

Caroline M. Stewart
CLERK AND RECORDER

MAY 31 3 12 PM '79

STATE OF COLORADO
COUNTY OF BOULDER
FILED FOR RECORD
IN MY OFFICE ON

340128

26-1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE HERITAGE MEADOWS RECREATIONAL ASSOCIATION

ARTICLE	TITLE	PAGE
I	Definitions	2
II	Scope of Declaration and Rights Reserved by Declarant	4
III	Property Rights	5
IV	The Association	6
V	Assessments	9
VI	Architectural Control	13
VII	Maintenance of the Common Areas	13
VIII	Insurance	14
IX	Condemnation	17
X	First Mortgagee Rights	17
XI	Duration and Amendments	20
XII	General Provisions	22

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE HERITAGE MEADOWS RECREATIONAL ASSOCIATION

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by RALPH R. HOFELE of Boulder, Colorado, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of the following property, situate in the County of Boulder, State of Colorado, more particularly described as:

HERITAGE MEADOWS, excepting Lots 1 through 4 and 34 through 37 therefrom, a subdivision of the City of Boulder, Colorado, in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 19, Township 1 North, Range 70 West of the 6th P.M., City of Boulder, State of Colorado.

WHEREAS, Declarant will construct a residential community on the property above described, together with other improvements thereon; and

WHEREAS, Declarant will convey the said property subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that the property above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of the property and for the benefit of any person having any right, title or interest in the described property, and which shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, successors, heirs, legal representatives and assigns.

ARTICLE I

DEFINITIONS

Section 1. ASSOCIATION shall mean and refer to The Heritage Meadows Recreational Association, a Colorado corporation, not for profit.

Section 2. BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as herein provided.

Section 3. BYLAWS shall mean the Bylaws adopted by the Association as amended from time to time.

Section 4. COMMON AREAS shall mean that portion of The Properties owned by the Association for the common use and enjoyment of the Members more specifically described as Outlot D of the said Heritage Meadows together with all facilities and improvements thereon.

Section 5. DECLARANT shall mean Ralph R. Hofele, his heirs, personal representatives or assigns.

Section 6. DECLARATION shall mean this Declaration of Covenants, Conditions, and Restrictions of the Heritage Meadows Recreational Association, as may be amended from time to time.

Section 7. DWELLING UNIT shall mean and refer to the residence constructed on each Lot within The Properties and any replacement thereof, including the patio, fence, garage and basement, if applicable.

Section 8. LOT shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of the Common Areas.

Section 9. OWNER shall mean and refer to the record Owner including the Declarant of the fee simple title to any Lot as defined herein which is a part of The Properties, whether one or more persons or entities, excluding those having an interest under an encumbrance.

Section 10. MEMBER shall mean and refer to all those who are Resident and Non-Resident Members of the Association as provided in Article IV Section 4 hereof.

Section 11. ASSESSMENTS shall mean all monies due the Association from members as duly assessed against the membership by the Board of Directors of the Association in accordance with Article V of this Declaration.

Section 12. FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns or receives a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering any Lot within The Properties.

Section 13. THE PROPERTIES shall mean and refer to all Common Areas and Lots and all the improvements thereon which constitute or shall constitute the entire project herein created, known as "Heritage Meadows" excepting Lots 1 through 4 and 34 through 37 therefrom.

Section 14. RULES shall mean the Rules and Regulations adopted by the Board of Directors as amended from time to time.

ARTICLE II

SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT

Section 1. PROPERTY SUBJECT TO DECLARATION.

Declarant, as the owner of fee simple title to The Properties, expressly intends to and, by recording this Declaration, does hereby subject The Properties to the provisions of this Declaration.

Section 2. CONVEYANCES SUBJECT TO DECLARATION.

All easements, restrictions, conditions, obligations, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in The Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

Section 3. MEMBER'S RIGHTS SUBJECT TO THE PROVISIONS OF THIS DECLARATION.

