

THE HEIGHTS

FIRST AMENDED DECLARATION OF PROTECTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS that WOODMOOR NORTH DEVELOPMENT, INC, hereinafter called the "Declarant", the developer of Lots one (1) through fifty-four (54) inclusive, of THE HEIGHTS Filing II and future filings, County of El Paso, State of Colorado, hereinafter called the "Property", more particularly described in Exhibit A attached hereto and incorporated herein. Declarant is the owner of Lots 7, 14, 15, and 18 through 54, inclusive, of THE HEIGHTS, Filing II and future filings, County of El Paso,

WHEREAS this First Amended Declaration of Protective Covenants is intended to amend and supersede The Heights Declaration of Protective Covenants ("Declaration") as filed in El Paso County at Book 6161 Page 89L.

NOW THEREFORE, the Declarant declares that, by a majority vote of the current landowners as provided in the Declaration, all of the Property is and shall be hereinafter held, transferred, sold, conveyed and occupied subject to the following terms, restrictions, limitations, uses, liens, charges, covenants conditions, obligations and covenants, which are for the purpose of protecting the value and desirability of, and which shall run with the Property, and shall inure to the benefit of and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, grantees, personal representatives, executors, administrators, devisees, successors

I. INTENT

1. The intent of these covenants is to preserve THE HEIGHTS as a high quality residential area of lasting value, in keeping with the current El Paso County zoning requirements for Category R -Residential District Property owners should be people who win uphold the letter, spirit and intent of these covenants.

II. HOMEOWNER'S ASSOCIATION

2. PROPERTY OWNER'S ASSOCIATION, DUES AND ASSESSMENTS:

a) Declarant has incorporated or will incorporate under the laws of the State of Colorado, as a nonprofit corporation, the HEIGHTS PROPERTY OWNERS ASSOCIATION (HPOA), whose Bylaws shall be in conformance with these covenants. Upon purchase of a lot in THE HEIGHTS, lot owners shall automatically become members of HPOA. Membership shall be appurtenant to and may not be separated from the ownership of any lot.

b) Dues for the HPOA shall be \$50.00 per year per lot, payable upon purchase and annually thereafter, in advance, on January 1 of each year. The Board of Directors of the HPOA shall have the power and authority, by a majority vote of the Board, to increase the amount and frequency of dues as it deems necessary. Funds collected as dues shall be used for the normal business expenses of operating the HPOA and for enforcement of these Covenants. Additionally, all owners shall be obligated to pay any special assessments imposed by the HPOA, up to annual maximum of \$200.00 per lot, as needed to meet the need for common improvements to the Property, reserves for enforcement and improvements, and insurance costs of the HPOA. Assessments are to be divided among all lots equally, however, the Declarant shall be assessed at twenty-five (25%) of such special assessments for any lots Declarant owns. The maximum assessment may be increased by the Board by five percent (5%) per year without a vote of the members. The maximum assessment may be increased by more than five percent (5%) per year by a vote of sixty-seven percent (67%) of the members present at a meeting duly called for such purpose. All owners of a particular lot are jointly and severally liable to the HPOA for the payment of dues, assessments, penalty assessments, and any costs for completion or removal of structures or maintenance on their lot as provided in paragraph 3 below.

c) Each lot shall have one (1) vote regardless of the numbers of owners of said lot, however, Declarant shall have three (3) votes per lot owned by Declarant. Only those lot owners whose dues are current and paid shall have a vote. Declarant, and its successors and assigns, shall not be required to pay dues on any lots it owns until three (3) years from the date of filing of the final plat covering such lots.

d) The HPOA may file a lien or suit for money judgment, including attorney fees and costs of collection, against the lot and lot owner(s) for dues and/or assessments in arrears for thirty (30) days or more, and for penalty assessments as hereafter provided. Any such lien shall be superior to all other liens and encumbrances (including any homestead exemption), except only for sums unpaid on a First Mortgage of record, and may be enforced by foreclosure by the HPOA. Each Owner hereby agrees that the HPOA's lien on a Lot for dues and/or assessments shall be superior to any homestead exemption, and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot shall signify such Owner's waiver of such homestead rights with respect to such lien.

