

491738 B-974 P-584 04/18/96 01:49P PG 1 OF 7 REC DOC NOT
MILDRED ALSDORF GARFIELD COUNTY CLERK AND RECORDER 36.00

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LOTS 54A, 54B AND 54C AT THE HENDRICK RANCH

The undersigned Son-Jay, Inc., by Robert Green, as Owner of Lots A, B and C of the Resubdivision of Lot 54, Hendrick Ranch Subdivision in the Town of Carbondale (the "Lot" or "Lots"), hereby declares that said Lots A, B, And C shall at all times be owned, held, used and occupied subject to the provisions of this Covenants, Conditions and Restrictions.

Article I - DEFINITIONS

1.1. "Common Elements" shall mean any part of the electric, gas, water, sewer, television cable or other utility systems which serves more than one Owner or Lot.

1.2. "Declarant" shall mean Robert Green.

1.3. "First Mortgagee" shall mean a person or persons, or entity, which is the beneficiary of a mortgage or deed of trust constituting a first lien against a Lot.

1.4. "Homeowners Association" or "Association" shall mean the 927, 937 and 947 Vito's Way Town Homes Homeowners' Association, a Colorado unincorporated association, its successors and assigns. Each of the three Owners of the Lots shall be a member of the Association, with one vote per Lot.

1.5. "Lot" shall mean any divided parcel of the Property as depicted and shown on the Plat and described by separate Lot designation, together with all improvements constructed on that Lot, title to which shall be owned and conveyed in fee simple.

1.6. "Mortgage" shall mean any mortgage or deed of trust of record constituting a lien upon a Lot as security for an indebtedness or other consideration.

1.7. "Owner" shall mean the record owner of any Lot, including Declarant, whether one or more persons or entities own the fee simple title to such Lot.

1.8. "Party Wall" shall mean the wall that forms the division between any two Lots, including any structural extension, but not exceeding one foot in width.

1.9. "Plat" shall mean the official plat for the Property as filed for record in the office of the Clerk and Recorder of Garfield County, Colorado.

1.10. "Property" shall mean all of the real property described as Lots A, B and C, Vito's Way, Town of Carbondale, County of Garfield and State of Colorado, as described on the Plat.

ARTICLE II - MAINTENANCE FOR LOTS

2.1. Lot Maintenance. Except as set forth in the original Declaration of

Wendy C. Lucas
12 Blue Creek Trail
Carbondale, CO 81623

Party Walls and Reservations and Grants of Easements, each Lot Owner shall be responsible for maintenance, repair, alteration and replacement of all interior, exterior, structural and nonstructural surfaces physically serving or connected with that Owner's Lot. In addition, each Owner shall be responsible for operation, maintenance, repair and replacement of all electric, gas, water, sewer, television cable or other utility systems commencing at the point where any of such systems depart an area of common usage or an area of usage restricted to the other Lots and begin in the direction of that Owner's Lot. Declarant's intent is that each Owner shall be solely responsible for any costs incurred for utility systems which provide service only to that Owner's Lot. Each Owner shall indemnify and hold the other Owners forever harmless from and against any and all loss or damage of whatsoever nature occasioned in the performance of that Owner's respective performance or failure to perform maintenance, repair, alteration or replacement. The right to maintain, repair, alter and replace materials removed with similar or other types or kinds of finishing materials of a similar style and equal or better quality, and to maintain the Property in neat and clean condition. Each Owner shall maintain and keep the improvements on that Owner's Lot in good repair and condition.

2.2. Approval by Other Owners. If any maintenance, repair, alteration or replacement on a Lot will substantially deviate from the original architectural scheme or physical feature on the Lot, the Owner who desires to make the change shall first obtain the written approval of the other two members of the Homeowners Association. Changes which substantially deviate from the original architectural scheme or physical features include, but are not limited to, changes in the shape, design, height, elevation of the foundation, pitches of the roof, color of the paint or shingles, and location of structures, fences, landscaping, utilities or drainage features.

2.3. Common Elements. The Homeowners Association shall be responsible for operation, maintenance, repair and replacement of any part of the electric, gas, water, sewer, television cable or other utility systems which serve more than one Owner or Lot (hereafter "Common Elements"). This responsibility shall include repair and replacement of any private property damaged or altered in the process of making necessary repairs or replacements. Decisions concerning operation, maintenance, repair or replacement of the Common Elements shall be made by the affirmative vote of any two or all three members of the Homeowners Association. Each member of the Homeowners Association shall pay an equal share of the expenses incurred for operation, maintenance, repair or replacement of the Common Elements, regardless of how that member voted on the question of whether to do the work. Nevertheless, nothing in this Declaration shall entitle the Homeowners Association to impose a monthly or recurring assessment for anticipated Homeowners Association expenses.

2.4. Landscaping and Drainage. Each Owner shall landscape that Owner's Lot and shall complete said landscaping within 12 months of purchasing that Lot. The Homeowners Associations philosophy regarding landscaping is to landscape in a manner such that water is conserved and minimal maintenance is needed. Each Owner shall keep the landscaped portion of that Owner's Lot in a clean, neat and properly trimmed manner. There shall be no interference with the established drainage patterns over any Lot. Owner's shall not plant, grow or install trees, bushes, or structures of any kind that interfere with another Owner's views of Mt. Sopris.