Each Resident Member shall own his Lot in fee simple for use as a single family residence, and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

Section 1. MEMBERS' EASEMENTS OF ENJOYMENT.

Every Member and his immediate family shall have a non-exclusive right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot of such Resident Member and with the membership of a Non-Resident Member, subject to the following rights:

- (a) The non-exclusive right and easement of the Association to make such use of The Properties as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. The Board of Directors, in its sole discretion, may from time to time grant easements and rights of way on, across, under and over the Common Areas to any entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to The Properties.
- (b) The right of the Board of Directors to make such reasonable Rules regarding the use of the Common Areas and facilities located thereon by Members and other persons entitled to such use.
- (c) The rights reserved in this Declaration to Declarant, Members, other persons and the Association.

Section 2. TITLE TO COMMON AREAS.

The Declarant may retain the legal title to the Common Areas until such time as in the opinion of the Declarant, it has completed improvements thereon and the Association is able to maintain the same, but, notwithstanding any provisions herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas to the Association free and clear of all encumbrances and liens, not later than December 31, 1982.

Section 3. DELEGATION OF USE.

A Resident Member may delegate his right of enjoyment of the Common Areas to the members of his family, to his tenants or to contract purchasers who reside upon his Lot within The Properties. A Non-Resident Member may delegate his right of enjoyment to the Common Areas to members of his family, to his tenants and to contract purchasers. All such persons shall be subject to the Rules concerning such use. A Member is fully responsible for the actions of the members of his family, guests, employees, licensees, lessees, or invitees.

ARTICLE IV

THE ASSOCIATION

Section 1. GENERAL PURPOSES AND POWERS.

The Association through its Board of Directors shall perform functions and manage The Properties as provided in this Declaration so as to further the interests of the residents of The Properties and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. It shall have all the powers necessary or desirable to effectuate such purposes.

Section 2. BOARD OF DIRECTORS.

The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws.

Section 3. ARTICLES AND BYLAWS.

The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws of the Association.

Section 4. MEMBERSHIP.

(a) Resident Membership. Every person or entity who is a record owner of a fee interest in any Lot which is subject by covenants of record to assessment by the Association shall have a Resident Membership in the Association, including contract sellers; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. If more than one person holds such interest or interests, all such persons shall be Resident Members. Such Resident Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for such membership.

(b) Non-Resident Membership. Every person or entity who is not a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, but who has purchased a membership in the Association from the Declarant or other Non-Resident Member shall have a Non-Resident Membership in the Association. If more than one person holds an interest in such Non-Resident Membership, then all such persons shall be Non-Resident Members. There shall be allowed a maximum of 50

Non-Resident Memberships in the Association.

Section 5. VOTING RIGHTS.

There shall be three classes of voting memberships.

(a) Class A Members shall be all Resident Members, with the exception of the Declarant.

The Class A Members shall be entitled to three votes for each Lot in which they hold the interests required for membership by Section 4. If more than one person holds such interest or interests, all such persons shall be Class A Members. The vote for such Class A Membership which is held by more than one Class A Member may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such Class A Membership is made prior to the completion of the vote, in which case the vote for such Class A Membership shall be exercised, as the persons holding such interest shall determine among themselves; provided that in no event shall more than three votes be cast with respect to any such Class A Membership.

(b) Class B Members shall be all Non-Resident Members, with the exception of the Declarant.

The Class B Members shall be entitled to one vote for each Non-Resident Membership owned. If more than one person holds an interest in such Non-Resident Membership, then all such persons shall be Class B Members. The vote for such membership which is held by more than one Class B Member may be exercised by any one of them unless an objection or protest by any other holder of an interest in such Class B Membership is made prior to the completion of the vote in which case the vote for such Class B Membership shall be exercised as the persons holding such membership shall determine among themselves; provided that in no event shall more than one vote be cast with respect to any Class B Membership.

(c) The Class C Member shall be the Declarant, his heirs, personal representative, successors and assigns.

