

DECLARATION

OF

CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

SETTLERS VILLAGE, FILING 1, at SouthPointe

INDEX

ARTICLE I - Covenants to Preserve the Residential Character of
the Subdivision Page 1

Section 101.	Property Uses.	Page 1
Section 102.	Structures.	Page 1
Section 103.	Construction Type.	Page 2
Section 104.	Storage.	Page 2
Section 105.	Completion of Work.	Page 2
Section 106.	Construction Completion.	Page 2
Section 107.	Construction or Sales Offices.	Page 2
Section 108.	Drilling Structures.	Page 2
Section 109.	Easements.	Page 3
Section 110.	Underground Utilities.	Page 3
Section 111.	Business Uses.	Page 3

ARTICLE II - Density, Setback, and Quality Standards Page 3

Section 201.	Limitation on Dwellings.	Page 3
Section 202.	Setback Areas.	Page 3
Section 203.	Dwelling Area Requirements.	Page 3
Section 204.	Height Restrictions.	Page 3
Section 205.	Roofs.	Page 3
Section 206.	Accessory Buildings.	Page 4
Section 207.	Roof Projections.	Page 4
Section 208.	Owner Maintenance.	Page 4
Section 209.	Rebuilding or Restoration.	Page 4
Section 210.	Fences.	Page 4
Section 211.	Design Guidelines.	Page 4

ARTICLE III - Living Environment Standards Page 4

Section 301.	Building and Grounds Conditions.	Page 4
Section 302.	Garage Doors.	Page 5
Section 303.	Maintenance Equipment.	Page 5
Section 304.	Refuse.	Page 5
Section 305.	Nuisances.	Page 5
Section 306.	Sound Devices.	Page 5
Section 307.	Landscaping.	Page 5
Section 308.	Street Trees.	Page 5
Section 309.	Weeds.	Page 6
Section 310.	Mowing and Pruning.	Page 6
Section 311.	Grading Patterns.	Page 6
Section 312.	Transmitters.	Page 6
Section 313.	Animals.	Page 6
Section 314.	Trailers, Campers, etc.	Page 6



Section 3.		Page 6
Section 316.	Unused Vehicles.	Page 7
Section 317.	Vehicle Repairs.	Page 7
Section 318.	Signs.	Page 7

ARTICLE IV - Architectural Control Page 7

Section 401.	Building Approval.	Page 7
Section 402.	Plans Submissions.	Page 8
Section 403.	Approval Process.	Page 8
Section 404.	Variances.	Page 8
Section 405.	Composition of the Approving Authority.	Page 9
Section 406.	Liability.	Page 10

ARTICLE V - Association Page 10

Section 501.	Formation of Association.	Page 10
Section 502.	Membership.	Page 10
Section 503.	Voting.	Page 10
Section 504.	Governing Board.	Page 11
Section 505.	Bylaws.	Page 11

ARTICLE VI - General Provisions For Effect of the Covenants Page 11

Section 601.	Definitions.	Page 11
	(a) Accessory Building.	Page 11
	(b) Association.	Page 12
	(c) Building Site.	Page 12
	(d) These Covenants.	Page 12
	(e) Declarant.	Page 12
	(f) Design Guidelines	Page 12
	(g) Due Notice.	Page 12
	(h) Garden Level.	Page 12
	(i) Governing Board.	Page 12
	(j) Landscape.	Page 12
	(k) Lot.	Page 12
	(l) Lot Lines.	Page 12
	(m) Owner.	Page 13
	(n) Structure.	Page 13
	(o) The Subdivision.	Page 13
	(p) Tree Yard.	Page 13
Section 602.	Captions.	Page 13
Section 603.	Approving Authority Resolves Questions of Construction.	Page 13
Section 604.	Covenants Run with the Land.	Page 13
Section 605.	Covenants are Cumulative.	Page 14
Section 606.	Waivers.	Page 14
Section 607.	Enforcement.	Page 14
Section 608.	Duration of Restrictions.	Page 14
Section 609.	Terminations and Amendment.	Page 14
Section 610.	Additional Areas.	Page 15
Section 611.	Enumerations Inclusive.	Page 15
Section 612.	Gender and Number.	Page 15
Section 613.	Severability.	Page 15
Section 614.	Action in Writing.	Page 15
Section 615.	Notices.	Page 15