III. BUILDING COMPLETION REQUIREMENTS

3. TIME OF CONSTRUCTION: a) Except for lot perimeter fencing, construction shall not be allowed on any lot until approved in writing in advance by the ACC in accordance with these covenants. Construction of the residence shall begin within two (2) years of purchase of the lot from the Declarant. Construction of any approved structures, including landscaping, shall be completed within nine months from the time such construction is started. If any lot remains without a residence built upon it for thirty-six (36) months from the date of purchase from Declarant, Declarant shall have the right, at its sole option, to purchase the lot at its current market value or original purchase price, whichever is lower. Owner shall be responsible for any real estate commissions due as a result of such repurchase.

b) If any structure is left in an unfinished condition for more than twelve (12) months, or is abandoned or not maintained, Declarant and/or the ACC shall have the right, power and authority to remove or complete all or any portion of such structure or to perform reasonable maintenance, at the lot owner's expense, so as to prevent its being unsightly and a detriment to the area. Notice of intent to remove or complete the structure or perform maintenance, and to charge for the expenses incurred, shall be mailed by certified mail to the owner of record at his last known address, and shall be posted on the lot a minimum of ten (10) days prior to such action.

c) The HPOA may file a lien or suit for money judgment, including attorney fees and costs of collection, against the lot and lot owner(s) for any removal, completion or maintenance expenses incurred by the HPOA which are not paid to the HPOA within thirty (30) days of request. Any such lien shall be superior to all other liens and encumbrances (including any homestead exemption), except only for sums unpaid on a First Mortgage of record, and may be enforced by foreclosure. Each Owner hereby agrees that the HPOA's lien on a lot for removal, completion or maintenance shall be superior to any homestead exemption, and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot shall signify such Owner's waiver of such homestead rights with respect to such lien.

IV. ARCHITECTURAL CONTROL

4. ARCHITECTURAL CONTROL COMMITTEE ("ACC"):

a) The ACC shall initially be composed of three (3) persons appointed by the Declarant ("appointees"). Such appointees shall serve until their resignation or removal by the Declarant, and in the event of such removal or the death, incapacity or resignation of any one of such three appointees, the Declarant shall have full authority to designate a successor who, in like manner may be removed at any time by the Declarant.

b) After completion of twenty-one (21) homes on the Property, Declarant will remove one of its appointees and a successor member, who must be a lot owner, shall be appointed by a majority vote of the HPOA Board of Directors for a term of three (3) years. Upon the completion of another twenty-one (21) homes, a second appointee shall be removed by the Declarant and a second owner shall be appointed by the Board in a like manner for a three year period. At the end of each three year term for members

appointed by the Board, the Board may reappoint the same member or a replacement member for subsequent three year terms. Declarant or its representative may remain on the ACC until all lots are sold and dwelling units are constructed on all lots. However, at its option, Declarant may, at any time, relinquish control of the ACC to the owners. At such time as all lots are sold and dwelling units have been built on all lots, Declarant shall remove its remaining appointee and the HPOA shall appoint a third member in a like manner. A quorum at any meeting of the ACC shall consist of two of the members thereof and any decision shall be reached by the vote of a majority of such members.

c) An ACC member, other than Declarant or the Declarant's appointees, may be removed by a vote of two-thirds (2/3) majority of the then owners present at a duly called meeting. In the event of such removal, or the death, incapacity or resignation of any one of the Board's appointees, the Board shall have full authority to designate a successor member to fulfill the remainder of the term. The ACC shall make and retain records of selections of its members for a period of ten (10) years. ACC members shall not receive compensation except reimbursement of expenses.

d) Neither Declarant nor any members of the ACC, nor any persons acting therefore, shall be liable for any actions taken or failure of action taken in these premises. The HPOA shall indemnify Declarant and all other members of the ACC for any and all liability, costs or expenses, including attorney fees, incurred as a result of their actions, which were in good faith and without malice, as members of the ACC.

e) Meetings: The ACC shall meet as a group to discuss, review, and examine submitted plans, make field trips to the lot and approve or disapprove all submissions, in writing.