The Class C Member shall be entitled to three votes for each Lot in which he holds the interest required for Membership in Section 4 and one vote for each Non-Resident Membership owned. The Class C Member shall be entitled to appoint all the Members of the Board of Directors so long as the Class C Membership exists.

Class C Membership may be converted to Class A and B

Memberships at the option of the Class C Member by notice to the secretary of the Association and shall be converted to Class A and B Memberships without further action or deed on December 31, 1982. At the time of such conversion, the Class C Member will receive one Class A Membership for each Lot in which he has an interest and one Class B Membership for each Non-Resident Membership which he owns.

From and after the date of conversion, the Class A and B Members will elect the Board of Directors.

Section 6. INDEMNIFICATION.

The manager, employees of the Association, and each director and officer of the Association, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having acted as such upon behalf of the Association; provided that this indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided further that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

Section 7. PROFESSIONAL MANAGEMENT.

Any agreement for professional management of The Properties, or any other contracts providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and payment of a termination fee on ninety (90) days' or less written notice.

ARTICLE V

ASSESSMENTS

Section 1. ASSESSMENTS.

Each Owner of any Lot, except those exempt under Section 6 of this Article, by acceptance of a deed therefor and each person by purchase of a Non-Resident Membership in the Association is deemed to covenant and agrees to pay to the Association assessments to be fixed, established and collected from time to time as herein provided. Such assessments, together with interest and the costs of collection in the event of delinquency in payment as allowed in ARTICLE V, Section 5, paragraph (a) shall be the personal obligation of the person who was the member or of the persons jointly and severally who were the Members at the time when the assessment was made.

Section 2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the Members of the Association, which include, but are not limited to the following: the expenses of the repair and maintenance of the Common Areas to include the mowing of the grass, the caring for the grounds and gardens, the operation and maintenance of the sprinkler systems, swimming pool, tennis court and recreational building or clubhouse repair, to provide casualty and public liability insurance for the Common Areas and for any other purpose reasonable, necessary, or incident to such purposes. Such assessment shall include the establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including but not limited to an adequate reserve fund for the maintenance, replacement or repair of those elements of the Common Areas which must be repaired on a periodic basis.

In the event repairs are required resulting from negligent acts of a Member, the Member's family, guests, employees, invitees or lessees, the Association shall be reimbursed forthwith by such Member therefor. Upon due notice to the Member responsible and failure of such Member to make such reimbursement within thirty (30) days, then the cost of the repairs shall be chargeable by Individual Assessment in accordance with ARTICLE V, Section 3, paragraph (b) against such Member.

Section 3. BASIS OF ASSESSMENTS.

- (a) Common Areas Expense: The expense of the maintenance, repair, replacement and operation of the Common Areas, all of which expense shall take into account any sinking fund established for future expected expenditures shall be paid by the Members in the proportion which the number of Memberships owned by a Member bears to the total number

of issued and outstanding Memberships in the Association.

- (b) **Individual Assessments:** The Board of Directors of the Association shall have the right to add to any Member's assessment as provided in this Article those amounts expended by the Association on the behalf of any individual to include but not be limited to, charges assessed under ARTICLE V, Section 2, ARTICLE V, Section 3, paragraph (d), and ARTICLE XII, Section 1. Individual Assessments are exempt from voting requirements required for other assessments called for under this Declaration.
- (c) **Levy of Assessments:** Within the first three months of each calendar year, the Board shall determine the estimated annual assessment payable periodically during the year by each Membership; provided however, that said assessments may be adjusted upon a finding of necessity by the Board, but no more than twice in any one year. Fines and Individual Assessments may be assessed at any time as required.
- (d) **Fines:** The Board of Directors of the Association shall have the right to assess a fine by Individual Assessment against a Member not exceeding \$50 for each violation of this Declaration, the Bylaws and the Rules of the Association. Such fine may be assessed additionally for each day the violation continues after written notice thereof is given the Member.
- (e) **Non-Exemption:** No Member shall be relieved from payment of any assessment by waiver or suspension of the use of any of the Common Areas or by the abandonment of his Lot or Non-Resident Membership.

