

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
SPARROW HAWK HILL ONE

KNOW ALL MEN BY THESE PRESENTS, that whereas McStain Enterprises, Inc., a Colorado corporation, hereinafter sometimes called "McStain" is the owner of Sparrow Hawk Hill One, a subdivision of part of the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 28, Township 56 North, Range 84 West of the 6th P.M., County of Sheridan, State of Wyoming; and

WHEREAS, McStain intends to improve part of the property described above by constructing residences thereon; and

WHEREAS, McStain intends to sell the residences and to impose on the property described above mutually beneficial covenants, conditions and restrictions under a general scheme or plan of improvement and development for the benefit of the future owners and tenants of those buildings;

NOW, THEREFORE, McStain hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with said property and be binding on all parties having any right, title or interest in said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1. "Association" means Sparrow Hawk Hill One Homeowners' Association, its successors and assigns.
2. "Owner" means and refers to the record owner whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Properties" means and refers to that certain real property hereinbefore described.
4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association at the time of the conveyance of the first lot is Open Space Sparrow Hawk Hill One as shown on the plat of Open Space Sparrow Hawk Hill One which is recorded in Plat Book No. 1 at Page No. 216 of the records of the Recorder of the County of Sheridan, State of Wyoming.
5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.
6. "McStain" shall mean and refer to McStain Enterprises,

Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from McStain for the purposes of development.

7. "Mortgage" means mortgage or deed of trust and "Mortgagee" means the holder of a mortgage or the holder of a note secured by a deed of trust.

## ARTICLE II

### PROPERTY RIGHTS

1. Owners' Easements of Use, Access and Enjoyment. Every owner and his tenants shall have a right and easement of use, access and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(a) The Association has the right to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Area;

(b) The Association has the right to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty days for any infraction of its published rules and regulations;

(c) The Association has the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for public purposes consistent with the intended use of the Common Area subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two thirds of each class of members agreeing to such dedication or transfer has been recorded;

(d) The Association has the right to limit the number of guests of members;

(e) The Association has the right to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to encumber said property, provided that the borrowing of any money for the purpose of improving the Common Area shall require the consent of two-thirds of each class of members described in Article IV hereafter and, provided further, the rights of the holder of any encumbrance shall be subject to rights of the members of the Association while any encumbrance is current and not in default.

2. Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area to members of his family, his tenants or contract purchasers who reside on the property.

3. Use Restrictions. The use of the Common Area shall be subject to the following restrictions:

(a) No use shall be made of the Common Area which will in any manner violate the statutes, ordinances, rules or regulations of any governmental authority having jurisdiction over the Common Area.

(b) No activity shall be conducted on any part of the Common Area which will permanently deny free access to such area.

(c) Use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

4. Title to Common Area. McStain agrees to convey title to the Common Area to the Association in fee simple free and clear of all liens and encumbrances on or before conveyance of the first lot shown on Sparrow Hawk Hill One Plat.

5. Easement of Use, Access and Enjoyment for Persons not Living in Sparrow Hawk Hill One. In consideration of similar easements being granted to the owners and tenants of property in this subdivision by the owners of all the property described in Exhibit A attached hereto and as part of the general plan for the development of the property described in Exhibit A attached hereto which has not yet been subdivided upon which McStain intends to impose the same burdens as are set forth herein when it is subdivided, there is hereby granted to the owners and tenants of all the property described above the same easement of use, access and enjoyment to the Common Area as is herein granted to the owners and tenants of Sparrow Hawk Hill One.

### ARTICLE III

#### COVENANT FOR ASSESSMENTS

1. Creation of Lien and Assessment as Personal Obligation. McStain hereby covenants and each owner of any lot by acceptance of a deed therefor is deemed to covenant and agree to pay to the Association annual assessments or charges for the common expenses set forth in these covenants, and special assessments for capital improvements, such assessments to be established and collected as herein provided. In addition to the foregoing, the owners of lots 36 through 40 agree to pay such assessments as may be levied by the Association for the maintenance of Outlot A which is a private street. The annual and special assessments, together with interest, costs and reasonable attorney's fees, if incurred, shall be a charge on the lot against which an assessment is made and if not paid when due, shall be a continuing lien upon said lot. Each such assessment, together with interest, costs, and reasonable attorney's fees, if incurred, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to an individual's successors in title unless expressly assumed by them.