ARTICLE III - INSURANCE

3.1. Insurance. Each Owner shall obtain and maintain insurance for fire and extended coverage perils for that Owner's Lot in an amount equal to 100% of the value of the Owner's improvements. Any Owner may, at that Owner's sole cost and expense, maintain and pay for homeowner's liability insurance.

3.2. Use of Proceeds. In the event of damage or destruction to improvements due to fire or other disaster, the insurance proceeds shall be promptly applied by the Owner(s) to repair, restore and replace such improvements. To the extent such proceeds are not sufficient, the affected Owner(s) shall pay any deficiency necessary to complete reconstruction.

ARTICLE IV - LIENS

4.1. Nonpayment of Expenses. If a Lot Owner fails to pay his or her share of Homeowners Association expenses within 30 days, interest shall thereafter accrue on the unpaid amount plus costs and expenses at the rate of 18% per annum. The Homeowners Association shall have a lien for the unpaid amount plus accrued interest on the defaulting Owner's Lot, superior and prior to all other liens and encumbrances, including any claim of homestead, except:

- (a) Tax and special assessment liens on the Lot in favor of any governmental assessing entity.
- (b) All sums unpaid on a First Mortgage, including all unpaid obligatory sums as may be provided by such encumbrance, including additional advances, refinance or extension of these obligations made thereon prior to the arising of the Homeowners Association lien.

To evidence its lien, the Homeowners Association shall prepare a written notice of lien setting forth the nature of the common expense, the amount of unpaid indebtedness for the common expense, the name and address of the defaulting Owner and a description of the Lot. The notice shall be recorded in the Office of the Garfield County Clerk and Recorder. The lien shall attach 30 days from the date of the failure to make payment and may be enforced by foreclosure on the defaulting Owner's Lot by the Homeowners Association in the same manner as on a real property mortgage. In any such foreclosure, the defaulting Owner shall be required to pay the costs and expenses of the proceedings, the costs and expenses for filing the notice of lien and all reasonable attorney's fees incurred in enforcement of the lien. The Homeowners Association shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the Lot. Any mortgagee holding a lien on a Lot may pay any unpaid Homeowners Association expense payable with respect to that Lot, and upon payment, the mortgagee shall be entitled to an assignment of the lien.

ARTICLE V - USE RESTRICTIONS

5.1. Single Family Residential Use. Lots shall be used for residential purposes only. No structures of a temporary character, mobile home, trailer, tent, shack, garage, barn or other outbuilding shall be used as a residence on any portion of any Lot at any time, either temporarily or permanently. No business activity shall be conducted on any Lot which is not permitted by law or governmental regulation, nor which would materially increase motor vehicle traffic in the parking areas. No licensed day care business shall be conducted on any Lot. That portion of each Lot originally constructed as a garage shall

not be converted to a living area, but shall remain the principal vehicle parking area for such Lot.

5.2. Vehicles. No trucks, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less shall be parked, stored or kept on any portion of any Lot. This restriction shall not prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to a Lot. No work on automobiles or other vehicles shall be performed in any visible or exposed portion of any Lot, except in emergencies. Abandoned or inoperable vehicles shall not be stored or parked on any portion of any Lot. An abandoned or inoperable vehicle is any vehicle which has not been driven under its own propulsion for three (3) weeks or longer and which appears incapable of operation.

5.3. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that not more than two (2) pets consisting of either two (2) dogs, two (2) cats, or one (1) dog and one (1) cat may be kept as family pets provided they are not kept, bred or maintained for any commercial purposes and provided that they do not constitute a nuisance or danger or unreasonably disturb other Owners or residents of other Lots. In the event an Owner rents a Lot, that Owner is encouraged to restrict his tenant's right to keep pets on the Lot.

5.4. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate on the Property. Trash, garbage, and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of other Lots and the street.

5.5. Signs. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on a Lot. However, one "for rent" or "for sale" sign not more than six square feet in size shall be allowed on each Lot.

5.6. Antennas. No exterior television or radio antennas or dishes of any sort shall be placed, allowed or maintained upon any Lot without the consent of the Homeowners Association.

5.7. Nuisances. No noxious, illegal, hazardous, or other offensive activity shall be conducted on any Lot which may (a) be or become a nuisance to other Owners; (b) interfere with the quiet enjoyment by each of the Owners of their respective Lots; (c) increase the rate of insurance for any Lot; (d) cause any insurance policy to be canceled; (e) cause a refusal to renew an insurance policy; or (f) impair the structural integrity of any improvement. No hazardous materials shall be kept on any Lot. Without limiting the generality of any of the foregoing provisions, no exterior loudspeakers, horns, whistles, bells or other sound devices other than security devices used exclusively for security purposes shall be located, used or placed on any Lot.