Section 4. SPECIAL ASSESSMENTS.

In addition to the assessments authorized above, the Board may levy special assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected repairs or replacement or capital improvements, including the necessary fixtures and personal property related thereto. If any such total assessment exceeds \$50 per membership per year, the same must have assent of the majority vote of the Members at which a quorum is in attendance as more fully defined by the Association's Bylaws. Written notice shall be sent to all Members of record not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.

- (a) All assessments shall be due and payable on the first

day of the period fixed for payment of the assessment and shall become delinquent unless paid thirty (30) days thereafter. All unpaid assessments shall be subject to a late charge for non-payment as may be determined from time to time by the Board. If such assessments are not paid within thirty (30) days after the due date, they shall bear interest from the date of delinquency at the rate of twelve (12%) per cent per annum or other reasonable rate as fixed by the Board and uniformly applied. Failure to make payment within thirty (30) days of the due date thereof also shall cause the full amount of such Member's estimated assessment for the remainder of that year to become due and owing at once, at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent assessments, whether by foreclosure of a lien hereinafter created or by an action at law, the delinquent Resident or Non-Resident Member shall pay, in addition to the assessments and late charge and interest herein provided, all costs of collection, including a reasonable attorney's fee and costs incurred by the Association in enforcing payment.

(b) When a Resident Member fails to make any payment or payments as required by this Declaration, the Association is hereby granted a lien against the Resident Member's Lot for such payment or payments provided however, that (1) such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Boulder County, State of Colorado, and each Resident Member, by accepting a deed to his Lot, designates any one of the officers of the Association or its duly appointed Manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (2) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Colorado for foreclosure of mortgages on real property; and (3) such lien shall be subject and subordinate to and shall not affect the rights of a First Mortgagee. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided however, the lien shall also be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust. In the event of a foreclosure, the Resident Member shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Resident Member's Dwelling Unit is left vacant, the Board make take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without notice to the Resident Member. In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Resident Member who fails to pay any amounts assessed against his Lot and obtain judgment for the amount of the assessments due plus

costs as herein provided. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.

(c) When a Non-Resident Member fails to make any payment or payments as required by this Declaration, the Association shall bring an action at law against the Non-Resident Member personally obligated to pay the assessment.

(d) When a Resident or Non-Resident Member fails to make any payment or payments as required by this Declaration, such Member's rights of enjoyment in the Common Areas shall be suspended until such time as such payments, together with all interest, late fees and costs of collection by the Association have been paid in full.

In the event a Non-Resident Member fails to make any payment or payments as required by this Declaration, and such failure continues for a period of ninety (90) days from its due date, the Board of Directors, at its option, may cancel upon thirty (30) days' written notice, such Non-Resident Member's membership in the Association. A Non-Resident Member's membership cancelled because of non-payment or assessments shall cause all monies paid for the membership and to the Association by such defaulting Non-Resident Member to be retained as liquidated damages and not as a penalty. The Board of Directors shall be free to sell said Non-Resident Membership to a new purchaser, free and clear of any claim by the defaulting Non-Resident Member.

(e) In the event a Resident Member is in default on any obligation secured by an encumbrance on his Lot, the Board at its option, may pay the amount due on said obligation and file a lien against the Lot in the manner as provided for herein for unpaid assessments.

(f) Sale or transfer of any interest by a Resident Member shall not affect or release any lien granted the Association herein.

(g) In the case of the conveyance of a Lot pursuant to foreclosure proceedings or by deed in lieu of foreclosure, such transfer of title shall extinguish the lien for all unpaid assessments made by the Board becoming due before the date of transfer of title. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a Common Area Expense collectible from all the Members as such, without prejudice to the right of the

Association to recover such amount from the delinquent Resident Member.