2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of paying all water, sewer and other utilities that may be incurred by the Association and for the purpose of maintaining the Common Area, including the costs of mowing the grass and maintaining the landscaping, for the purpose of maintaining all parking areas, and the cost of maintaining all paths, walks and bikeways that may be placed in the Common Area. The Association shall further pay premiums to maintain fire and other hazard insurance for any improvements that may be placed on the Common Area and shall pay premiums to maintain a liability insurance policy insuring the Association. The Association shall further pay for maintenance and repairs of fences and any structures or other improvements placed upon the Common Area by the Association. The Association shall maintain a reserve of funds in such amount as the Board of Directors deems necessary to pay for expenses as they accrue, provided, however, at no time shall the reserve of funds be greater than \$4000.00.

3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$60.00 per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than three per cent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased above three per cent by a vote of two-thirds of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the amount of the maximum.

4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, re-construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

5. Notice and Quorum for any Action Authorized Under Paragraphs 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6. Rate of Assessment. Special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis. Annual assessments shall be fixed at a uniform rate for all lots except lots 36 through 40 which shall, in addition to the assessments assessed against all other lots, pay such additional assessments as may be authorized pursuant to the provisions of paragraph 1 above.

7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area and shall be payable in equal monthly installments. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of

the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed Certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

10. Records of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the owners and others with an interest such as mortgage holders or prospective lenders from 8 a.m. to 5 p.m. on any regular working day not a legal holiday.

#### ARTICLE IV

##### MEMBERSHIP

1. Members. Every owner as defined in Article I above shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot and ownership of such lot shall be the sole qualification for membership.

2. Classes of Membership. The Association shall have two classes of voting members whose designations are as follows:

Class A. Class A members shall be all owners as defined in Article I above with the exception of McStain. Each Class A member shall be entitled to one vote for each lot in which he holds the interest required for membership as prescribed by paragraph 1 of this Article. When more than one person owns an interest in such lot, all such persons shall be members and the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than one vote be cast with respect to each lot.

Class B. The only Class B member shall be McStain which shall be entitled to three votes for each lot in which it holds the interest required for membership as prescribed by paragraph 1 of this Article. Class B membership shall cease to exist and be converted to Class A membership on the happening of either of the following events:

(a) When the total number of votes outstanding in Class A membership equals the total number of votes outstanding in

Class B membership, or

(b) On January 1, 1984.

ARTICLE V

RESTRICTIVE COVENANTS

1. No structures of a temporary character, trailer basement, tent, shack, barn, or other outbuilding shall be erected or used on any portion of the premises at any time either temporarily or permanently.

2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for McStain to maintain during the period of construction of buildings on properties, upon such portion of the properties as McStain may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the development of properties including, but not limited to a business office, storage area, construction yards, signs, model units and sales office.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept, except that dogs, cats or other household pets may be kept subject to such rules and regulations as may be enacted by the Board of Directors of the Association.

4. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any building, nor shall any building be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any building or any resident thereof, provided, however, "For Rent" or "For Sale" signs may be placed upon a building when such building is for sale or for rent. No such sign shall be more than five square feet. No business activities of any kind whatever shall be conducted in any building on any portion of the properties. The foregoing covenants, however, shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns in furtherance of its powers and purposes as herein set forth. Signs indicating public pedestrian access shall be located in such a way as to be readily visible but shall be designed in such a manner as to be in character with the general architecture of the development.

5. All garbage cans, service yards or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

6. All exterior materials shall be wood or simulated wood and masonry only and all roofs shall consist of tan asphalt shingles, wood shingles, shake shingles or earthtone metal. Windows shall be framed in brown metal or earthtone painted wood. Exterior colors shall be limited to earthtones from tans to dark browns with changes in hues towards gray, olive or rust, except for accent colors, unless the architectural control committee grants a variance. Solar collectors must be approved by the architectural control committee as to material and location.

