of 600 square feet of living space on the main floor.

## (5) Lot Coverage

No building or structure shall be constructed on any lot which covers more than fifty (50) per cent of the total area of the lot.

## B. R-1-90 Single Family Residential District

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) Guest house, servant quarters, and cabana or pool house provided that such separate structures do not exceed the set-back requirements delineated below.

## (2) Minimum Lot Size

9,000 square feet; no lot shall be divided into smaller lots or parcels.

## (3) Set-Back Requirements

- (a) Front yard—No building or structure shall be located within thirty (30) feet of the front property line.
- (b) Rear yard—No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
- (c) Side yard—There shall be a side yard set-back of not less than ten (10) feet from the side property lines to the nearest building or structure, and on corner lots, the side set-back on the street side shall be not less than fifteen (15) feet, or ten (10) per cent of the lot width at its widest point whichever is greater. No eave or overhang of any roof shall be closer than five and one-half (5½) feet from any side lot line.

## (4) Minimum Living Area

No dwelling shall be constructed on any R-1-90 lot in the Subdivision having less than the following minimum square footage of living space, exclusive of porch, garage, cabana, guest house or servant quarters.

One-story houses shall have a minimum of 1,000 square feet of living space.

Multiple-story houses shall have a minimum of 750 square feet of living space on the main floor.

## (5) Lot Coverage

No building or structure shall be constructed on any lot which covers more than fifty-five (55) per cent of the total area of the lot.

## C. R-1-T Single Family Townhouses

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) There shall be but one main building or structure on each of the designated lots, with the exception that with the prior written approval of the Committee, a series of consecutive lots may be purchased for the express purpose of constructing "cluster" type Townhouse Residences which do not adhere to the property lines as delineated on the plat of the subdivision.
- (c) Cabana or pool houses provided that such separate structures do not exceed the set-back requirements delineated below.

## (2) Minimum Lot Size

2,400 square feet

## (3) Set-Back Requirements

- (a) Front yard--No building or structure shall be located within twenty-five (25) feet of the front property line.
- (b) Rear yard--No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
- (c) Side yard--There is no side yard set-back requirement with the exception that the side wall of any Townhouse may not infringe upon the adjoining property. There is no side yard set-back requirement between lots owned by a single owner or conforming to the Condominium Ownership Act except that the end units of a group of units shall have a five (5) foot side yard from the nearest lot line of an adjoining lot. If the end lot is a corner lot, the set-back on the street side shall be ten (10) feet.

## (4) Height

All buildings and structures will be limited to a maximum of two stories or a maximum height of thirty-five (35) feet.

## (5) Minimum Living Area

No dwelling shall be constructed on any R-1-T lot in the Subdivision having less than the following minimum square footage of living space, exclusive of porch, garage, cabana, guest house or servant quarters.

One-story houses shall have a minimum of 800 square feet of living space.

Multiple-story houses shall have a minimum of 800 square feet of living space on the first floor.

## (6) Lot Coverage

No building or structure shall be constructed on any lot which covers more than eighty (80) per cent of the total area of the lot.

## (7) Parking

There shall be provided upon each lot in this classification at least one off-street parking (which term when used herein shall be defined as an area located entirely on private property consisting of a rectangle measuring no less than 9' x 20'), having an approved all-weather surface, of sufficient size upon which to park one standard-size passenger car.

## D. R-1-P Single Family Patio Residences

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) Cabana or pool houses provided that such separate structures do not exceed the set-back requirements delineated below.
- (c) There shall be but one main building or structure on each of the designated lots, with the exception that upon the prior written approval of the Committee, a series of consecutive lots may be purchased for the express purpose of constructing "cluster" type Patio Residences which do not adhere to the property lines as delineated on the plat of the subdivision.

## (2) Minimum Lot Size

3,200 square feet

## (3) Set-Back Requirements

- (a) Front yard—No building or structure shall be located within twenty-five (25) feet of the front property line.
- (b) Rear yard—No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course. The rear yard may be completely enclosed with privacy walls or fences which may abut the rear property line unless the lot is contiguous to a lake or golf course. Such fences or privacy walls shall not be more than six feet in height.
- (c) Side yard—There is no side yard set-back requirement with the exception that the side wall of any Patio Residence may not infringe upon the adjoining property.

## (4) Height

All buildings and structures shall be limited to a single story.

## (5) Minimum Living Area

No building shall have less than eight hundred (800) square feet of living area.

## (6) Lot Coverage

No building or structure shall cover more than eighty (80) per cent of the total area of such lot.

## (7) Parking

There shall be provided upon each lot in this classification at least one off-street parking space having an approved all-weather surface.

## E. R-2 Duplex or Two-Family Residential District

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) Cabana or pool houses provided that such separate structures do not exceed the set-back requirements delineated below.
- (c) There shall be but one main building or structure on each of the designated lots, with the exception of certain specific quarters such as servant quarters or guest house which must be approved by the Committee in advance of their construction. Two complete living units shall be allowed on each R-2 lots, however, the two units must be in the same structure with a common roof and with only a party-wall separating them.

## (2) Minimum Lot Size

9,000 square feet; no lot shall be divided into smaller lots or parcels.

## (3) Set-Back Requirements

- (a) Front yard—No building or structure shall be located within twenty-five (25) feet of the front property line.
- (b) Rear yard—No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
- (c) Side yard—Side yards shall be set back not less than six (6) feet. On corner lot street side shall be not less than ten (10) feet or ten (10) per cent of lot width at widest point whichever is greater. No eave or overhang shall be closer than three (3) feet from any side line.



## (4) Height

All buildings and structures will be limited to a maximum of two stories or a maximum height of thirty-five (35) feet.

## (5) Minimum Living Area

No dwelling shall be constructed on any R-2 lot in the Sub-division having less than the following minimum square footages of living space, exclusive of porch, garage, cabana, guest house or servant quarters.

One-story houses shall have a minimum of 800 square feet of living space per unit. That is, each duplex shall contain not less than 1,600 square feet.

Two-story houses shall have a minimum of 600 square feet of living space on the main floor.

## (6) Lot Coverage

No building or structure shall be constructed on any lot which covers more than sixty (60) per cent of the total area of the lot.

## (7) Parking

There shall be provided upon each lot parking spaces for a minimum of two standard-size passenger cars.