5. **AUTHORITY OF THE ARCHITECTURAL COMMITTEE:** The ACC shall have the discretion and right to resolve all questions of interpretation of these covenants in accordance with their general purpose and intent as herein expressed. The ACC shall monitor all construction on the Property, and shall have the right to enter any Lot for purposes of inspecting and monitoring construction as to conformance with these covenants and as to progress in accordance with approved plans. The ACC may require reasonable changes in lot owner's plans solely for aesthetic reasons. If any improvements are made to any lots which do not comply with the covenants, restrictions and Architectural Guidelines expressed herein, or are commenced without the approval of the ACC as provided herein, the ACC may require the removal of such improvements at the Owner's expense, and/or the ACC may subject the Owner(s) of the subject lot to a fine of up to \$100.00 per day for every day the violation exists. Such fine may be enforced and collected by the HPOA Board as a penalty assessment. The ACC and the HPOA Board shall have the right at law and equity to enforce these covenants and the selection of any one remedy shall not be deemed an exclusive remedy, and the ACC and Board may concurrently or subsequently utilize other remedies to enforce the covenants on the same matter. The ACC may, from time to time, issue guidelines and rules relating to the procedures, materials to be submitted and additional factors which may be taken into consideration in connection with the approval of any future improvements. For purposes of quality control, the ACC shall have the discretion and authority to determine and approve which Builders shall be allowed to build on the property.

6. **TECHNICAL ADVISOR:** The ACC may retain a non-voting Technical Advisor (TA), experienced in residential site planning, construction, and landscaping, to assist with the management, review and processing of applications and plans for the ACC, as well as to monitor the construction progress of each project in accordance with approved plans. The TA's compensation for these services will be from the application and processing fee. The TA may also provide consulting services to an applicant, at the applicant's expense, prior to applicant's formal submittal of plans. To avoid any appearance of a conflict of interest, however, the TA shall not consult for a fee with an applicant once plans have been formally submitted to the ACC for approval. The TA shall be required to maintain records of his services for both the ACC and applicants.

7. **APPROVED BUILDERS, PROCESSING FEES AND COMPLETION BOND:** The ACC shall maintain a list of Builders approved for construction of homes in THE HEIGHTS. Persons wishing to purchase lots and construct a residence may select a Builder from the approved list, or, if the owner wishes to use a Builder not on the approved list, such Builder must first be approved by the ACC before

any contraction begins on such lot. The Builder, in conjunction with the owner, will complete the appropriate application documents supplied by the ACC. An initial non-refundable Construction Application Fee of one hundred fifty dollars (\$150.00) shall accompany each initial formal submittal of plans to cover costs of processing the application. The ACC may increase the application fee if deemed necessary to cover increases in the cost of processing. Any accumulated unused portion of application fee shall annually be deposited into the HPOA general fund. Requests for changes, such as, but not limited to additions, remodels or alterations shall be accompanied by an application form, a full set of plans and an application fee of one-fourth (1/4) the prevailing full application fee. A completion bond of \$1200 for the structure and \$500 for other improvements including driveways and landscaping will be required from Applicant to be deposited by the ACC in an escrow account maintained by the HPOA. Upon written notice to the ACC by the Applicant that construction is completed the ACC may inspect the construction, and upon the ACC's determination that the construction is complete, the ACC shall release the bond. The bond and fee may be waived at the sole discretion of the ACC.

8. APPLICATION AND APPROVAL PROCEDURE: a) A completed application with two (2) sets of plans shall be submitted by the lot owner or Builder to the ACC. If the owner is uncertain regarding the approval of specific plans, he is encouraged to submit preliminary drawings or sketches and a written request for preliminary review prior to completion of a full set of plans and formal application. Such preliminary reviews are performed as a courtesy and do not constitute final action. The ACC shall retain records of all requests, applications, preliminary drawings, house plans, location plot/site plans and actions taken for a period of three (3) years after all structures applied for there under have been completed. If requests for changes, such as, but not limited to, additions or remodels or alterations are made, both the original plans and the plans for said changes shall be submitted with the application and shall be retained for a period of three (3) years after said changes are completed.

b) No plans shall be approved by the ACC unless said plans comply in every respect with the covenants, restrictions and Architectural Guidelines contained herein, or the ACC grants a waiver, exemption or variance to such. The decision of the ACC shall be promptly transmitted to the persons or entity submitting the request for approval ("Applicant") at the address of the Applicant submitted to the ACC by the Applicant.

c) Any request for approval of a proposed improvement shall be deemed approved unless notice of disapproval is sent to the applicant within forty-five (45) days of actual receipt by the ACC of the application including all plans and specifications, unless such time is extended by mutual agreement. The ACC shall return one set of documents showing the ACC's written determination and comments to the owner.