Article VI - PARTY WALLS

6.1. Easement for Party Walls: The wall and any structural extension that forms the division between any two (2) Lots (not exceeding one foot in width) is hereby declared to be a party wall as shown and located on the Plat, to be shared and owned in common by the Owners of the respective Lots. Each Lot shall be subject to an easement for encroachment created by construction, setting or overhang of the present party walls, and to a reasonable degree, any subsequent improvement, addition or replacement thereof, and for the maintenance of the same, so long as such encroaching portion stands and exists. In the event any building is partially or totally destroyed by fire or otherwise and is rebuilt by the Owners thereof, such Owners agree that minor encroachment of parts of this adjacent Improvements upon a Lot due to such reconstruction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall and does exist. Each Owner shall have an easement for horizontal and lateral support for improvements situated on such Owner's Lot. Each Owner shall have the irrevocable right to have necessary for the inspection, maintenance, repair or replacement of a party wall or any utilities located therein or for making emergency repairs necessary to prevent damage to a party wall or a Lot.

6.2. Responsibility for Party Walls. Except as is otherwise provided in this Declaration, the cost of reasonable maintenance, repairs, and replacement of each party wall shall be the joint expense of the Owners sharing such party wall. The cost of repairs and maintenance of the finished surface of the party wall located within a Lot shall be the sole expense of the Owner of such Lot. An Owner shall have the right to reasonably maintain and repair any utility installation located within a party wall, but in so doing shall restore the party wall to its original condition.

6.3. Negligence by Owner: In the event a party wall is damaged or destroyed by the act, omission, default or negligence of one of the Owners, such Owner shall rebuild or repair such wall and shall compensate any other Owner for any damage to the latter's property. In addition, an Owner who by negligence or willful act causes or permits a party wall to be exposed to the elements of nature, shall bear the whole cost of furnishing the necessary protection against such elements so as to protect such party wall and other Owner's property against such elements.

6.4. Standard of Repair: Any repairs or rebuilding of a party wall shall be done in a workmanlike manner and shall conform, in all respects, to the laws in force at such time regulating the construction, restoration, or repair of buildings.

6.5. Common Law Application: To the extent they are not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls shall apply to the Property.

6.6. Utility Easements: At the time of conveyance of the said Lots A, B and C by the undersigned Owner there shall be granted as an appurtenance to each Lot conveyed, an easement for existing utilities serving the Lot conveyed for purposes of the operation, maintenance, repair and replacement thereof as well as an easement of reasonable access to such existing utilities for the purposes aforesaid. Similarly there shall be reserved in any such conveyance an easement for existing utilities serving the other Lot or Lots and an easement for access thereto for purposes of operation, maintenance, repair or replacement of any such utilities. Any damages caused to the Lot burdened by the easement by the Owner

or Owners of the easement granted or reserved in the use of such easement, shall be immediately repaired by the Owners of Lots A, B and C and the expense of such repair borne by such Owners served by the easement on a ratable basis. Any expense of maintenance, repair or replacement of any of the utilities located within the foregoing described easements shall be borne equally by the respective Owners of the Lot or Lots unless such maintenance, repair or replacement is necessitated by the intentional or negligent act or omission of the Owners of one or more of the Lots, in which case the latter Owner or Owners shall be solely responsible for the cost of such maintenance, repair or replacement. Further, none of the Owners of the Lots A, B and C shall build or erect any structure over existing easements and utilities located therein, except for those portions of such easements which are presently located under or through existing buildings and structures.

ARTICLE VII - GENERAL PROVISIONS

7.1. Covenants Run With Land. The covenants, conditions and restrictions of this Declaration shall run with and encumber the Property and Lots, and shall inure to the benefit of and be enforceable by the Owners, their heirs, devisees, personal representatives, successors and assigns.

7.2. Interpretation. Necessary grammatical changes required to make the provisions hereof apply either to a corporation or to individuals, men or women, shall in all cases be made as though in each case fully expressed.

7.3. Enforcement. Each Owner and any other occupant of any part of the Property shall comply with the provisions of these Covenants. Failure to comply with these Covenants shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. In addition, any public or other private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available. Any action to enforce these Covenants may be brought by an aggrieved Owner.

7.4. Attorney's Fees and Costs. In the event of litigation to resolve a claim of default in performance by any party, the party who is determined to be in default shall pay the attorney's fees, expenses and court costs of the nondefaulting party.

7.5. Mailing of Notices. The address of each Owner as disclosed by the records of the Garfield County Assessor shall be the address for mailing of any notice hereunder. All notices or demands intended to be served upon any Owner shall be either hand delivered or sent by certified mail, postage prepaid, addressed in the name of the Owner at such mailing address. All notices or demands to be served on First Mortgagees pursuant hereto shall be sent by certified mail, postage prepaid, addressed in the name of the First Mortgagee at the address appearing in the recorded Mortgage. Any notice referred to in this section shall be deemed given when actually delivered or when deposited in the mail in the form provided for in this section.

7.6. Invalid Provision. If any provision of this Declaration shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the Declarant that if any provision of this Declaration is capable of two