## F. R-3 Multiple-Family Residential District

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) Cabana or pool houses provided that such separate structures do not exceed the set-back requirements delineated below.
- (c) The general use shall be for multiple-family dwelling structure(s) which may be constructed as "individual lodges" or as "party-wall" apartments. All structures must be limited to one story, except where the neighborhood and/or terrain provide settings which the Committee decides shall allow for other types of structure(s).
- (d) No habitable dwelling unit shall be constructed which does not contain complete kitchen and bathroom facilities to include kitchen sink, oven and range, kitchen cabinetry and drawers for the storage of utensils, cutlery and dishes, and mechanical refrigerator; the bathroom shall be equipped with water closet, lavatory, and bath-tub and/or stall shower.

## (2) Minimum Lot Size

17,000 square feet

## (3) Set-Back Requirements

- (a) Front yard--No building or structure shall be located within twenty-five (25) feet of the front property line.
- (b) Rear yard--No building or structure shall be located within ten (10) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
- (c) Side yard--There shall be a side yard set-back of not less than five (5) feet. No eave or overhang of any roof shall be closer than three (3) feet from any side lot line.

## (4) Minimum Living Area

No dwelling shall be constructed on any R-3 lot in the Sub-division having less than the following minimum square footage of living space, exclusive of porch, garage, cabana, guest house or servant quarters.

One-story houses shall have a minimum of 600 square feet of living space.

## (5) Lot Coverage

No building or structure shall be constructed on any lot which covers more than sixty (60) per cent of the total area of the lot.

## (6) Parking

There shall be provided upon each lot in this classification, a minimum of one and one-half (1½) off-street parking spaces for each habitable living unit constructed thereon.

## G. R-4 Multiple-Family Residential District

## (1) Uses Permitted

- (a) All uses permitted in R-1-75
- (b) Guest houses and cabana or pool houses provided that such separate structures do not exceed the set-back requirements delineated below.
- (c) The general use shall be for multiple-family dwelling structure(s) of more than one story, which may be constructed as "individual lodges" or as "party-wall" apartments.

- (d) Churches with off-street parking as approved by the Committee.
  - (e) No habitable dwelling unit shall be constructed which does not contain complete kitchen and bathroom facilities to include kitchen sink, oven and range, kitchen cabinetry and drawers for the storage of utensils, cutlery and dishes, and mechanical refrigerator; the bathroom shall be equipped with water closet, lavatory, and bath-tub and/or stall shower.
- (2) Minimum Lot Size
- 26,000 square feet
- (3) Set-Back Requirements
- (a) Front yard--No building or structure shall be located within twenty-five (25) feet of the front property line.
  - (b) Rear yard--No building or structure shall be located within ten (10) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake or golf course.
  - (c) Side yard--There shall be a side yard on each side of the dwelling structure(s) of not less than seven (7) feet for the first two stories, ten (10) feet for three stories, twelve (12) feet for four stories, and two (2) additional feet for each story over four stories.
- (4) Minimum Living Area
- No dwelling unit shall contain less than six hundred (600) square feet of actual living area exclusive of porches, patios, breezeways or other appurtenances.
- (5) Lot Coverage
- No more than sixty (60) per cent of the total lot area shall be used for dwelling and other structures for habitable or utility useage.
- (6) Parking
- There shall be provided upon each lot in this classification, a minimum of one off-street parking space for each bathroom contained in the apartment complex; or one and one-half (1½) off-street parking spaces for each two-bedroom apartment and one and one-quarter (1¼) off-street parking spaces for each one-bedroom apartment and one off-street parking space for each efficiency or bachelor apartment, whichever method of tabulation shall provide more off-street parking spaces.

## H. RM-1 Motel/Hotel

The RM-1 classification provides certain lands designed for medium-high density of accommodations generally provided for non-permanent populations. The following regulations and restrictions shall apply to the lands so designated:

## (1) Minimum Size Lot

There shall be a minimum of eighty thousand (80,000) square feet in each lot.

## (2) Lot Coverage

Minimum yard requirements with regard to set-back from property line shall be established by the Committee. But in no event shall the main structure occupy more than sixty (60) per cent of the total lot area.

## (3) Parking

Off-street parking must be provided upon the basis of one (1) space for each bedroom regardless of the possibility that a suite of rooms may contain one or more bedrooms, or, if an "efficiency" or "bachelor" apartment contains convertible furniture to make for sleeping accommodations in a "one-room" unit, then that unit shall be considered a "bedroom" and the proper off-street parking space must be provided. In addition, there shall be provided one (1) off-street parking space for each two hundred (200) square feet of "public room" areas such as lobby, hotel or motel offices, restaurants, coffee shops, bars, lounges and retail shops, plus one (1) off-street parking space for each two hotel employees.

## (4) Minimum Living Area

Each and every unit shall have the following minimum square footages; exclusive of patios, porches, breezeways or other appurtenances:

Hotel room--including bath, dressing, closet and toilet facilities (250).

Efficiency or bachelor apartment--including bath, dressing, closet, toilet and any cooking facilities (400).

Suites--including sitting room and bedroom with bath, dressing, closet and toilet facilities (600).

Additional bedrooms adjoining a one-bedroom suite which may become a part of the suite optionally (150).

One-bedroom apartments with one bathroom (600).

Two-bedroom apartments with one bathroom (750).

Two-bedroom apartments with two bathrooms (850).

For each additional bedroom beyond two bedrooms in any apartment (150).

## (5) Office and Lobby Space

Each hotel or motel shall have an office and lobby area of not less than six hundred (600) square feet or two (2) per cent of the total square footage of all rental units, whichever is greater.

## (6) Uses Permitted

Hotels and motels which may include special retail shops on the ground (or main) floor of the structure which shall be limited to the following types of retail businesses: antiques, banks, barber shops, bars, beauty shops, book store, cafes or restaurants, clothing shops, clubs, confectionary, cocktail lounges, drugs, dry cleaning and pressing, dry goods, fine art galleries, florists, guns and sporting equipment, gifts, jewelry, photography, shoes, stock brokerages, stationery, sundries and news and health clubs.

## (7) Service Area

There shall be provided adequate loading (unloading) space on private property for standing and for loading and unloading service for any commercial use involving the receipt or dispatch of materials or merchandise. Such loading space shall be of a size, and so located and designed as to avoid undue interference with the use of public street and/or alleys, and shall be graded and surfaced to provide proper drainage and prevent dust arising therefrom.

## (8) There shall be no height limitation to structures in this classification, but any building containing in excess of two floors of rental units or public-room facilities shall provide adequate mechanical elevator service to all rooms above (but not excepting) the second floor, and all rooms served by such elevator service shall not be more than a horizontal measurement of 200 feet from the elevator installation.