9. INFORMATION REQUIRED: a) The construction application shall be submitted on the ACC's application form with the following attachments: A plot/site plan and a landscape plan at the same scale (may be on the site/plot plan), complete house/structure plans, the required application fee, and any other supplemental information that may be requested by the ACC to carry out its purpose. The plot/site plan shall show the exact location on the lot of all proposed improvements and construction, such as, but not limited to, the house, garage, driveways, retaining walls, earthwork, grading, exterior lighting, accessory buildings and fences, even if only contemplated for the future. Exact proposed setbacks from lot lines, measured perpendicular to the lot lines shall be shown. Driveways to proposed structures and any clearing of trees and vegetation, plantings of trees and other landscaping materials, fencing, provisions for drainage, etc., must be shown in sufficient detail for the ACC to make valid judgments of the proposed improvements. The plot/site plan shall show existing topographic (contour) information at a contour interval of two (2) feet. Trees, existing and planned, larger than two (2) inch caliper shall also be shown on the plan. Detailed topographic lot maps are available from the Declarant. The house/structure/building submittals shall show details of the floor plans, architectural elevations, and exterior materials and color samples. Samples of new, or non-traditional exterior materials may be submitted for evaluation by the ACC prior to a request to utilize

such materials. The structure(s) location on the lot shall be accurately staked on the lot prior to submittal of the formal application.

10. ARCHITECTURAL DESIGN AND BUILDING REQUIREMENTS:

a) No building, structures, walls, gates, hedges, fences, mailboxes, driveways, windbreaks, swimming pools, flagpoles, exterior lighting, antennas or other improvements of any kind shall be commenced, erected, converted, placed, added to, maintained or altered on any lot until complete construction plans and specifications, to include design, height, material and color samples to be used and a site/plot plan showing the exact location of the structure(s) as set forth above, have been approved in writing, by the ACC as to materials, harmony of external design with existing structure(s) and adjoining lots, location with respect to other structures planned, and as to topography and finished grade elevation. This requirement applies both to new construction and to subsequent changes, additions, repainting and major repairs or renovations. The ACC may require site changes if in its opinion the proposed site location would unduly interfere with existing trees, with drainage of the Property, or with the use and enjoyment of adjoining lots.

b) HEIGHT AND SIZE: 1) The maximum height allowed for any building shall be two and one-half (2-1/2) stories and shall not exceed 28 feet in height from the mean undisturbed topography of the building site, and in any event shall not exceed the height restrictions of the El Paso County Land Use Code for this zoning. For purposes of these covenants, houses with basement windows above or partially above ground level or houses with garden level or basement entrances on one side may, at the discretion of the ACC, be considered as single or multi-story structures, depending on appearance, size, location and amount of total finished floor area. 2) The enclosed total area of any dwelling structure, exclusive of garages, decks, patios or porches, shall not be less than three thousand (3000) square feet. The enclosed ground level area (footprint) of the main dwelling structure, exclusive of garages, decks, patios or porches, shall not be less than twelve hundred (1200) square feet for a multi-story dwelling and eighteen hundred (1800) square feet for a single-story dwelling. The ACC may grant requests for minor variances to size or height criteria when other factors which enhance the quality of the structure conclusively justify such variance.

c) GARAGES: Garages are required for all dwellings and shall be of sufficient size to accommodate two (2) full-size automobiles. Oversized two or three car garages are recommended as economical and practical storage space.

d) SETBACKS: Buildings shall be located a minimum of forty (40) feet from the front and rear lot and a minimum of fifteen (15) feet from the side lot lines. For purposes of these covenants, chimneys, eaves, overhangs, steps, porches, and decks shall be considered as part of the structure. Fences must be located a minimum of five (5) feet from the lot line.

e) REFUSE AND RUBBISH: Rubbish, garbage, trash, refuse or other waste shall be kept and disposed of in a sanitary manner. All garbage or trash containers shall be kept at all times in a closed garage or placed in a walled in area designed to blend with the house so that they shall not be visible from other lots or from public roads. No trash, litter, equipment, boxes, or other such items shall be permitted to remain exposed on any area of a lot that is visible from any other lot or from any public road. Builders and Owners shall be responsible for timely and complete removal of all debris related to construction. On-site burying of trash or debris is prohibited. During construction, all building sites shall be maintained in a clean, safe and orderly condition. Builders not in compliance shall be subject to removal from the Approved Builder list maintained by the ACC.