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Conditions, Covenants, Restrictions and Easements

for

SETTLERS VILLAGE, FILING 1, at SouthPointe

Horizon Communities, Inc., A Colorado Corporation (called the "Declarant" in this Declaration), is the sole owner of property described as follows:

All lots in Settlers Village, Filing No. 1, except Lot 1, Block 4, according to the plat thereof recorded in Pueblo, Colorado. This land is called the "Subdivision" and individual lots designated by the recorded plat are called "Lots".

Declarant desires to place protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value. Declarant also wishes to create an association to advance and promote the common interests of the Owners with respect to the Subdivision. Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE SUBDIVISION

Section 101. Property Uses. All Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling.

Section 102. Structures. No Structure shall be erected within the Subdivision except single-family dwellings and those Accessory Buildings and Accessory Structures which have been approved by the Approving Authority. No Structure other than a dwelling with an attached or detached garage for a minimum of two cars, no Accessory Building and no trailer, tent or other similar or dissimilar temporary



quarters may be used for living purposes. No other Structure may be placed on any Building Site before completion of the dwelling upon such Building Site except with the permission of the Approving Authority.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot or Building Site except as expressly herein-after provided in Section 107 for temporary construction, sales or administration buildings, and except as provided in the following sentence. The Approving Authority, in its sole discretion, may permit a single-family residence, other than a mobile home, previously constructed at another location to be located on a Lot within the Subdivision, provided that such residence is installed on a permanent foundation, is in good condition, is compatible in quality and architecture with other homes in the Subdivision and is in compliance with Article II of these Covenants.

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 105. Completion of Work. A Structure shall not be occupied in the course of original construction until substantially completed. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Construction Completion. The exterior of all buildings or other Structures must be completed within six months after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this Section 106, "Commencement of Construction" for a single-family dwelling, is defined as the obtaining of necessary building permits and the pouring of a foundation, and for all other Structures, is the undertaking of any visible exterior work.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Approving Authority. Model homes may be used and exhibited only by Declarant or with the permission of the Approving Authority. Temporary buildings permitted for construction or administration purposed or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 108. Drilling Structures. No derrick or other Structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substance be produced from any well located upon, in or under any Lot.

Section 109. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the five foot strips along and adjoining each rear Lot Line of each Lot, and each of the five foot strips along and adjoining each side Lot Line of each Lot for the use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 110. Underground Utilities. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground. Existing overhead utility lines, in place and operational prior to development of this area shall be permitted to remain.

Section 111. Business Uses. No business, profession or other activity conducted for economic gain shall be conducted on or within any Lot or Building Site, except for normal home-based businesses or home offices which cannot be detected from outside the structure and do not involve any signage or create any customer or commercial traffic.

ARTICLE II

DENSITY, SETBACK AND QUALITY STANDARDS

Section 201. Limitation on Dwellings. No more than one dwelling shall be erected or maintained within any Lot or Building Site.

Section 202. Setback Areas. All buildings and structures shall be placed upon the Lots in compliance with the setbacks and placements shown on the Special Area Plan. Any Lot that is not part of a Special Area Plan shall have setbacks that comply with the City of Pueblo Zoning Ordinance.

Section 203. Dwelling Area Requirements. No dwelling shall be erected which, exclusive of basements below Garden Level, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable floor area of less than 1,200 square feet if a single-story dwelling, or less than 1,400 square feet if a multi-story dwelling.

Section 204. Height Restrictions. No dwelling or other Structure shall be more than two stories in height.

Section 205. Roofs. All roof areas shall be of wood shakes, wood shingles, clay or concrete tile, composition shingles or other material approved by the Approving Authority. Roof areas must be of earthtone colors only.

Section 206. Accessory Buildings. Any Accessory Building or Structure shall be of the same colors and harmonize in appearance with the dwelling situated on the same Lot.