## I. Limited Commercial Area C-1

## (1) Uses Permitted

Uses permitted in the C-1 Commercial Areas encompass any Special Retail use permitted in the RM-1 Area (above) and the following additional uses shall also be permitted in accordance with the regulations governing them as follows:

- Automobile Rental Agencies
- Bakeries (Retail)
- Banks
- Bowling Alleys
- Churches
- Department Stores
- Discount Stores
- Electrical Appliance Stores

Electrical Supplies  
 Food Markets, Groceries  
 Furniture (New)  
 Hardware  
 Meat Market & Delicatessen  
 Offices and Office Supplies  
 Photographic Studios  
 Plumbing Fixtures and Supplies  
 Printing  
 Recreation Activities  
 Self-Service Laundries  
 Shoe Sales and Repairs  
 Theatres

Such other types of retail and wholesale business including automobile service stations will be permitted where, in the sole opinion of the Committee such businesses are compatible with the uses permitted above, and with the other businesses conducted or planned for the immediately adjacent areas.

The operations from such stores, shops or businesses shall be conducted entirely within an enclosed building.

(2) Height

Maximum building height will be two stories not to exceed thirty-five (35) feet.

(3) Parking

There will be a requirement to provide off-street parking spaces for automobiles in the C-1 Limited Commercial Area with a minimum of one (1) parking space for each four hundred (400) square foot of floor space.

(4) In the planning of the C-1 Limited Commercial Areas, the purchaser of such lots, plots or parcels must agree to follow definite architectural planning and design which will include approval by the Committee of the size of the structure allowed on any particular lot, plot or parcel, the external appearance of the building including detailed specifications as to height, parapets, roof pitches, exterior materials, roofing materials, doors, windows, placement, size, design, and installation of signs, exterior lighting, roof extensions, overhangs, or covered walkways, exterior color and texture of all native, manufactured or coated material; height and width of sidewalks and walkways; and landscaping required to accentuate the aesthetic appearance of each and every structure to be placed upon the lot.

## J. Condominium Structures

Condominium developments shall be permitted in the Subdivision subject to approval of the Committee and in accordance with the Condominium Ownership Act, Chapter 118, Article 15, CRS 1963, State of Colorado, as the same may be amended from time to time.

Such Condominium developments will be permitted in the following land use classification areas:

- R-3 Multiple-Family Single-Story Lots
- R-4 Multiple-Family Multi-Story Lots
- R-1-T Townhouse Lots
- R-1-P Patiohouse Lots
- C-1 Limited Commercial Areas

Restrictions governing the aforesaid land use classifications shall apply to such condominium developments, and in each instance where condominium units are proposed to be constructed.

6. PARTICULAR RULES FOR APPLICATION OF SET-BACK REQUIREMENTS

A. If the line with respect to which a set-back measurement is to be made is a meandering line, the average length of the two lot lines that intersect said meandering line shall be determined, and using that average length, an imaginary straight line shall be drawn through the meandering line and the set-back measurement shall be made along a line perpendicular to such imaginary line.

B. The term "front lot line" defines a lot boundary line that is abutting the right of way of the street on which the lot abuts.

C. The term "side lot line" defines a lot boundary line that extends from the street on which the lot abuts to the rear line of the lot.

D. The term "rear lot line" defines the boundary line of the lot that is farthest from, and substantially parallel to, the line of the street on which the lot abuts, except that on corner lots it may be determined from either street line.

E. A corner lot shall be deemed to have a front line on each street on which the lot abuts, and such lot need have only one rear yard.

F. The set-back lines set forth above are subject to and may be superseded by such set-back lines as are shown on the recorded plat, it being intended hereby that the plat shall take precedence.

7. GENERAL PROHIBITIONS AND REQUIREMENTS

The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Subdivision.

A. No outside toilet shall be constructed on any lot. With the prior written consent of the Committee, water wells and septic systems may be constructed on lots not served by central water or sewage systems, provided, however, such water or septic facilities shall comply with all requirements of the Health Department of the State of Colorado and other governmental agencies having jurisdiction thereof. All plumbing fixtures, dishwashers or toilets shall be connected to the central sewage system, or individual septic systems as permitted above. Storm water shall not be allowed to flow into the sewage system. At such time as central water or sewer facilities become available to a lot owner who has constructed a water well and/or septic system, the water well and/or septic system shall be abandoned and the central system made available shall be utilized exclusively. Unless otherwise determined by the entity having jurisdiction in the matter, the central water system shall be deemed to be available for purposes of this paragraph when water lines are installed, operative, and ready for connection within one

hundred feet of the property line of the lot utilizing a water well and the central sewage system shall be deemed to be available when sewer lines are installed, operative and ready for connection within four hundred feet of the property line of the lot utilizing a septic system.

B. No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any lot, provided, however, that the Committee may grant permission for any such temporary structure for storage of materials during construction. No such temporary structures as may be approved shall be used at any time as a dwelling place, nor shall any overnight camping be permitted on any lot.

C. Once construction of improvements is started on any lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within six (6) months from commencement.

D. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications.

E. All structures constructed or placed on any lot shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any such lot.

F. No animals or livestock of any description, except the usual household pets, shall be kept on any lot other than agricultural lots or lots designated specifically for such purposes.

G. All signs, billboards, or advertising structures of any kind are prohibited except upon application to and written permission from the Committee.

H. No stripped down, partially wrecked, or junk motor vehicles, or sizeable part thereof, shall be permitted to be parked on any street in the Subdivision or on any lot.

I. Every tank for the storage of fuel installed outside any building in the Subdivision shall be either buried below the surface of the ground or screened to the satisfaction of the Committee by fencing or shrubbery. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street, waterway or golf course within the Subdivision at any time except during refuse collections.

J. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street, waterway or golf course within the Subdivision.

K. No owner of any lot shall build or permit the building thereon of any dwelling house that is to be used as a model house or exhibit unless prior written permission to do so shall have been obtained from the Committee.

L. All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon.

M. No noxious, offensive or illegal activities shall be carried on on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.



N. No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

O. No commercial type truck shall be parked for storage overnight or longer, on any lot in the Subdivision in such a manner as to be visible to the occupants of other lots in the Subdivision or the users of any street, waterway, or golf course within the Subdivision, unless the prior written approval of the Committee has been obtained.

P. Any dwelling or outbuilding on any lot in the Subdivision which may be destroyed in whole or in part by fire, windstorm or for any other cause, or act of God must be rebuilt or all debris removed and the lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than sixty (60) days.