Section 6. EXEMPT PROPERTY.

The following property and memberships subject to this Declaration shall be exempt from the assessments, charges and lien granted herein:

(a) All Lots and Memberships, Resident and Non-Resident, owned by the Declarant; provided however, the Declarant shall be obligated until his Class C Membership is terminated pursuant to ARTICLE IV, Section 5 hereof to contribute monthly to the Association such amounts, if any, as will offset any deficits of the Association excluding from such contributions, however, any deficits resulting from any special assessments or any deficits arising from establishing and maintaining any reserve or sinking fund.

Upon the termination of the Class C Membership, the Declarant shall pay to the Association for each Lot and Non-Resident Membership owned by him all assessments as fixed and established from time to time as herein provided.

(b) All properties dedicated to and accepted by a local public authority.

(c) All Common Areas.

ARTICLE VI

ARCHITECTURAL CONTROL

The Architectural Control of Outlot D of The Properties shall be the responsibility of the Architectural Control Committee as established by the COVENANTS, CONDITIONS AND RESTRICTIONS OF THE HERITAGE MEADOWS SUBDIVISION and all of the terms and conditions of ARTICLE VII of the said COVENANTS, CONDITIONS AND RESTRICTIONS are incorporated herein and by reference made a part hereof.

ARTICLE VII

MAINTENANCE OF THE COMMON AREAS

The Association shall provide for the care, operation, management and repair of the Common Areas. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas in good, clean, attractive and

sanitary order and repair; shall maintain and keep in good repair the Association's Clubhouse or recreational building, swimming pool and tennis courts, maintain and replace all or any portion of the landscaping, shall keep the Common Areas safe, attractive and desirable; and shall make necessary or desirable alterations or improvements to the Common Areas. Nothing herein shall be construed as a waiver of any right by the Board of Directors to recover for any damage or expense incurred as the result of the willful or negligent action or omission of any person.

ARTICLE VIII

INSURANCE

Section 1. INSURANCE REQUIREMENTS GENERALLY.

The Board of Directors shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado and having a BEST'S Insurance Report rating of a Class VI or higher.

To the extent possible, the casualty, property and liability insurance shall: (a) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents; and (c) provide that the policy of insurance shall not be terminated, cancelled or substantially modified by either the insured or the insurance company without at least thirty (30) days' prior written notice being given to the Association and to each First Mortgagee. The Board of Directors shall not obtain any policy where: (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the Association's Board of Directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds.

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of any First Mortgagee. Any loss falling within the deductible portion of a policy shall be borne by the party suffering the loss.

Section 2. CASUALTY INSURANCE.

The Board of Directors shall obtain and maintain at all times insurance coverage providing all risk coverage or the nearest equivalent available for the full replacement cost of the general Common Area Improvements and personal property of the Association without deduction for depreciation. The insurance shall be carried in blanket policy form naming the Association as the insured and shall provide a standard non-contributory mortgage clause in favor of each First Mortgagee. The Association shall furnish a certified

copy of such blanket policy to any party in interest at its request.

The insurance described in this paragraph shall be inflation coverage insurance, if such insurance is available, which insurance at all times represents one hundred percent (100%) of the replacement value of all facilities in the Common Area except land, foundation, excavation, and other items normally excluded hereof. The Association shall, at least every three (3) years, obtain an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents one hundred percent (100%) of the replacement value of the facilities in the Common Area.

Section 3. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.

The Board of Directors shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Common Area and any other area the Association is required to restore, repair or maintain pursuant to this Declaration with bodily injury liability limits not less than one million dollars (\$1,000,000) for each occurrence and property damage liability limits of not less than one million dollars (\$1,000,000) for each occurrence, and one million dollars (\$1,000,000) aggregate. Each policy shall include a "severability of interest" endorsement.

Section 4. WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.

The Board of Directors shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 5. FIDELITY INSURANCE.

