

2-59047

RETURN TO:  
VANDEBERG, JOHNSON & GANDARA  
1900 FIRST INTERSTATE PLAZA  
1201 PACIFIC AVENUE  
TACOMA, WA 98402-4391

9413727

**TIMBERLINE VILLAGE**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made on this 20 day of July, 1994, by Far West Industries, Inc., a Washington corporation (hereinafter referred to as "Declarant").

**W I T N E S S E T H :**

**WHEREAS**, Declarant is the owner of certain real property (the "Property") situated in Lewis County, Washington, more particularly described in Exhibit A, which is attached to this Declaration and incorporated herein by this reference; and

**WHEREAS**, Declarant desires to preserve and enhance the property values, desirability and attractiveness of the Property and to create and maintain a mountain resort atmosphere compatible with the Declarant's existing and proposed structures in the area, and pursuant to this end desires to subject the Property to the restrictions, covenants and other conditions set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner; and

**WHEREAS**, Declarant will convey the Property or any portion thereof, subject to certain protective restrictions, covenants and other conditions hereinafter set forth;

**NOW, THEREFORE**, Declarant hereby declares that all of such Property described in Exhibit A hereto shall be held, transferred, sold, conveyed and occupied subject to the restrictions, covenants and other conditions set forth in this Declaration. These restrictions, covenants and other conditions shall run with the Property and shall be binding on all the parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of each Owner thereof.

**ARTICLE I - DEFINITIONS**

1.1 "Approval" means written approval, or any written waiver of approval rights, or the issuance of a letter of "no objection" by the ACC.

1.2 "ACC" means the Architectural Control Committee as described in this Declaration.

1.3 "Condominium Unit" means any condominium unit upon the Property.

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1.4 "Declarant" means Far West Industries, Inc., a Washington corporation, and its successors and assigns; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant under this Declaration unless such rights and obligations are specifically set forth in the instrument of succession or assignment.

1.5 "Declaration" means this entire document as it may from time to time be amended.

1.6 "First Mortgagee" means a lender who holds the first mortgage or deed of trust on a Lot and who has notified the ACC in writing of its holdings.

1.7 "Lot" means any numbered plot of land shown upon any recorded plat of the Property.

1.8 "Mortgage" includes a Deed of Trust or other security instrument.

1.9 "Notice" means written notice delivered personally or mailed to the last known address of the intended recipient.

1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Condominium Unit, or if any Lot or Condominium Unit is sold under real estate contract, the vendee or vendees under that contract; provided, however, that the term "Owner" shall not include those having such interest merely as security for the performance of an obligation.

1.11 "Person" means natural person, corporation, limited liability company, partnership, limited partnership, proprietorship or trust.

## ARTICLE II - ARCHITECTURAL CONTROL COMMITTEE

2.1 Appointment. An Architectural Control Committee ("ACC") consisting of not less than three (3) nor more than seven (7) persons shall be appointed. Each member shall hold office until he or she resigns, is removed, or until his or her successor has been appointed and qualified. The Declarant shall have the authority to determine the number of persons on the ACC and to appoint those persons until the Declarant no longer holds a fee simple interest in any portion of the Property. Thereafter, the right to determine the size and membership of the ACC shall be determined by a majority vote of the Owners.

2.2 Duties. The ACC shall have the authority to review and act upon proposals and plans submitted and to perform other duties set forth in this Declaration.

2.3 Adoption of Guidelines. The ACC shall have the authority to adopt and amend written guidelines to be applied in its review of plans and specifications, in order to further the intents and purposes of this Declaration and any other covenants or restrictions covering the Property. If such guidelines are adopted, they shall be available to all members upon request.

2.4 Meetings; Compensation. The ACC shall meet as necessary to properly perform its duties and shall keep and maintain a record of all actions taken at the meetings or otherwise.

2.5 Non-Waiver. Approval by the ACC of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval.

2.6 Liability. Neither the ACC nor any of its members shall be liable to any Owner for any damage, loss or prejudice resulting from any action taken in good faith on a matter submitted to the ACC for approval or for failure to approve any matter submitted to the ACC.