f) COLOR: Structural color schemes shall be subdued, unobtrusive natural or earth color. Color samples must be submitted with the application.

g) FACING/SIDING/FRAMING: Exterior surfaces, including concrete foundations and retaining walls, shall be covered by one or a combination of two (2) or more materials from the following: Stucco,

brick, stone, cedar or other wood siding. Two (2) or more materials shall be used on the fronts of homes with 15% or more of the treated surface to consist of brick or stone. Natural wood sidings must be treated and periodically maintained with preservative or stain. Since clear wood finishes do not withstand the high altitude weather, any finish material or stain shall have at least twenty percent (20%) pigment to aid in blocking ultra-violet and infrared rays, thereby protecting the underlying material. Metal, asbestos, pressed board, ply board or plastic-siding materials are prohibited. Unless exempted by the ACC, 2x6 or larger construction shall be used on all exterior walls together with insulation that completely fills the wall void. A moisture barrier (i.e. visquine) is required on all exterior walls.

h) **DRIVEWAYS:** Driveways shall be at least 14 feet in width and covered with concrete or hot mix asphalt, utilizing culverts as required by the topographic and drainage plans. Maintenance of driveways is the responsibility of the lot owner.

i) **CHIMNEYS AND OPEN FIRES:** Spark arresters shall be required on an chimneys. Open fires are prohibited.

j) **ROOFING:** Roof materials and color shall be consistent with the architecture, color and exterior wall material of any structure. Slate, concrete tiles or high-grade composition roofs with at least 40-year warranty will be required. The ACC may allow variations from this requirement in those cases where such variation would be harmonious with the surrounding area. New high-quality materials with shake, tile or slate appearances may be considered at the sole discretion of the ACC. The overhang (eaves) of the roof of a structure shall be at least eighteen (18) inches wide. The minimum roof pitch on all buildings shall not be flatter than a ratio of three (3) vertical feet to twelve (12) horizontal feet. Flat roofs or nearly flat roofs with or without parapet walls are prohibited. Roof mounted solar collectors shall be flush mounted and must be approved by the ACC prior to installation.

k) **ENERGY FEATURES:** Energy efficient designs are encouraged through well sealed and insulated construction and the use of passive solar design techniques. Solar collectors, when utilized, shall be an unobtrusive part of a house or garage structure so that reflections and appearances do not unreasonably defeat the intent of these covenants to maintain a natural environment. Wind driven electric generators or windmills are prohibited.

l) **EXTREME DESIGNS:** At the discretion of the ACC, houses of extreme design may not be approved, it being the intent of these covenants to establish an area of quiet, unobtrusive dignity and quality consistent with other homes in THE HEIGHTS.

m) **LANDSCAPING:** All soils disturbed during the building process must be re-graded to natural grade. A landscaping plan showing drainage and tree and shrub plantings must accompany all submittals requesting improvements that disturb any part of the lot. A maximum of two thousand (2000) square feet of irrigated landscaped area is allowed per lot. Trees to be cut or moved must have the approval of the ACC. The owners of lots on which dry ponds are located as a part of the approved drainage plan shall keep ponds free from debris, rubbish and sediment that may impede the flow of water through exit culverts or that may reduce the storage capacity of the dry pond. No person may dam said ponds or otherwise prevent the free flow of water through culverts on the Property. Owners may landscape the dry pond areas for purposes of beautification; however, Declarant and the Heights Property Owners Association shall not be responsible for loss of such landscaping should the ponds fill temporarily as a part of water evacuation for the subdivision. No fence, wall, hedge, tree, shrub or tree planting or other structure which unduly obstructs line-of-sight shall be placed or permitted to remain on any corner formed by the intersection of a street with another street.

n) **WATER AND SANITATION:** There shall be no water wells drilled, placed or maintained and no sewage disposal system placed on any lot. Any dwelling house constructed on any lot shall be connected to the Woodmoor Water & Sanitation water and sewage system before that residence is

occupied. All lot owners are subject to the taps fees, availability of service fees, and all regulations associated with the Woodmoor Water & Sanitation District.