Q. No tree over three (3) inches in diameter shall be removed from any numbered lot in the Subdivision without the written consent of the Committee.

R. No exterior television or radio antenna of any kind shall be constructed or erected on any lot or residence after such time as a central television system has been made available to the Subdivision at rates commensurate with those prevailing in the area.

S. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any lot or be thrown into or left on the shoreline of any waterway in the Subdivision. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. In order to enhance the appearance and orderliness of the Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate a commercial scavenging service within the Subdivision for the purpose of removing garbage, trash and other like household refuse. Such refuse collection and removal service shall be provided not less often than once each week on a day or days designated by the Declarant or its successors or assigns. The charge to be made for such refuse collection and removal service shall be at a reasonable rate commensurate with the rates charged by commercial scavengers serving other subdivisions of high standards in the area, and shall be subject to change from time to time.

T. No change in ground level may be made of any lot in excess of one foot from existing grades without the written approval of the Committee obtained prior to the commencement of work.

#### 8. VARIANCES

The Committee may allow reasonable variances and adjustments of these Restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood, the Subdivision.

9. EASEMENTS

A. The Declarant reserves unto itself, its successors and assigns, certain easements along, across, over and upon the real estate that constitutes the Subdivision. The easements so reserved by the Declarant are described as follows:

- (1) Declarant, for itself, its successors and assigns and licensees, reserves a ten (10) foot wide easement along all road rights-of-way, and rear property lines, and a five (5) foot easement along the side lines of each and every lot in the Subdivision for the purpose of installing, maintaining and operating utility lines and mains thereon, together with the right to trim, cut or remove any trees and/or brush, and the right to locate guy wires, braces and anchors wherever necessary for said installation, maintenance and operations, together with the right to install and maintain and operate utility lines and mains and appurtenances thereto, and reserving unto itself, its successors, assigns and licensees, the right to ingress and egress to such areas for any of the purposes heretofore mentioned. No permanent building shall be placed on such easements, but the same may be used for gardens, shrubs, landscaping and other purposes, provided that such use or uses does not interfere with the use of such easement for their intended purposes. In instances where an owner of two or more adjoining lots erects and constructs a dwelling or building which will cross over or through a common lot line, the same shall not be subject to the aforementioned five (5) foot easement along or upon the contiguous or common lot line, except where utility lines or mains have been platted or installed.
- (2) Declarant further reserves for itself, its successors, assigns and licensees, for lake and shoreline maintenance and control along that portion of each lot contiguous to the shoreline of all lakes, an easement ten (10) feet wide. Any such lot shall be subject to a flowage easement to an elevation on the lot equal to the high-water elevation of the adjacent lake.
- (3) Declarant for itself, its successors, assigns and licensees, reserves a twenty-five (25) foot wide easement along all rights-of-way for the purpose of cutting and filling and drainage. Declarant further reserves unto itself, its successors and assigns and licensees, the right to cause or permit drainage of surface water over and/or through said lots, and further, it reserves an easement on, over and under all road rights-of-way for the purpose of installing, maintaining and operating utilities or drainage.
- (4) Each lot shall further be subject to an easement for the maintenance and permanent stabilization control of slopes.

- (5) No owner of any lot in the Subdivision shall have any claim or cause of action against Declarant, its successors, assigns or licensees, either in law or in equity, and arising out of exercise of any easement reserved hereunder, excepting in cases of wilful or wanton negligence.
- (6) All lot owners will install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the Committee hereinabove described.

B. Rules for Determination of Location of Easements

The rules prescribed in paragraph six (6) of the Restrictions above for the establishment of set-back lines that must be measured from meandered lines may be applied, whenever necessary, and with such adaptations as are necessary, in defining the location of any easement that is to encumber a strip of land contiguous to a meandered line.

C. Declarant reserves for itself, its successors or assigns an exclusive easement for the installation and maintenance of radio and television transmission cables with the rights-of-way and easement areas reserved and defined in paragraph 9A(1) above.

D. On each lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided, however that where the existing location of a drainage channel would hinder the orderly development of a lot the drainage channel may be relocated provided such relocation does not cause an encroachment on any other lot in the Subdivision and upon written approval from the Committee. Improvements within such areas shall also be maintained by the respective lot owner except for those for which a public authority or utility company is responsible.

E. Whenever two or more contiguous lots in the Subdivision shall be owned by the same person, and such person shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If written permission of such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with a single-dwelling house.

F. The lots in the Subdivision shall be burdened by such additional easements as may be shown on the recorded plats, however, in the event of conflict, the provisions of these Restrictions shall prevail.

G. Every lot in the Subdivision that lies contiguous to a lake or other waterway shall be subject to an inundation or a flowage easement to an elevation on the lot equal to the high-water line.

10. OWNERSHIP, USE AND ENJOYMENT OF PARKS AND RECREATIONAL AMENITIES

A. All parks, recreational facilities and other amenities within the Subdivision are private, and neither the Declarant's recording of the plat nor any other act of Declarant with respect to the plat, shall be construed as a dedication to the public, but rather all such parks, recreational facilities and other amenities shall be for the use and enjoyment of members or associate members of the Pagosa Property Owners Association, Inc., to residents of rental properties, other classifications of persons as may be designated by the Declarant, and to the guests of such members of the Association or other residents of Pagosa who qualify for the use and enjoyment of the facilities.

B. The ownership of all recreational facilities within the Subdivision shall be in Declarant or its designee, however, Declarant may convey or otherwise transfer any or all of the facilities to the Pagosa Property Owners Association, Inc., and such conveyance shall be accepted by it, provided it is free and clear of all financial encumbrances.

11. PAGOSA PROPERTY OWNERS ASSOCIATION, INC.

A. Every person acquiring legal or equitable title to any lot in the Subdivision, except limited commercial lots, C-1, becomes a member of the Pagosa Property Owners Association, Inc., a Colorado non-profit corporation, herein referred to as "Association," and with such ownership in the Subdivision and membership in the Association he then becomes subject to the requirements and limitations imposed in these Restrictions and to the regulations and assessments of the Association, with the exception, however, of such person or persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a lot within the Subdivision, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivision.

C. The Association shall be responsible for the maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use, of all recreational facilities, and other properties within the Subdivision as it may from time to time own or agree to maintain. The Association may provide fire and police protection for the residents of the Subdivision.