The Board of Directors shall also maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of directors, officers, trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as an obligee, (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and (iv) provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least fifteen (15) days' written notice to the First Mortgagees and the Association.

Section 6. OTHER INSURANCE.

The Board of Directors may obtain such additional insurance cover against such additional risks as it shall determine to be appropriate.

Section 7. FLOOD INSURANCE

If The Properties are in an area identified by the Secretary of Housing and Urban Development as an Area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, the Board of Directors shall purchase a "blanket" policy of flood insurance on The Properties in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the mortgages on the Lots comprising The Properties.

Section 8. REBUILDING OF DAMAGED COMMON AREAS.

Any portion of the Common Areas damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration Not To Rebuild" signed by Members holding seventy-five (75%) per cent or more of the total votes hereunder and by one hundred per cent (100%) of the First Mortgagees is recorded in the office of the County Clerk and Recorder, Boulder, Colorado, indicating their intention not to rebuild.

The cost of repair or replacement of the Common Areas in excess of insurance proceeds received and reserves shall be assessed as a Common Area Expense in accordance with ARTICLE V, Section 3, Paragraph (a) and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership.

If the entire damaged Common Area is not repaired or replaced (a) the insurance proceeds shall be used to restore the damaged Common Area to a condition compatible with the remainder of the Common Areas, and (b) the remainder of the proceeds shall be distributed to all Members in the same proportion as Common Area Expenses are assessed. Proceeds hereunder shall be paid to the Resident Members and their respective First Mortgagees as their interest may appear and no Member or other party shall be entitled to prior over a First Mortgagee with respect to any such distribution. A Non Resident Member shall be entitled to their full pro rata share of the proceeds.

ARTICLE IX

CONDMENATION

Section 1. CONDEMNATION OF COMMON AREA.

In the event of a proceeding in condemnation or partial condemnation of any Common Area by any governmental authority authorized so to do, then the proceeds from such condemnation attributable to the Common Areas shall be distributed unto the Members in the same proportion as Common Areas Expense are assessed.

Section 2. LIEN HOLDERS.

When such condemnation occurs and a Resident Member's Lot is subject to an encumbrance, the proceeds due the Resident Member by reason of such condemnation shall be paid to such Members and their respective First Mortgagees as their interest may appear and no Member or other party shall be entitled to priority over a First Mortgagee with respect to such distribution. A Non-Resident Member shall be entitled to his full pro rata share of the proceeds.

ARTICLE X

FIRST MORTGAGEE'S RIGHTS

Section 1. NOTICE TO FIRST MORTGAGEE.

Each First Mortgagee, upon written request by such First Mortgagee to the Board of Directors, shall receive any of the following:

- (a) Copies of budgets, notices of assessments, or any other notices or statements provided for under this Declaration by the Association to the Owner of a Dwelling Unit in which a First Mortgagee has a security interest.
- (b) Financial Statements of the Association which are prepared for the Association and distributed to the Members.
- (c) Copies of notices of meetings of the Membership and the right to be represented at any meetings by a designated representative.

- (d) Notice of the decision of the Members to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.
- (e) Notice of commencement of any condemnation proceedings with respect to any part of the Common Areas or with respect to a Dwelling Unit in which the First Mortgagee has a security interest.
- (f) Notice of any default which is not cured by the Owner of a Dwelling Unit in which a First Mortgagee has a security interest within sixty (60) days after the giving of notice by the Association.

Section 2. FORM OF BEQUEST.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Dwelling Unit, the Association shall honor the most recent request received.

Section 3. PAYMENT OF CHARGES.

First Mortgagees, jointly or singularly, may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on a lapse of a policy for the Common Areas and may also pay taxes and other charges which are in default or which may or have become a charge against the Common Areas. A First Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement is to be reflected in an agreement in favor of all First Mortgagees duly executed by the Association.

Section 4. BOOKS AND RECORDS.

A First Mortgagee shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice.

Section 5. RESTRICTIONS.