2.7 Approval of Plans Prior to Formation of the ACC. Prior to the appointment of the members of the ACC, the Declarant shall have full authority to approve or disapprove plans and specifications.

### ARTICLE III - ARCHITECTURAL AND LANDSCAPE CONTROL

3.1 Approval of Plans Required. None of the following actions may be taken upon the Property until plans and specifications for the same have been approved in writing by the ACC:

- (a) The construction or erection of any building, fence, wall or other structure.
- (b) The remodeling, reconstruction, or alteration of any building or other structure.

Any of such actions which has been approved shall be taken only in conformity with the plans and specifications actually approved by the ACC, and no changes in or deviations from the approved plans and specifications shall be made without the prior written approval of the ACC; provided, however, that Torre Russell Co. may make non-material changes and deviations from its approved plans and specifications. Notwithstanding anything contained herein to the contrary, any deviations or changes from the elevations as shown on previously approved plans and specifications shall require written approval from the Declarant or ACC, as the case may be.

3.2 Procedure for Approval. Any person wishing to take any of the actions described above shall submit to the ACC two (2) sets of plans and specifications. Plans for the construction or modification of any building, fence, wall or other structure shall be building elevation plans which, in addition to the details customarily shown on such plans, shall show the proposed location of the building, fence, wall or other structure on the Lot, the exterior color scheme, the type and quality of all building and other materials, proposed outdoor lighting, and proposed landscaping. At the request of the ACC, the person submitting such plans shall locate stakes on the Lot which indicate the corners of the proposed building, fence, wall or other structure. Approval of plans and specifications shall be evidenced by written endorsement on such plans and specifications, one (1) copy of which shall be delivered to the Owner of the Lot or Condominium Unit upon which the proposed action is to be taken. The ACC shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

3.3 Criteria for Approval. Approval of plans and specifications may be withheld or conditioned if the proposed action is at variance with these covenants, other covenants covering the Property, or design guidelines adopted by the ACC. Approval may also be withheld or conditioned if, in the opinion of the ACC, the proposed action will be detrimental to the mountain resort atmosphere and architecture being desired, or adversely impacts other property or structures, in existence or as contemplated, because of the grading and drainage plan, location of the improvement on the Lot, color scheme, finish design, proportions, size of the improvement, shape, height, style, materials, outdoor lighting proposed, or landscaping plan, or impact on view rights.

3.4 Failure to Approve. In the event that the ACC fails to approve or disapprove an action within thirty (30) days after plans and specifications (and any other information or materials requested by the ACC) have been submitted to it, or in any event, if the ACC has not notified the Owner of its determination that the action does not comply with the plans and specifications as approved within sixty (60) days after the completion thereof, approval will not be required and the relevant covenants shall be deemed to have been fully complied with.

3.5 Conformity With Approved Plans. It shall be the responsibility of the ACC to determine that actions have been completed in accordance with the plans as submitted and approved. Such determination must be made within sixty (60) days of the completion of the action. If the ACC determines that the action does not comply with the plans and specifications as approved, it shall notify the Owner within that 60-day period, and the Owner,

within such time as the ACC shall specify, but not less than thirty (30) days, shall either remove or alter the improvement or take such other steps as the ACC shall designate. If no action by the ACC is taken within sixty (60) days of the date of completion of the improvement, the action shall conclusively be deemed to be satisfactory to the ACC. This Paragraph 3.5 shall not apply to Torre Russell Co.'s construction of a condominium on Lots 50, 51 and 52, Division II of Timberline Village, although the Declarant (or the ACC, as the case may be) shall retain the right to disapprove any material deviations from the plans and specifications heretofore approved.

#### ARTICLE IV - GENERAL PROTECTION COVENANTS

4.1 Temporary and Mobile Structures. No outbuildings erected or placed on any Lot, nor similar structures of a temporary character, nor any mobile home shall at any time be used as a residence, whether temporary or permanent.