In the event that the Association at any time fails to properly maintain such parks and recreational facilities, or fails to provide adequate fire and police protection, the Declarant may in its sole discretion enter upon and make any and all repairs, or may maintain any of the properties under the responsibility of the Association, or the Declarant may adopt measures to provide adequate fire and police protection and may charge the Association for all such repairs or protections, provided, however, that Declarant shall under no circumstances be obligated to take any such action.

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to assess and collect from every member of the Association a uniform monthly charge per single-family residential lot within the Subdivision. The amount of such charge is to be determined by the Board of Directors of the Association for the purposes set forth in the Articles of Incorporation, and the charge in no event shall be less than Two (\$2.00) Dollars per month, payable annually, and provided further that no such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any entity that may be created to acquire title to, and operate, the water or sewer utilities serving the Subdivision, any commercial operations or any waterway, beach, access tract, marina, golf course, tennis courts, swimming pool, clubhouse, clubhouse grounds, campgrounds, or other like recreational facilities within the Subdivision.

All multiple residential use lots shall pay a minimum charge of Two (\$2.00) Dollars per month per lot prior to construction; and, thereafter, a minimum charge of Two (\$2.00) Dollars for each living unit constructed.

Motel and hotel property owners may contract for the use of the recreational properties and facilities within the Subdivision for their guests upon such terms and conditions and for such fees as may be mutually agreed upon from time to time between the operators of such properties and the Declarant or the Board of Directors of the Association.

All monthly charges are payable annually by the member to the Association on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot by the first day of April of each year, and written notice of the charge so fixed shall be sent to each member in the event it is changed from the previous year.

Every person who shall become the legal or equitable owner of any lot in the Subdivision by any means is, by the act of acquiring such title, or by the act of contracting to acquire such title, held to have agreed to pay the Association all charges that the Association shall make in accordance with these Restrictions. If such payment is not made when due, it shall bear interest from the due date at the rate of eight (8) per cent per annum. Until paid such charges together with costs and reasonable attorney's fees required to secure payment thereof shall constitute a perpetual lien on and against the property charged. The Association may publish the name of a delinquent member and may file notice that it is the owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorney's fees and may foreclose the lien in accordance with the laws of the State of Colorado.

The Association shall upon demand at any time furnish a list of members who have paid such assessment or of such members who are then delinquent in the payment of such assessments.

E. The fund accumulated as a result of the charges levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the members of the Association and in particular providing police and fire protection and the maintenance of the waterways, parks and other recreational facilities.

F. The lien of a mortgage or deed of trust placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon, shall be superior to any such lien as provided for in these Restrictions.

G. The Board of Directors of the Association shall have the right to suspend voting rights (if any) and the right to the use of the recreational facilities of any member or associate member if any charge owed (as assessed under paragraphs 11-D and 12 of these Restrictions) remains unpaid; or for any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation has been brought to the attention of the member in writing by the Board of Directors of the Association; or during the period that any utility bill for water or sewer service remains unpaid.

#### 12. ASSOCIATION'S RIGHT TO PERFORM CERTAIN MAINTENANCE

In the event an owner of any lot in the Subdivision shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association shall have the right to enter upon said lot and repair and restore the lot and the exterior of any improvements erected thereon. Such right shall not be exercised unless two-thirds (2/3) of the Board of Directors shall have voted in favor of such action. The cost of such exterior restoration and maintenance shall be added to and become a part of the annual charge to which such lot is subject. The Association shall not be liable for any damage which may result from any maintenance work performed hereunder.

#### 13. LAKE FRONTAGE LOTS

A. Certain lots in the Subdivision are contiguous to a lake which has been or is to be established within the boundaries of the Subdivision. The water in, and the land under said lake is and will be owned by the Declarant. Said lake is depicted in the recorded Subdivision plat and the normal pool water elevation and the high water elevation of said lake is, and will be as determined by the spillway elevation of said lake. The title that will be acquired by the grantee of the Declarant's title to any of said contiguous lots (and by the successors and assigns of such grantee) will and shall extend only to the shoreline of the lake to which such lot is contiguous, as said shoreline would be established on the date hereof if the water elevation in said lake were at an elevation one vertical foot above the normal pool water elevation and as the shoreline may hereafter be established by the water, at an elevation one vertical foot above normal pool water elevation, by erosion from said shoreline. No such grantee, nor any of such grantee's successors or assigns, shall have any right with respect to any stream that is a tributary to said lake, or with respect to said lake, the land thereunder, the water therein, or its or their elevations, use or condition, and none of said lots shall have any riparian rights or incidents appurtenant; provided further that title shall not pass by reliction or submergence or changing water elevations. The Declarant, its successors and assigns, shall have the right at any time to dredge or otherwise remove any accretion or deposit from any of said lots in order that the shoreline of the lake to which the lot is contiguous may be moved toward, or to, but not inland beyond, the location of said shoreline as it would exist as of the date hereof if the water elevation in said lake were at an elevation one vertical foot above the normal pool water elevation and title shall pass with such dredging or other removal as by erosion.

B. The Declarant reserves to itself, and to the Association, and its successors and assigns, such an easement upon, across and through each of said lots contiguous to said lake as is necessary in connection with operating said lake. Without limiting the generality of the immediately preceding sentence, it is declared that neither the Declarant nor any successor or assign of the Declarant shall be liable for damages caused by ice, erosion, washing or other action of the water.

C. The Declarant reserves to itself, and its successors and assigns, the right to raise and lower the elevation of said lake, but neither the Declarant nor any successor or assign of the Declarant shall have an easement to raise (by increasing the height of any dam or spillway, or otherwise) the high water elevation of any of said lake to an elevation above the normal pool water elevation.

#### 14. CHARGES FOR WATER AND SEWER SERVICE

A. Every legal or equitable owner of a lot in the Subdivision shall pay charges for water and sewer service in accordance with rates approved by the entity having jurisdiction in the matter. At such time as water or sewer service is available to the owner of a lot, he shall pay a water connection fee and/or a sewer connection fee in amounts established by the entity having jurisdiction in the matter. Unless otherwise determined by the entity having jurisdiction in the matter, water service shall be deemed to be available for purposes of this paragraph when water lines are installed, operative and ready for connection within one hundred feet of any property line of a lot and sewer service shall be deemed to be available when sewer lines are installed, operative and ready for connection within four hundred feet of any property line of a lot.

B. Easements in addition to those reserved throughout these Restrictions and on the recorded plats shall be granted for the practical construction, operation and maintenance of such water and sewer facilities upon request of the Declarant or the entity having jurisdiction in the matter.