Section 207. Roof Projections. No aerial, antenna or microwave system for reception or transmission of radio, television or other electronic signals, or other roof projection, including but not limited to lightning rods and weather vanes, shall be maintained on the roof or any other exterior location of a building or Lot, unless fully screened in a manner approved by the Approving Authority so as not to be visible at ground level from neighboring property or adjoining streets.

Section 208. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any Accessory Building and all other Structures, lawns and Landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off.

Section 209. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, wind storm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

Section 210. Fences. All fences facing the street shall be constructed of solid opaque materials approved by the Approving Authority. These currently include natural rough cedarwood, concrete block, brick, stucco or vinyl, but other materials will be considered. Fences shall be no more that 6 feet high. Chain link fencing may be used along side lot lines and rear lot lines except where the side or rear lot lines are adjacent to a public street. No other material may be used for fences unless previously approved by the Approving Authority. Except with approval of the Approving Authority, no fence or hedge more than two and one half feet high shall be installed closer to an adjoining street than the dwelling or any other building located on the Lot is to the street. Along side streets of corner Lots, fences may be extended to the property line but not into the right of way.

Section 211. Design Guidelines. All Lots shall comply with the Design Guidelines as defined in Article VI, Section 601 here-in.

ARTICLE III

LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall maintain the exterior of the dwelling, any Accessory Building, fence and all other Structures, lawns and Landscaping, walks and

driveways, in first class condition and shall cause them to be repaired as the effects of damage or deterioration become apparent.

Section 302. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress and egress to or from the garage.

Section 303. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible at ground level from neighboring property or adjoining streets.

Section 304. Refuse. No unsightly objects or materials, including but not limited to: ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two weeks of continued violation of this Section 304, the Approving Authority shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass and the Owner shall be liable for all costs incurred relative thereto.

Section 305. Nuisances. No noxious, offensive or hazardous activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No annoying lights, sounds or odors shall be permitted to emanate from any living units or Accessory Buildings.

Section 306. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any Structure or within any Lot.

Section 307. Landscaping. Within six months after completion of a dwelling or within any extension of that period granted by the Approving Authority, all yards and open spaces shall be Landscaped and thereafter maintained in lawn or Landscaping. Unless otherwise approved by the Approving Authority, at least fifty (50%) percent of the front yard area shall be covered with bluegrass lawn or its equivalent. For purposes of this section, the front yard is defined as the area of the Lot between the paved surface of any street adjacent to the Lot and the building setback line on the Lot. Landscaping will be required in the Tree Yard. Grasses, trees, shrubs, bushes, ground cover or other live materials need to cover at least fifty percent (50%) of the Tree Yard. The balance may be covered with decorative rock or mulch. Concrete and asphalt will not be allowed in the Tree Yard except for driveways and sidewalks that cross the Tree Yard.

Section 308. Street Trees. After initial construction of each house, the Declarant will install Street Trees in the Tree Yard in accordance with the Declarants Street Tree Plan. The Homeowner will be responsible for watering, care, and maintenance of the Street

Trees adjacent to their homes, and will be required to replace any Street Trees that die with a tree of the same variety or a variety approved by the Approving Authority. Street Trees replaced by Homeowners need to be a minimum of 1 1/2 inches in caliper.

Section 309. Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the reasonable opinion of the Approving Authority are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Approving Authority causes undue danger of fire or an unsightly appearance to the Subdivision.

Section 310. Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot.

Section 311. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading and the subdivision grading and drainage plan. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

Section 312. Transmitters. No electronic or radio transmitter of any kind shall be operated in or on any Structure or Lot, in such a way as to cause nuisance, inconvenience or interference to neighbors.

Section 313. Animals. No animals except small domestic animals permanently confined indoors and except an aggregate of two domesticated dogs or cats shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Approving Authority makes an unreasonable amount of noise or odor or is a nuisance.

Section 314. Trailers, Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, any towed trailer unit or truck, excepting only pickups with or without bed toppers and passenger vans for the private use of the residents of a dwelling as primary transportation on a day-to-day basis, shall be parked within any Lot or Building Site except in a completely enclosed Structure such as a garage, or unless screened in a manner approved by the Approving Authority so not more than two feet of the vehicle is visible above the enclosure at ground level from any neighboring property or adjoining street.