4.2 Rubbish and Trash. No Lot shall be used as a dump for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other materials resulting from landscaping work shall not be dumped into streets or on Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or other such materials from any Lot or Condominium Unit or any street where deposited by him or her within ten (10) days following the date on which notice is mailed to him or her by the ACC, the ACC may have such materials removed and charge the expense of such removal to the Owner.

4.3 Maintenance of Structures and Grounds. Each Owner shall maintain his or her Lot or Condominium Unit in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard.

4.4 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any private street upon the Property for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when in the opinion of the ACC, its presence offends the occupants and owners of nearby property. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the ACC, they may have the vehicle removed and charge the expense of such removal to the Owner.

4.5 Fences. No fence or screening structure shall be erected on any Lot without prior written approval of the ACC. All fences shall be of the design as established by the ACC.

4.6 Exterior Finish. The exterior of all construction on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural mountain surroundings, existing structures and landscaping. Exterior colors must be approved by the ACC in accordance with the provisions of Article III. Exterior trim, fences, doors, railings, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.

4.7 Exterior Lighting and Signs. Any exterior lighting and signs which are visible from any public or private street or any other Lot or Condominium Unit must be approved prior to installation by the ACC in accordance with the provisions of Article III.

4.8 Completion of Construction. The construction of any building or structure on any Lot, including painting and all exterior finish, shall be completed within eight (8) months of the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision shall be extended for a reasonable length of time upon written approval from the ACC. The building area shall be kept reasonably clean and in workmanlike order during the construction period. During construction, all Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

4.9 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, mining or mineral extraction operation of any kind shall be permitted upon the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

4.10 Authority to Adopt Additional Rules and Restrictions. The ACC shall have the authority to adopt additional written rules and restrictions governing the use of the Property, provided such rules and restrictions are consistent with the purposes of the Declaration, and to establish penalties for violation of those rules and restrictions. Copies of adopted rules and restrictions, along with the established penalties, shall be available to all Owners upon request. Any such additional rules and regulations shall not affect Torre Russell Co. previously approved plans and specifications.

#### ARTICLE V - MORTGAGEE'S PROTECTION

5.1 As used in this Declaration: (1) "mortgagee" includes the beneficiary of a deed of trust, a secured party, or other holder of a security interest; (2) "foreclosure" includes judicial and non-judicial foreclosure proceedings, or sale on default under a security agreement; and (3) "institutional holder" means a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

5.2 The prior written approval of at least seventy-five percent (75%) of the First Mortgagees (based on one vote for each first mortgage owned) of the individual Lots or Condominium Units shall be required for the following:

(a) Any material amendment to this Declaration, including but not limited to, any amendment which would change the ownership interests of the Owners in this project, change the pro-rata interest or obligation of any individual Owner for the purpose of levying assessment or charges or for allocating distributions of hazard insurance proceeds or condemnation awards.

(b) Any act or omission seeking to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of buildings and other improvements, the maintenance of the Property, or the upkeep of plantings upon the Property.

5.3 Each First mortgagee (as well as each Owner) shall be entitled to timely written notice of:

(a) Any default under this Declaration which gives rise to a cause of action against the Owner of a Lot or Condominium Unit where the default has not been cured in thirty (30) days.

(b) Any material amendment of this Declaration.

#### ARTICLE VI - GENERAL PROVISIONS

6.1 Binding Effect. All present and future Owners or occupants of a Lot or Condominium Unit shall be subject to and shall comply with the provisions of this Declaration, as amended from time to time. The acceptance of a deed or conveyance for or the entering into occupancy of any Lot or Condominium Unit shall constitute an agreement that the provisions of this Declaration and rules and regulations of the ACC, as they may be amended from time to time, are accepted and ratified by the Owner or occupant, and

all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot or Condominium Unit, as though such provisions were recited and stipulated at length in each and every deed and conveyance or lease thereof.

**6.2 Enforcement.** The ACC and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, covenants or other conditions now or hereafter imposed by the provisions of this Declaration. Should the ACC or any Owner employ legal counsel to enforce any of the foregoing restrictions, covenants or other conditions, all costs incurred in each enforcement, including a reasonable fee for legal counsel, shall be paid by the Owner found to be in violation of said restriction, covenant or other condition.