#### 15. INCLUSION OF ADDITIONAL SUBDIVISIONS

Declarant, may, from time to time, and in its sole discretion, subject to restrictions substantially the same as those set forth herein, additional Subdivisions to be located within the Development. Such additional Subdivisions shall be subjected to such restrictions upon the recordation thereof in the appropriate records of Archuleta County, Colorado. Such restrictions shall be substantially the same as those contained herein, provided, however, that;

- (1) Such restrictions may impose additional limitations upon the property subject thereto.
- (2) Such restrictions shall not discriminate against lot owners whose property is included in an existing Subdivision already subject to restrictions.
- (3) Lot owners in such additional subdivisions shall become members of the Association in the same manner herein provided and shall have the same privileges, obligations and responsibilities as set forth herein.

#### 16. REMEDIES

A. The Association or any party to whose benefit these Restrictions inure, including the Declarant, its successors and assigns, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions; provided, however, that it is expressly understood that neither Declarant nor the Association shall be liable for damages of any kind to any party for failing to either abide by, enforce, or carry out any of these Restrictions.

B. No delay or failure on the part of an aggrieved party to invoke an available remedy set forth in 16A above in respect of a violation of any of these Restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

17. GRANTEE'S ACCEPTANCE

A. The Grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of Declarant and of the Association and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, the Association, and to and with the grantees and subsequent owners of each of the lots within the Development to keep, observe, comply with and perform said Restrictions and agreements.

B. Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all the risks and hazards of ownership or occupancy attendant to such lot, including but not limited to its proximity to golf course fairways or waterways.

18. SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

19. CAPTIONS

The underlined captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN WITNESS THEREOF, the Declarant has executed this Declaration on the day and year first above written.

TRANSAMERICA TITLE INSURANCE COMPANY,  
A California Corporation, as Trustee

BY: John E. Griffith

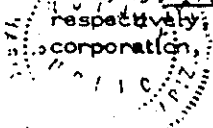
Vice President

ATTEST:

Vincent A. Pellerito  
Assistant Secretary

STATE OF ARIZONA )  
COUNTY OF MARICOPA ) ss:

This instrument was acknowledged before me this 18th day of June, 1970, by John E. Griffith and Vincent A. Pellerito respectively, of TRANSAMERICA TITLE INSURANCE COMPANY, a California corporation, acting as Trustee.



Gary H. Ennet  
Notary Public

My commission expires May 14, 1972

BOOK 122 PAGE 247



Recorded **AUG - 2 1983** 3:35 A.M.  
Page **117710** Martha Valdez-Recorder  
J.J.

SUPPLEMENTAL DECLARATION OF RESTRICTIONS

FOR

FAIRFIELD - EATON, INC.

This Supplemental Declaration of Restrictions (hereinafter referred to as Supplemental Declaration) made and entered into this 26th day of July, 1983, by and between Fairfield - Eaton, Inc., a Delaware Corporation, (hereinafter referred to as Declarant) and Colorado Land Title Company, a Colorado Corporation, (hereinafter referred to as Title Company) parties of the first part ; and SUCCESSORS IN TITLE TO DECLARANT AND/OR TITLE COMPANY IN AND TO ANY AND ALL NUMBERED LOTS IN THE HEREINAFTER ENUMERATED SUBDIVISIONS WHICH LOTS ARE EITHER OWNED BY DECLARANT AND/OR TITLE COMPANY AT THE DATE OF RECORDATION OF THIS SUPPLEMENTAL DECLARATION OF RESTRICTIONS OR ARE HEREAFTER ACQUIRED BY DECLARANT AND/OR TITLE COMPANY, ITS SUCCESSORS OR ASSIGNS, parties of the second part;

For the purpose of this Supplemental Declaration the term "lot" shall mean and include any and all townhouses and condominiums platted of record, any and all timeshare units platted of record, and any and all land subdivided and platted of record as single family residences;

WITNESSETH:

WHEREAS, Declarant is the developer of that certain resort development known as "Fairfield Pagosa" located in Pagosa Springs, Archuleta County, Colorado; and

WHEREAS, Declarant has conveyed the legal title to certain properties in Fairfield Pagosa to Title Company pursuant to a Title Clearing Agreement dated June 21, 1983 for the purpose of providing a convenient method of conveying title, releasing encumbrances and protecting the interest of the parties as their interests may appear; and

WHEREAS, Declarant is the developer of certain lots in the subdivisions hereinafter enumerated, which subdivisions are located in Fairfield Pagosa,

Plats of said subdivisions being recorded in the Archuleta County Recorder's Office in the Books at the Pages hereinafter enumerated, the aforesaid subdivisions and the recordation data of the respective plats and Declaration of Restrictions being attached hereto as Exhibit A; and

WHEREAS, Declarant is also the owner and/or developer of certain unnumbered land or lands in Fairfield Pagosa which lands are intended for commercial, multiple dwelling, condominium or hotels, or recreational uses; and,

WHEREAS, certain of the aforesaid unnumbered land or lands have been developed by Declarant as recreational amenities; and,

WHEREAS, Declarant may hereafter develop other of said lands as recreational amenities; and,

WHEREAS, the recreational amenities hereinabove referred to include or may hereafter include but shall not be limited to, dams, lakes, beaches, golf courses, tennis courts, swimming pools, club houses and adjacent clubhouse grounds, and campgrounds; and

WHEREAS, the aforesaid recreational amenities are provided to further and promote the community welfare of property owners in Fairfield Pagosa; and

WHEREAS, any or all of the aforesaid recreational amenities may be conveyed by the Declarant or the operation thereof may be transferred to one or more non-profit property owners associations, whereupon the maintenance, repair, and upkeep, of such recreational amenities will be provided by said association(s); and

WHEREAS, Declarant desires to insure the maintenance, repair, and upkeep of such recreational amenities until such time if ever, as any or all of such recreational amenities may be conveyed or the operation thereof transferred to one or more non-profit property owners associations; and

WHEREAS, Declarant also desires to insure that all purchasers of lots in the subdivisions hereinafter enumerated in Exhibit A will be members of the Pagosa Property Owners Association, a Colorado non-profit corporation, hereinafter referred to as "Association";

NOW, THEREFORE, Declarant hereby declares that all numbered lots in the aforesaid subdivisions listed on Exhibit A attached hereto (1) owned by Declarant or Title Company at the date and time of recordation of this Supplemental Declaration or (2) hereafter acquired by Declarant or Title Company, its successors and assigns, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to this

Supplemental Declaration as well as to the applicable Declaration of Restrictions hereinafter set forth in Exhibit A attached hereto; provided however that any lot heretofore sold by Declarant for which a deed has not been recorded shall not be subject to this Supplemental Declaration (unless hereafter acquired by Declarant, its successors or assigns) provided that the deed for such lot is recorded without reference therein to this Supplemental Declaration.