Section 315. Parking. No vehicles shall be parked in the front yard of any Lot except in the driveway. No vehicles shall be parked overnight on any street.

Section 316. Unused Vehicles. No unused, stripped down, partially wrecked or junk motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street. An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than a week as determined by the Approving Authority.

Section 317. Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Structure which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 318. Signs. The only signs permitted on any Lot or Structure shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;
- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale and administration purposes installed by, or with the permission of Declarant during development;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) Such signs as may be required by law.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 401. Building Approval. No Structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include but are not limited to: the exterior appearance, material, color, height and location of each Structure, covering, drive, walk and fence, landscaping and grading of site. In granting or withholding approval, the Approving Authority shall consider among other things: compliance with the Design Guidelines, the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the Structure or covering to the environment and to surrounding uses, the degree, if any, to which the proposed Structure or covering will cause intrusions of sound, light or other effect on neighboring sites beyond those

reasonably to be expected in a quality urban residential area from considerate neighbors.

Section 402. Plans Submissions. All plans, samples and other materials to be submitted to the Approving Authority shall be submitted in writing. The minimum scale of these plans shall be one-twentieth inch equals one foot. The plot plan in this minimum scale shall show the location of all buildings, drives, walks, fences and any other Structures. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples.

Section 403. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within thirty days after delivery of all the required materials to the members of the Approving Authority, the materials so delivered shall be deemed approved for the purpose of these Covenants. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 404. Variances. The Approving Authority shall have the authority to grant for a Lot or Building Site a variance from the terms of one or more of Sections 106, 202, 203, and 209 subject to terms and conditions which may be fixed by the Approving Authority and will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of all of those Sections will result in unnecessary hardship. Following an application for a variance:

(a) The Approving Authority shall within sixty days after the request for the variance is delivered, determine whether to grant or deny the variance. If the Approving Authority fails to act on the request for a variance within sixty days, the variance shall be deemed denied. If a variance affects Sections 202, 203, or 209 above, then the Approving Authority shall call a meeting of Owners of Lots in the Subdivision that are within 300 feet of the subject property, notice of which meeting shall be given to the Owners at least ten days in advance, at which meeting all Owners shall have an opportunity to appear and express their views.

(b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one week after the meeting either grant or deny the variance.

(c) The Approving Authority shall determine whether or not a variance granted hereunder shall run with the Lot or Building Site for which granted on a case-by-case basis.

(d) If a variance is denied, another application for a variance for the same Lot or Building Site may not be made for a period of one year.

(e) A variance shall not be granted unless the Approving Authority shall find that all of the following conditions exist:

(i) the variance will not authorize the operation of a use other than private, single-family residential use;

(ii) owing to the exceptional and extra-ordinary circumstances, literal enforcement of the sections above enumerated will result in unnecessary hardship;

(iii) the variance will not substantially or permanently injure the use of other property in the Subdivision;

(iv) the variance will not alter the essential character of the Subdivision;

(v) the variance will not weaken the general purposes of these Covenants;

(vi) the variance will be in harmony with the spirit and purpose of these Covenants; and

(vii) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner, and are not applicable generally to Lots in the Subdivision or their Owners.

Section 405. Composition of the Approving Authority.

Declarant shall act as the Approving Authority until the earlier of: (i) the date when Declarant no longer owns any interest in any Lot within the Subdivision; or (ii) the date when Declarant elects to assign its rights, powers and authority to act as the Approving Authority to the Governing Board of the Association, discussed below in Section 504. At the time that Declarant ceases to own any interest in any Lot within the Subdivision or at such earlier time as Declarant elects to make the assignment, Declarant shall execute and record in the real property records of Pueblo County, Colorado a document assigning the rights, powers and authority and delegating the functions and duties of the Approving Authority to the Governing Board. If Declarant fails to record such a document within 10 days after Declarant ceases to own any interest in any Lot within the Subdivision, then the Governing Board shall automatically be deemed to be the Approving Authority for all purposes of these Covenants, and a document expressly assigning the rights, powers and authority and

delegating the functions and duties of the Approving Authority shall not be required.