The prior written approval of all First Mortgagees will be required for any of the following:

- (a) The failure to maintain fire and extended coverage on insurable Common Areas property on a current replacement

cost basis in an amount not less than one hundred (100%) per cent of the insurable value (based on current replacement cost.)

- (b) The use of hazard insurance proceeds for losses to any part of the Common Areas for other than repair, replacement or reconstruction of such improvements.
- (c) An amendment to the Declaration which (i) changes the manner in which assessments are assessed against Owners, or (ii) amends this Section or any other provision which specifically grants rights to First Mortgagees hereunder.
- (d) The abandonment, partition, subdivision, sale or transfer or the encumbrance of the Common Areas; except that the consent of the First Mortgagees shall not be required for action by the Board of Directors to grant easements for utilities and similar or related purposes.
- (e) The abandonment of the planned unit development or the removal of any part or all of The Properties from the provisions of this Declaration.
- (f) The waiver or abandonment of the scheme of Architectural Control or the enforcement thereof.

Section 7. PROTECTION.

No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

ARTICLE XI

DURATION AND AMENDMENTS

Section 1. DURATION.

The covenants, restrictions and obligations of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 2. AMENDMENTS.

Except in cases of amendments that may be executed by the Declarant pursuant to ARTICLE XI, Section 3, and except as restricted by ARTICLE X, Section 5 hereof, this Declaration shall not be amended or revoked until a certificate setting forth the amendment approved and signed by Members holding seventy-five per cent (75%) or more of the total votes hereunder and by one hundred per cent (100%) of the First Mortgagees is recorded in the office of the County Clerk and Recorder, Boulder, Colorado. No amendment shall affect the rights of the Declarant herein unless approved and consented to by the Declarant in writing.

Section 3. SPECIAL AMENDMENTS.

As long as the Declarant has the right to appoint the Board of Directors of the Association in accordance with ARTICLE IV, Section 5 hereof, the Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Dwelling Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Member. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power

of Declarant to make, execute and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Dwelling Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Dwelling Unit. Any such amendment must have the unanimous approval of all of the First Mortgagees.

ARTICLE XII

GENERAL PROVISIONS

Section 1. ANIMALS WITHIN THE COMMON AREAS.

Dogs, cats and other household animals shall not litter the Common Areas. It shall be the duty of the Association to keep the Common Areas free from litter caused by and left by pets. The owners of pets known to be at large shall be properly assessed by the Board of Directors for the cleanup expenses incurred, together with the costs of collection and enforcement to include reasonable attorneys' fees, as an Individual Assessment against the owner of such pets causing such litter in accordance with ARTICLE V, Section 3 Paragraph (b).

Dogs, cats and other household animals shall not be allowed to run at large within the Common Areas but shall be at all times on a leash while such animal is off his owner's Lot. It shall be the duty of the Association, or its representative, to notify the City Dog Warden of pets found at large within the Common Areas in violation of City Ordinances.

Section 2. PARKING.

Automobile parking will be subject to regulation and restriction by the Board of Directors.

Section 3. RULES.

Every Member, his guests, members of his family, servants, employees, invitees, lessees and licensees shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

Section 4. ENFORCEMENT.

The failure of any Member to comply with the provisions of the Declaration, Bylaws and any Articles of Incorporation of the Association will give rise to a cause of action in the Association by its Board of Directors and in any aggrieved Member for the recovery of damages of injunctive relief, or both.

Section 5. INVALIDITY.

Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 6. CLAIMS.

No claim or cause of action shall accrue in favor of any person for the failure of the Association or Declarant to enforce any provision hereof. This Section may be pleaded as a full bar to the maintenance of any suit, action, or arbitration brought in violation of this provision.

Section 7. WAIVER.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8. NOTICES.

Each Member shall register his mailing address with the Association. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 9. ATTORNEY'S FEES AND COSTS.

If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.

Section 10. CAPTIONS.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

Section 11. GENDER.

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, when the context so requires.