THE COVENANTS, CONDITIONS AND CHARGES HEREBY IMPOSED UPON SUCH LOTS ARE AS FOLLOWS:

Article I. Recreational Amenity Fee

Section 1. Power to Levy Fee. The Declarant shall have the power to levy against each lot subject to the provisions hereof an annual charge, the amount of said charge to be determined solely by the Declarant after consideration of current and future needs of Declarant for the reasonable and proper maintenance, repair and upkeep of all recreational amenities owned by the Declarant or Title Company and actually provided at the date of the levy of such charge. The recreational fee may be collected for the Declarant by one or more designated property owners associations as a part of their common expenses.

Section 2. Successors and Assigns. The power to levy such charge shall inure also to the successors and assigns of each such recreational amenity, provided however, that no charge shall be levied by any such successor or assign within twelve (12) months following the date of levy by Declarant or by the predecessor in title to such successor or assign of a charge as provided herein for the maintenance, repair, and upkeep of the recreational amenity or amenities acquired by such successor or assign.

Section 3. Entities Not Subject to Fee. No such charge shall ever be levied against lots owned by the Declarant or Title Company, by any non-profit property owners association, or by any corporation or corporations that may acquire title to or operate any water or sewer utilities serving the area, or any dams, lakes, beaches, golf courses, tennis courts, swimming pools, club house grounds, or other like recreational facilities, regardless of whether such facilities are used by persons other than lot owners.

Section 4. Liens. Charges to be levied by the Declarant, its successors and assigns, for the maintenance, repair and upkeep of the recreational amenity or amenities during the ensuing year shall be determined on or before the first day of each year. Each such charge shall become a lien or encumbrance upon the lot upon which same is levied as of the aforesaid first day of January, and acceptance of each deed for a lot or the execution of the Contract of Purchase for a lot, shall be construed to be a covenant by the lot owner or lot purchaser to pay each such charge. Any lot acquired shall be taken subject to the lien for any unpaid prior charges, and every person who shall become the owner of the title, legal or equitable, to any lot subject to such a charge by any means whatsoever (other than a mortgagee under a mortgage or a trustee under a Deed of Trust) shall be deemed conclusively to have covenanted to pay to Declarant, its successors or assigns, any such charge or charges. However, if a mortgagee or trustee under a Deed of Trust should, through foreclosure or otherwise, become the equitable or real owner of the lot, he will then be subject to all provisions of these Covenants.

Section 5. Payment. Each such charge shall become due and payable on the first day of March of the year in which such charge is levied, and each such charge shall bear interest from its due date at the highest rate of interest allowed by law, which interest until paid shall also constitute a lien or encumbrance upon the lot to which said charge is applicable. Such charge shall be pro-rated from the date of execution of the lot purchase contract.

Section 6. Place of Payment. Payment of all charges provided for herein, whether levied by Declarant, its successors or assigns, shall be made to Declarant, its agents, successors, or assigns at Fairfield Pagosa, P. O. Box 4100, Pagosa Springs, Colorado, 81157 or to such replacement address or addresses of Declarant, its agents, successors or assigns as may be designated by Declarant.

Section 7. Remedies. The lien of each charge as provided for hereunder may be foreclosed by Declarant, its successors or assigns, at any time following the due date of the charge levied. In addition and as an alternative to the remedy of lien foreclosure, the Declarant, its successors and assigns, shall have the right and option to sue the lot owner or lot purchaser and any successor owner or owners of same for any and all unpaid charges, interest, costs and reasonable attorney's fees, in any court of competent

jurisdiction as for a debt owed by such lot owner or lot purchaser or successor lot owner or lot purchaser to Declarant, its successors or assigns.

Section 8. Priority. Any and all liens as provided for in this item shall be subordinate to the lien of a bona fide mortgage or Deed of Trust representing a first lien at any time placed upon any lot for the purpose of permanent financing provided said mortgage or Deed of Trust is recorded in accordance with the laws of the State of Colorado.

Section 9. Record Keeping. All funds accumulated from the charges levied hereunder by the Declarant, its successors and assigns, shall be separately reflected on the books of account of the Declarant or any other such owner, if any, of said amenities as pertaining to the recreational facilities of the subdivision.

Section 10. Suspension of Privileges. Declarant, its agents, successors or assigns shall have the right to publish a list of lots subject to charges hereunder, which charges are in a delinquent status; and Declarant, its successors and assigns, shall have the right to suspend the use of all recreational facilities owned by Declarant, its successors and assigns, by any person or persons basing the right of use of such recreational facilities upon the ownership or possession of any such lot for which charges provided for hereunder are delinquent.

Section 11. Use Fee. Nothing contained herein shall be interpreted or construed to prevent Declarant, its successors or assigns, from charging any user for the use of any amenities owned or operated by them, or any of them; including charges for individual services or goods provided users through such facilities.

## Article II. Pagosa Property Owners Association

Section 1. General. The Pagosa Property Owners Association, Inc. is a Colorado non-profit corporation which is organized for the benefit of the residents and owners of property within the Fairfield Pagosa Resort to promote community welfare, strengthen and enhance property values and operate and be responsible for certain of the common areas.

Section 2. Membership in the Association. Every person acquiring legal or equitable title to any Lot shall automatically be a member of the Association, subject to the requirements imposed by these Covenants and the Articles.

Bylaws, rules and regulations of the Association. The provisions of this Section 1 will not apply to any persons who hold an interest in any Lot solely as security for the performance of an obligation to pay money, such as mortgages or deeds of trust. However, if any such person should, through foreclosure or otherwise, become the equitable or real owner of the Lot, he will then be subject to all provisions of these Covenants.

Section 3. Powers and Duties. The Association will have the powers and duties set forth in its Articles, Bylaws, rules and regulations, and applicable Declaration of Covenants and Restrictions, including the power to assess its Members, and the duty to maintain parks, recreational facilities and provide such other community services such as police and fire protection as it determines advisable. If the Association does not properly perform any of its required duties, Declarant shall have the right, but not the obligation, to perform such duties.

Section 4. Assessments.