Section 406. Liability. Members of the Approving Authority shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

ARTICLE V

ASSOCIATION

Section 501. Formation of Association. There is hereby created an unincorporated association to be known as the Settlers Village at SouthPointe Homeowners Association (the "Association"). The Association is established for the following purposes:

(a) to enforce the provisions of these Covenants, in its own name or on behalf of its members, and to seek redress for the violation of any provision of these Covenants, by any and all remedies available at law or equity;

(b) acting through the Governing Board, to fulfill the duties and functions and exercise the rights, powers and authority of the Approving Authority as provided in these Covenants, after assignment to the Governing Board as provided in Section 405;

(c) to advance and promote the common interests of the Owners relating to the Subdivision; and

(d) to perform other functions as may be determined by a majority of the Owners.

The Association shall have perpetual existence.

Section 502. Membership. Each Owner shall automatically be a member of the Association. Only Owners of Lots shall be members of the Association. Each membership in the Association shall be appurtenant to the fee simple title to a Lot. The Owner of a Lot shall automatically be the Owner of the membership appurtenant to that Lot and ownership of the membership for the Lot shall automatically pass with fee simple title to the Lot. If fee simple title to a Lot is held by more than one person or entity, all such persons or entities shall be members.

Section 503. Voting. The members of the Association shall have one vote for each Lot owned. The total number of votes held by all Owners collectively shall be equal to the total number of Lots in the Subdivision. When more than one person or entity owns a Lot, the vote for such Lot shall be cast by one of such persons or entities designated by the Owners. In no event shall more than one vote or fractional votes be cast with respect to any one Lot. Members shall have the right to vote only on the members of the Governing Board as expressly provided in Section 504 and on other matters referred to the

members by the Governing Board. A vote of the majority of all votes in the Association shall be required for approval or disapproval of, or action on, any matter placed before the Association for a vote.

Section 504. Governing Board. The affairs of the Association shall be managed by a governing board composed of five individuals (the "Governing Board"). For as long as Declarant owns any interest in any Lot within the Subdivision, Declarant shall have the right to appoint all of the members of the Governing Board, and such members of the Governing Board need not own any interest in any Lot. At such time as Declarant no longer owns any interest in any Lot within the Subdivision, Declarant shall appoint five individuals, each of whom owns a real property interest in a Lot within the Subdivision, to act as the members of the Governing Board. Thereafter, whenever a member of the Governing Board shall resign, die or be unwilling or unqualified to act, the remaining members or remaining member, if only one, shall appoint a successor who owns, or successors who own, a real property interest in a Lot or Lots within the Subdivision as members of the Governing Board, so as to fill the existing vacancies. Notwithstanding the foregoing, after such time as Declarant no longer owns any interest in any Lot within the Subdivision, or Declarant has ceased to exist, Owners of Lots in the Subdivision who hold a majority of the total votes of the Association may, through a duly recorded, written instrument executed by such Owners, change the members of the Governing Board, so long as the members of the Governing Board all own a real property interest in a Lot or Lots within the subdivision. Any appointment, removal or replacement of members of the Governing Board shall be by written instrument signed and acknowledged by Declarant or other person or persons above authorized to make appointment, removal or replacement and filed for record in the real property records of Pueblo County, Colorado.

Section 505. Bylaws. The Governing Board may, upon approval of a majority of the members of the Governing Board, adopt, amend, alter or repeal bylaws or other rules or regulations relating to meetings of the Governing Board, meetings of the members of the Association and other matters concerning the governance or operations of the Association; provided, however, that no bylaw, rule or regulation shall conflict with the express provisions of these Covenants.

ARTICLE VI

GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 601. Definitions. The following words and expressions as used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

- (a) Accessory Building. Detached garages, storage sheds, patios, swimming pools, covers, enclosures, dressing rooms or other similar Structures, recreation facilities, separate guest houses without kitchens, separate servants' quarters without kitchens and other buildings customarily used in

connection with the single-family residence.

(b) Association. Settlers Village at SouthPointe Homeowners Association, an unincorporated association discussed in Article V.