o) **EARTHWORK, GRADING AND MAILBOXES:** Concrete headwalls are required on both sides of all culverts where culverts are required by the drainage plan. All earthwork and grading shall be performed in such a manner that disturbance to the lot is minimized. No finished grade shall be more than four (4) feet above or below the existing natural grade. All graded earth cuts or fills shall be sloped no deeper than a ratio of three (3) feet horizontal to one (1) foot vertical. No retaining wall shall be constructed in excess of four (4) feet in height. All retaining walls shall be constructed of wood timbers, concrete or concrete block provided said concrete or concrete block is covered with stucco, stone, or brick. Retaining walls shall be shown on the owner's submitted plans. Mailbox enclosures shall conform to the established design for the subdivision and must incorporate a space for newspapers. No separate receptacle shall be allowed for newspapers and other deliveries.

p) **FENCES:** No fence, hedge, or wall shall be erected, placed or altered on any lot without prior approval from the ACC and in keeping with the minimum set-back requirements. Split-rail fencing is recommended as being in harmony with the rural nature of the area.

q) **CLOTHESLINES, ANTENNAS, SATELLITE DISHES AND TANKS:** No clothesline, radio/television antenna, satellite dish, ham radio antenna, fuel/water/gas tank, swimming pool filter tank or similar tank may be placed, erected, or maintained on any lot outside an approved building or in a position which permits any part of it to be visible from any surface position outside the lot which contains it.

r) **EASEMENTS:** Easements for the installation and maintenance of utilities and drainage facilities and for roadways shall be preserved as described on the recorded plat. No shrubbery, trees, or plantings shall be placed on any said easement so as to interfere with the installation and maintenance of utilities, or which may obstruct or change the direction of flow of drainage of the easement. No buildings, fences, or structures of any type shall be built over, across, or on the line of any easement or in such a manner as to include such easements with the lot. Such easements shall remain open and readily accessible for service and maintenance of utility and drainage facilities and other purposes.

s) **WINDOWS AND AWNINGS:** No reflective materials including but not limited to aluminum foil, reflective screens or glass, mirrored or similar type items shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a lot, which can be seen from any other lot or from the outside of the Property. Further, no bed sheets, newspaper or similar items shall be permitted to be installed or placed on the outside or inside of any window or other part of a lot which can be seen from any other lot or outside of the Property, unless otherwise approved in writing by the ACC.

V. LAND USE RESTRICTIONS

11. **BUILDING TYPE AND USE:** All lots shall be known, described and used for residential purposes only and no building, other than one private single-family dwelling together with a private garage in keeping with the architecture of the principal residence and subject to approval by the ACC as herein provided, shall be erected or placed on any lot. No more than one family and occasional guests may reside upon any one Lot.

12. **TEMPORARY RESIDENCES:** No structure of a temporary character, including trailers, campers, tents or other outbuildings may be placed or erected on any portion of the Property or used on any lot as a residence, temporarily or permanently. However, nothing herein shall prevent the Declarant, and contractors designated by the Declarant, from establishing and maintaining construction offices, security offices, sales offices, and model homes within and upon the Property.

13. NUISANCES: Nothing shall be done on any lot which may become an annoyance or nuisance to the neighborhood. No noxious noise, polluting or otherwise offensive activities or commercial businesses or trades shall be carried on upon any lot. Any exterior lighting on any lot shall either be indirect or of such controlled focus and intensity as to not unduly disturb resident of adjacent or nearby property. No trail bikes, mini bikes, mopeds, motorcycles, all-terrain vehicles, snowmobiles or other such noise causing vehicles shall be operated within THE HEIGHTS other than on roads going to and from residences. No activity shall be permitted which will generate a noise level or noxious odor sufficient to interfere with the peaceful and reasonable enjoyment of the persons on any adjoining or nearby lots. No hunting of any kind by any form of device, nor the discharge of any type of firearm, explosive or fireworks devices shall be permitted in THE HEIGHTS.

14. CLEARING OF TREES AND SHRUBS: Approval shall be obtained from the ACC to cut down, clear, or kill any trees or shrubs any lot. Any tree dug up, cut down or killed, accidentally or purposely, without approval of the ACC shall be replaced with an equivalent tree by the owner within 3 months. In the event the owner fails to replace such trees, the ACC may replace the tree(s), and the owner of the lot shall pay for said tree(s) and the cost of replacement. Further, each and every Owner agrees that all the trees and shrubs cleared by him will be disposed of in such a way that all lots, whether vacant or occupied by buildings, shall be kept free of accumulations of brush, trash, or other materials which may constitute a fire hazard or renders a lot unsightly.