- (a) Lots Subject to Assessments. All Lots subject to the provisions hereof shall be subject to assessments by the Association. However, no assessment shall be payable by Declarant, the Title Company, or the Association itself. In addition, neither Declarant, the Association, or any other entity shall pay assessments for portions of the Property utilized for public water or sewer services, community waterways, nonexclusive beaches, access tracts, marinas, golf courses, tennis courts, swimming facilities, clubhouses or grounds, campgrounds or other similar recreational facilities so designated by Declarant on any recorded plat or subsequently recorded document.
- (b) Basis of Assessments. The Association will adopt a budget at the beginning of each fiscal year and will set assessments for the year sufficient to fund its budgeted operations. The Association will then set the level of assessment for each Lot in a manner which equitably shares the expenses of the Association's operations based on the benefit each Lot derives from the Association, its size, value and other pertinent factors determined by the Association. Lots determined by the Association to be comparable will be assessed equally. The Association will promptly notify Lot Owners of their Lot's assessment by the first day of April each year.

- (c) Payment. All assessments are payable annually on or before the first day of May each year. Every person who shall become the legal or equitable Owner of a Lot subject to assessments hereunder by any means is, by the act of acquiring such title, or by the act of contracting to acquire such title, held to have agreed to pay the Association all charges that the Association shall make in accordance with these Covenants. If such payment is not made when due, it shall bear interest from the due date at the rate of 12 percent per annum. Until paid, such charges, together with costs and reasonable attorneys' fees required to secure payment thereof, shall constitute a perpetual lien on and against the Lot charged. The Association may publish the name of a delinquent Member and may file notice that it is the holder of a lien to secure payment of the unpaid charge plus costs and reasonable attorneys' fees and may foreclose the lien in accordance with the laws of the State of Colorado. The Association shall, upon demand at any time, furnish a list of Members who have paid such assessments or of such Members who are then delinquent in payment of such assessments.
- (d) Priority. The lien for unpaid Association assessments shall be junior and subordinate to any properly recorded First Lien on any portion of Fairfield Pagosa. However, all assessments coming due after any holder of a First Lien acquired actual or equitable title through foreclosure or otherwise shall constitute a lien on the lot involved as provided above. The Declarant's lien for unpaid recreational assessments provided in Article I and the Association's lien for unpaid assessments provided in this Article II shall be concurrent and on equal parity.
- (e) Suspension of Voting Rights. The Association shall have the right to suspend voting rights (if any) and the right to the use of the recreational facilities owned by the Association of any Member or associate Member if any charge owed remains unpaid; or for any continuing violation of these Covenants, after the existence of the violation has been brought to the attention of the Member in writing by the Association; or during the period that any utility bill for water or sewer service remains unpaid.

Section 5. Additional Common Areas. Some areas within Fairfield Pagosa may have additional common areas or facilities designed to serve specific portions of the Property. If so, there may be additional owner's associations with supplemental assessment rights for purposes of operating and maintaining these additional facilities. Any such additional associations or assessment rights will be specified in the Supplemental Covenants for the areas involved.

### Article III. Purpose

It being the intent and purpose of this Supplemental Declaration to include any and all lands hereinafter developed and sold by Declarant for residential, resort or retirement purposes. Property added to the Fairfield Pagosa development by Declarant by way of execution of a Declaration of Restrictions shall incorporate this Supplemental Declaration therein by reference.

IN WITNESS WHEREOF, Fairfield - Eaton, Inc. and Colorado Land Title Company have caused these presents to be executed and their corporate seals to be hereto affixed all by order of their Board of Directors duly given, this the day and year first above written.



FAIRFIELD - EATON, INC.

By: [Signature]  
Vice President



COLORADO LAND TITLE COMPANY

By: [Signature]  
Vice President

117710



Recorded JAN 11 1978

At 10:05 A.M.

Recpt. No. 90305 Felima Gardner-- Recorder *RR*

AMENDMENT TO RESTRICTIONS

EATON INTERNATIONAL CORPORATION, having adequate ownership and/or consents pursuant to the below referred Declaration of Restrictions, hereby Amends the said Declaration of Restrictions recorded as follows in the office of the Archuleta County, Colorado Recorder:

RECORDED:

1. September 13, 1971	Book 126, Page 95
2. May 23, 1972	Book 128, Page 72
3. June 7, 1973	Book 132, Page 250
4. June 24, 1970	Book 122, Page 224
5. September 13, 1971	Book 126, Page 71
6. June 4, 1973	Book 132, Page 245
7. June 4, 1973	Book 132, Page 231
8. November 5, 1973	Book 134, Page 35
9. November 5, 1973	Book 134, Page 37
10. March 1, 1972	Book 127, Page 275
11. June 6, 1972	Book 128, Page 264

As to all the above, whether directly recited or incorporated by reference, the first and second paragraphs of Paragraph 7D of 1, 2, 3 above, and the first and second paragraphs of Paragraph 11D of 4 through 11 above are amended to read as follows:

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to assess and collect from every member of the Association a uniform annual charge per single-family residential lot within the Subdivision. The amount of such charge is to be determined by the Board of Directors of the Association for the purposes set forth in the Articles of Incorporation, and the charge in no event shall be less than as follows:

\$21.00 annually, for the initial lot owned,  
plus \$1.00 per year for each additional lot  
owned in the same name;

\$27.00 annually, where a lot has been improved  
with a living unit,

and provided further that no such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any entity that may be created to acquire title to, and operate, the water or sewer utilities serving the Subdivision, any commercial operations or any waterway, beach, access tract, marina, golf course, tennis courts, swimming pool, clubhouse, clubhouse grounds, campgrounds, or other like recreational facilities within the Subdivision.

All multiple residential use lots shall pay a minimum charge of \$27.00 per year for each living unit constructed.

Except as above modified, the above recited Declarations of Restrictions remain unchanged.

DATED this 6th day of January, 1978.



EATON INTERNATIONAL CORPORATION,  
a Delaware corporation

By David H. Eaton  
Executive Vice President

ATTEST:

Patricia L. Vietze  
Assistant Treasurer

STATE OF ARIZONA     )  
County of Maricopa    ) ss.

This instrument was acknowledged before me this 6th day of January, 1978, by David H. Eaton and Patricia L. Vietze, as Executive Vice President and Assistant Treasurer, respectively, of EATON INTERNATIONAL CORPORATION, a Delaware corporation.



Jandi Martin  
Notary Public

My Commission expires:

My Commission Expires Feb. 6, 1981

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90305