7. No exterior additions, or alterations to any building or erection of or changes in hedges, walls, fences and other structures shall be commenced, erected, or maintained until the plans and specifications showing the nature, kind, shape, heights, materials and location shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures on the property described above by an architectural control committee composed of the Board of Directors of the Association unless other provisions for composition of the architectural control committee are contained in the By-laws of the Association. The members of the architectural control committee shall not be entitled to compensation for services performed pursuant to the terms of this paragraph. If the architectural control committee fails to approve any matter submitted to it within thirty days after such submission, approval will not be required and this paragraph will be deemed to have been fully complied with. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of buildings and tenants and is necessary for their protection.

8. No external radio or television antennas shall be installed.

9. Split rail or pole fences may be placed anywhere on the site. Privacy fences may be placed on the site so long as they conform to the following requirements:

(a) They shall be located so as to be either perpendicular or parallel to the walls of the house, and may enclose no more than 1,200 square feet of yard.

(b) They shall be built to a maximum height of 6 feet and the materials and colors shall be compatible with those described in paragraph 6 of this Article.

10. Any variance or adjustment of these conditions and restrictions granted by the architectural control committee pursuant to any of the paragraphs of these covenants or any acquiescence in or failure to enforce any violation of the conditions and restrictions herein shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

11. All trailers, detached campers, boats or mobile homes which are stored on any site shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets.

12. In the event that any one or more of the provisions, conditions, restrictions and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions and restrictions and covenants herein set forth shall continue unimpaired and in full force and effect.

## ARTICLE VI

### EASEMENTS

The owners agree that if any portion of the Common Area and facilities encroaches upon any lot, or if any residence encroaches on any portion of the Common Area, a valid easement for the encroachment and for the maintenance of same shall and does exist. If a structure is partially or totally destroyed and then rebuilt, the owners agree that minor encroachment upon parts of the Common Area and facilities due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

There is hereby created a blanket easement above, across, over and under properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the companies providing electrical and telephone service to erect and maintain the necessary equipment on said property and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of structures on said properties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on properties except as initially programmed and approved by McStain or thereafter approved by McStain or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

## ARTICLE VII

### GENERAL PROVISIONS

1. Enforcement. The Association, McStain or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, McStain or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty year period by an instrument signed by the owners of not less than ninety per cent of the lots and ninety per cent of the holders of recorded first mortgages and thereafter by an instrument signed by the owners of not less than seventy-five per cent of the lots and seventy-five per cent of the holders of recorded first mortgages. Any amendment must be recorded.



4. FHA/VA Approval. As long as there is Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 13<sup>th</sup> day of SEPTEMBER, 1979.

ATTEST:

MCSTAIN ENTERPRISES, INC.

Elsie Sanders  
Secretary (Ass't.)  
STATE OF COLORADO )  
COUNTY OF BOULDER ) ss.

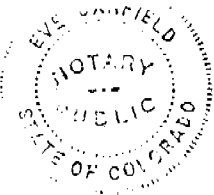
By

[Signature]  
President

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of SEPTEMBER, 1979, by Thomas R. Hoyt as President and ELSIE SANDERS as Ass't. Secretary of McStain Enterprises, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: June 1, 1982



Eve Campfield  
Notary Public

Exhibit A to Declaration of Covenants,  
Conditions and Restrictions of  
Sparrow Hawk Hill One

All the following described property  
not included within Sparrow Hawk Hill One  
and Open Space Sparrow Hawk Hill One,  
both located in the city of Sheridan,  
County of Sheridan, State of Wyoming:

Township 56 North, Range 84 West, 6th P.M.  
Sheridan County, Wyoming

All that part of the S 1/2 SE 1/4 of Section  
28 lying Northerly of the Sheridan-Beckton  
County Road.

Also, all that portion of the NE 1/4 NW 1/4  
of Section 33 lying on the Northerly side of  
said Sheridan-Beckton County Road.

Also, the SE 1/4 SW 1/4 of Section 28.

Containing 75 acres, more or less.