15. SIGNS: Any and an signs, including their shape, size and content, must first be approved in writing by the ACC. Real estate signs and Builder's signs shall not exceed two (2) square feet in size, with the exception of signs advertising, the opening of Filings by the Declarant and other such signs as the Declarant may deem necessary to adequately market the subdivision or to abide by governmental regulations.

16. VEHICLE PARKING AND EQUIPMENT: No vehicle shall be stored or parked within THE HEIGHTS except in a closed garage; however, recreation vehicles, including travel trailers, campers, boats and motor homes and related equipment may be kept if they are not readily visible from public roads, are not readily visible from other lots, and are screened from public view with appropriate garaging or solid opaque fencing approved in writing by the ACC. No commercial type vehicle and no truck shall be placed, stored, or parked on any lot except in a garage, nor parked on any residential street or alley except while engaged in transport to or from a residence. For the purpose of this covenant, a 3/4 ton or smaller vehicle, commonly known as a "pick-up" truck or as a "jeep", whether used for commercial purposes or not, shall not be deemed to be a commercial vehicle or truck.

17. ANIMALS: No farm animals, horses or livestock of any kind shall be housed, raised or kept on any lot either temporarily or permanently. Up to only four (4) commonly accepted domestic household pets may be kept on any one lot at one time, and such pets may be kept for non-commercial purposes only. All pets shall be kept under control of their owners at all times, either in a fenced enclosure approved by the ACC, or, while walking off the owner's property, on a leash no longer than twelve (12) feet. No pet shall be kept which is deemed to be a danger or a nuisance to others, specifically including habitually barking dogs.

18. COMMERCE: No commerce (service, manufacturing, or otherwise) shall be conducted or maintained upon, in front of or in connection with any lot, nor shall any lot in any way be used for other than strictly residential purposes. However, offices in the home may be used for the conduct of professional activities upon the written approval, on a case by case basis, of the ACC. Each such approval automatically expires after the elapsed time of one (1) year from the date of approval unless, if requested in writing by the lot owner, it is approved anew, in writing, by the ACC. Such professional activities must always be incidental, to the primary use of the premises as a residence, and signs advertising professional services and not allowed.

VI. GENERAL PROVISIONS

19. **ENFORCEMENT:** Enforcement of these covenants, rights, reservations, conditions and restrictions set forth herein ("covenants") may be by proceedings at law or in equity, against any person or persons violating or attempting to violate any covenant. These covenants are for the use, convenience and protection of all property owners in THE HEIGHTS, therefore, the owner(s) of any lot, the HPOA, and the Declarant including its successors or assigns may enforce these covenants either to restrain violation or to recover damages. Declarant and the ACC together or separately, or through authorized agents or employees further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of these covenants, and after ten (10) days notice to the owner, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the said owner and such entry and abatement or removal shall not constitute nor be deemed a trespass. Property owners in THE HEIGHTS expressly agree to abide by injunctions, without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay all costs of enforcement proceedings, including reasonable attorney's fees. The failure to enforce any covenant, right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same or any other breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. Any non-payment of HPOA dues, assessments, penalty assessments, or ACC enforcement expenses may result in a recorded lien being placed on the violator's lot, and shall bear interest at ten percent (10%) per annum.

20. **LIABILITY:** Neither the Declarant, its successors or assigns, the ACC, the HPOA, the Board, nor any agent, member or employee acting therefor shall be liable in damages to any person or entity by reason of any action, failure to act, or any other circumstance taken in good faith and without malice to enforce or meet the intent of these covenants. Such parties shall be reimbursed by the HPOA for any costs or expenses, including attorney fees, incurred by them as a result of threatened or pending litigation in which they are or may be named as parties.