**6.3 Failure to Enforce.** No delay or omission on the part of the Declarant or the Owners of a Lot or Condominium Unit in exercising any rights, power or remedy provided in this Declaration shall be construed as a waiver of or acquiescence in any breach of the restrictions, covenants and other conditions set forth in this Declaration. No action shall be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action for any breach of this Declaration or for imposing restrictions which may be unenforceable.

**6.4 Severability.** Invalidation of any one of the restrictions, covenants or other conditions set forth in this Declaration by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

**6.5 Interpretation.** In interpreting this Declaration, the term "person" may include natural persons, limited liability companies, partnerships, corporations, associations and personal representatives. The singular may also include the plural and the masculine may include the feminine, or visa versa, where the context so admits or requires. This Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate the purpose of protecting and enhancing the value, marketability and desirability of the Property as described herein.

**6.6 Amendment.** The restrictions, covenants and other conditions set forth in this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time during the first thirty (30) years by an instrument signed by the Owners of not less than ninety percent (90%) of Lots and Condominium Units (voting together). Thereafter, the restrictions, covenants and other



conditions set forth in this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of Lots and Condominium Units (voting together). Any amendment must be recorded.

**6.7 Power of Declarant to Amend to Meet Financing Requirements.** Notwithstanding anything in this Declaration to the contrary, Declarant may without the consent of any Owner, at any time prior to the time it has sold and closed ninety percent (90%) of the Lots, amend this Declaration by an instrument signed by Declarant alone in order to satisfy the requirements of any federal mortgage agencies, such as the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the successors or assigns of their respective interests.

**6.8 Certain Rights of Declarant.** For such time as Declarant shall own a Lot or Condominium Unit there shall be no amendments to the Declaration or any rules and regulations adopted by the ACC which:

- (a) Discriminate or tend to discriminate against the Declarant's rights as an Owner.
- (b) Change Article I ("Definitions") in a manner which alters Declarant's rights or status.
- (c) Alter previously recorded or written agreements with public or quasi-public agencies regarding easements and rights-of-way.
- (d) Alter the Declarant's rights as set forth in Articles II and III relating to architectural controls.
- (e) Alter the provisions of the use restrictions as set forth in Article IV.
- (f) Alter the Declarant's rights as they appear in this Declaration.

**6.9 Voting.** The Owner of a Lot or a Condominium Unit shall be entitled to one (1) vote for each Lot or Condominium Unit held by such Owner.

#### **ARTICLE VII - CONDOMINIUMS**

**7.1 Additional Rules and Regulations.** Nothing herein shall prohibit the development of a Condominium on any portion of the Property covered by this Declaration, nor the adoption by the Condominium Declarant or subsequent Homeowners Association of any additional covenants, conditions, easements and rules and

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed this on the day and year first above written.

By: Robert J. Mitchell  
Robert J. Mitchell, President  
Vice -

On this day personally appeared before me **Robert J. Mitchell**, to me known to be the <sup>vice-</sup>President of Far West Industries, Inc., the corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation.

MARK A. HOOD  
(Print Notary Name)

A circular notary seal for Mark A. Hood, a Notary Public in the State of Washington. The seal features the text "MARK A. HOOD" at the top, "COMMISSION EXPIRES" on the left, "NOTARY" in the center, "PUBLIC" below it, "FEB. 15, 1995" at the bottom, and "STATE OF WASHINGTON" on the right. Two small stars are positioned on the left and right sides of the seal.

Exhibit A

Legal Description of the Property

[Insert Legal]

Lots 50, 51 and 52, Division III of Timberline Village, as recorded in Vol. 5 of Plats, pages 114 and 115, records of Lewis County, EXCEPTING THEREFROM, that portion of said Lots 50 and 51 condemned to the State of Washington by Decree entered in Lewis County Superior Court No. 29124.

RECORDED AT REQUEST OF:  
TITLE GUARANTEE  
WILL CALL  
TITLE GUARANTEE  
94 AUG 25 AM 10:48

GARY E. ZANDELL, AUDITOR  
LEWIS COUNTY, WA.

BY Nori