(c) Building Site. A Lot as established by the recorded plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 5,000 square feet.

(d) These Covenants. This Declaration and the provisions contained in it.

(e) Declarant. Horizon Communities, Inc., a Colorado Corporation, or any person or entity that succeeds to Horizon Communities, Inc.'s interest in the Subdivision.

(f) Design Guidelines. A document prepared by the Declarant that is intended to be a supplement to the Covenants. The Design Guidelines contain Covenant information and additional details intended to aid the Homeowner and/or Builder during the design and construction phase of the home. The Design Guidelines may be amended from time to time at the sole discretion of the Declarant. Homeowners and/or Builders are expected to comply with the Design Guidelines in effect at the time that the original building plans for their house are submitted to the Approving Authority. The Design Guidelines are incorporated here-in as a part of these Covenants by reference.

(g) Due Notice. Written notice delivered in accordance with the requirements of these Covenants at least ten days prior to the action required by the notice.

(h) Garden Level. A level of floor space that has a floor to ceiling height of not less than eight feet and which has a ceiling that is not less than three feet above finished grade.

(i) Governing Board. The governing body of the Association, as described in Section 504.

(j) Landscape. The treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks or mulch materials, or other decorative surfacing materials approved by the Approving Authority. For purposes of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as Landscaped and Landscaping.

(k) Lot. Each area designated as a Lot in the recorded plats of the Subdivision.

(l) Lot Lines. Front, side and rear Lot Lines shall be the

same as defined in the zoning regulations of the City of Pueblo in effect from time to time.

(m) Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

(n) Structure. Any thing or device other than trees and Landscaping the placement of which upon any Building Site might affect its exterior appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, mail-box, outdoor lighting and lawn ornamentation. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(o) The Subdivision. The area subdivided as Settlers Village, Filing No. 1., except Lot 1, Block 4, according to the plat recorded in the office of the Clerk and Recorder of the County of Pueblo and State of Colorado, together with any additional land subjected to these Covenants pursuant to Section 610 below.

(p) Tree Yard. The area adjacent to each Lot between the curb and the detached sidewalk.

Section 602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 603. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intentment or meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in a written instrument duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of Pueblo County, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Approving Authority shall not be subject to this Section 603.

Section 604. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 605. Covenants are Cumulative. Each of these Covenants is cumulative and independent. Each provision of these Covenants may be construed separately without reference to any other provisions.

Section 606. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 607. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Approving Authority and the Association and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Approving Authority, the Association or any combination of them. All costs, including reasonable attorneys' fees, incurred by the Approving Authority in connection with any successful enforcement proceeding initiated by the Approving Authority (along or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 608. Duration of Restrictions. Unless sooner terminated as provided in Section 609, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2025 and shall be automatically renewed for successive periods of ten years unless before the year 2025 or before the end of any ten year extension, there is filed for record with the Clerk and Recorder of Pueblo County an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in the Subdivision.

Section 609. Terminations and Amendment. All sections of these Covenants (except Article V) may be terminated at any time, and from time to time any section or sections of these Covenants (except Article V) may be amended or new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds of the Lots in the Subdivision and filed for record with the Clerk and Recorder of Pueblo County.

Section 610. Additional Areas. From time to time Declarant may include additional areas within the real estate subject to these Covenants. Such additions shall be effected by filing with the Clerk and Recorder of Pueblo County, Colorado, a supplemental declaration, together with a legal description designating the additional area to be included. All areas so added shall be subject to all these Covenants, and any references to the Subdivision in these Covenants shall automatically include such additional areas upon recording the supplemental declaration. Declarant may also impose additional restrictions on areas so added. All areas so added shall be within one-half mile of, and contiguous to, the Subdivision, and shall be residential Lots for a neighborhood similar in character and style to the Subdivision.

Section 611. Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

Section 612. Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations and to other entities, singular to include plural and plural to include singular.

Section 613. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 614. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application or other action.

Section 615. Notices. Any writing described in Section 614, including but not limited to any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise:

(a) to the dwelling situated on the Lot owned by that Owner; or

(b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Approving Authority has a record.