21. **AMENDMENT AND TERMINATION:** These covenants and restrictions shall run with and bind the land, and shall inure to the benefit of the owner(s) or any lot subject to this Declaration, their respective representatives, heirs, successors, and assigns, and shall remain in full force and effect for a term of twenty-one (21) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended or terminated, changing said covenants in whole or in part, and additional land may be annexed, by an affirmative vote of sixty-seven percent (67%) of the owner(s) of lots then covered by this Declaration (Owners - one vote per lot, Declarant - three votes per lot). Additionally, as long as Declarant owns any lots in THE HEIGHTS, any amendment or revocation must also have the prior written consent of the Declarant. All instruments amending or revoking these covenants shall be recorded in the real estate records of El Paso County. Notwithstanding the foregoing, Declarant hereby reserves and is granted the right and power, but not the duty, to record a special amendment to this Declaration at any time and from time to time which amends this Declaration (i) to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs functions similar to those currently performed by such entities, or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee Mortgages covering lots in the Property, or (iii) to correct technical errors, or (iv) to comply with the requirements of El Paso County.

22. **NOTICES:** Any notice required to be given to any owner under the provisions of these covenants shall be deemed to have been properly given when mailed, postpaid, to the last known address of the person who appears as the owner on the records of the HPOA at the time of such mailing.

23. SEVERABILITY: If any covenant or restriction contained herein be declared un-constitutional or invalid by a court of competent justification, such un-constitutionality or invalidity shall not affect any of the remaining covenants or restrictions which shall remain in full force and effect.

24. ASSIGNMENT: Declarant, its successors or assigns, may assign any and all of its rights, powers, obligations, duties and privileges under this instrument to any other entity, corporation, committee, or person.

25. CONFLICTS: In the event there shall be any conflict between the provisions of this Declaration and any provisions of the Articles, Bylaws, or any HPOA Rule or Regulation, the provisions of this Declaration shall be deemed controlling.

26. COSTS AND ATTORNEY FEES: In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees.

27. ACCEPTANCE OF PROVISIONS: The conveyance or encumbrance of a lot shall be deemed to include the acceptance of all the provisions of this First Amended Declaration, the Articles, the Bylaws, and the Architectural Guidelines, and shall be binding upon each grantee without the necessity or inclusion of such express provisions in the instrument of conveyance or encumbrance. The easements and rights created in this Declaration for the benefit of an owner shall be appurtenant to the lot of that owner, and all conveyances and other instruments affecting title to a lot shall be deemed to grant and reserve the easements and rights as provided in this First Amended Declaration, as though set forth in said instrument in full, even though specific reference to said easements or rights does not appear therein.

[The Signatures below were scanned from the original documents.]

IN WITNESS WHEREOF, upon approval by a majority of the current owners, the Declarant has executed this First Amended Declaration this 7 day of December, 1993.

WOODMOOR NORTH DEVELOPMENT, INC., a
Colorado corporation

By: Michael D. Mason
Michael D. Mason, President

STATE OF COLORADO)

County of EL PASO)

The foregoing First Amended Declaration of Protective Covenants was acknowledged before me this 7th day of December, 1993, by Michael D. Mason, President of Woodmoor North Development, Inc., a Colorado corporation.

Witness my official hand and seal.



Travis L. Anderson

address:

ROBERT J. ANDERSON, P.C.
Attorney at Law
303 S. Cascade Ave., Suite 101
Colorado Springs, CO 80903
Ph: (719) 473-3040

THE HEIGHTS

LANDOWNER APPROVAL OF THE
FIRST AMENDED DECLARATION OF PROTECTIVE COVENANTS

By a two-thirds majority vote of the current Owners of Lots one (1) through fifty-four (54), inclusive, of THE HEIGHTS Filing II and future filings, County of El Paso, State of Colorado, hereinafter called the "Property", this First Amended Declaration of Protective Covenants ("Amended Declaration") is approved to amend and supersede The Heights Declaration of Protective Covenants ("Declaration") as filed in El Paso County at Book 6161, Page 891.

It is hereby agreed that all of the Property is and shall be hereinafter held, transferred, sold, conveyed and occupied subject to the terms, restrictions, limitations, uses, liens, charges, covenants, conditions, obligations and easements, as set forth in the Amended Declaration which are for the purpose of protecting the value and desirability of, and which shall run with the Property, and shall inure to the benefit of and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, grantees, personal representatives, executors, administrators, devisees, successors and assigns.

WOODMOOR NORTH DEVELOPMENT, INC.


[The Signatures below were scanned from the original documents.]



Michael D. Mason, President

Owner - Lots 7, 14, 15, and 18 through 54, Filing II and future filings.

GREAT WESTERN CONSTRUCTION AND DEVELOPMENT, INC.



BY:

Owner - Lots 1 through 6, and 8 through 12, 16 and 17 Filing II.