

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HERITAGE MEADOWS

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STATE OF COLORADO
COUNTY OF BOULDER
FILED FOR RECORD
IN M. O. F. C. N.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HERITAGE MEADOWS

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 Outlot D 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 HOMEOWNERS ASSOCIATION.

Section 2. BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of this Association, duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein 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 Outlots A, B and C of the said Heritage Meadows Subdivision, 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 Heritage Meadows, as may be amended from time to time.

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

Section 8. DWELLING UNIT EXTERIOR shall mean and refer to the roof, foundation, steps, footings, patios, fences, balconies, crawl spaces and outer surface of exterior walls of Dwelling Unit, including, without limitation, those portions which serve more than one Dwelling Unit.

Section 9. 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 10. OWNER shall mean and refer to the record Owner including the Declarant of the fee simple title to any Lot or Living Unit situated within The Properties whether one or more persons or entities, excluding those having an interest under an encumbrance.

Section 11. MEMBER shall mean and refer to all those who are Members of the Association as provided in Article IV Section 4 hereof.

Section 12. 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 13. 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 or Living Unit located within The Properties.

Section 14. PARTY WALL shall mean the entire wall or fence, including the foundations thereof, which is built as a part of the original improvements on a Lot and is intended to be placed on the boundary line between adjoining Lots.

Section 15. THE PROPERTIES shall mean and refer to all Common Areas, Lots and Living Units and all improvements thereon and thereto which constitute or shall constitute the entire project herein created, known as "Heritage Meadows", excepting Outlot C therefrom.

Section 16. RULES shall mean the Rules and Regulations adopted by the Association as amended from time to time.

Section 17. LIVING UNIT shall mean and refer to that portion of a building situated upon any Lot designed and intended for use and occupancy as a residence by a single family (a Condominium Unit).

Section 18. ATTACHED DWELLING UNIT shall mean and refer to any building containing two or more Dwelling Units under one roof, each situated upon its own individual Lot, separated by a party wall.

Section 19. SINGLE FAMILY RESIDENCE shall mean and refer to a single housekeeping unit, which includes not more than three adults who are legally unrelated, together with their legal children.

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, covenants, 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 Member shall own his Lot or Living Unit 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 or Living Unit of such 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 Association, 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 district or other entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to The Properties or any addition to The Properties.
- (b) The right of the Association 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.

Any Member may delgate 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 or Living Unit within The Properties. 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 and his guests, employees, licensees, lessees, or invitees.

Section 4. LEASE OF DWELLING UNIT

Any Member shall have the right to lease his Dwelling Unit

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upon such terms and conditions as the Member may deem advisable, subject to the following:

- (a) Any such leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Bylaws of the Association, and the Rules.
- (b) Only an entire Dwelling Unit may be leased, not any portions thereof, and only for single family residential use, as defined by this Declaration.

Any failure of a lessee to comply with the terms of this Declaration or Bylaws of the Association, or the Rules shall be a default under the lease enforceable by the Association.

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.

Every person or entity who is a record owner of a fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a Member of 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. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment by the Association. Ownership of such Lot or Living Unit shall be the sole qualification for such membership.

Section 5. VOTING RIGHTS

There shall be two classes of voting membership.

(a) Class A Members shall be all those Members other than the Declarant. Class A Members will be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership by Section 4. If more than one person holds such interest or interests, all such persons shall be Members. The vote for such

Lot or Living Unit which is held by more than one Member may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such Lot or Living Unit is made prior to the completion of the vote, in which case the vote for such Lot or Living Unit shall be exercised as the persons holding such interests shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any such Lot or Living Unit. When Class B Membership has been converted to Class A Membership, all directors of the Association shall be elected by the Class A Members.

For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

(b) The Class B Member shall be the Declarant, his heirs, personal representative, successors and assigns. The Class B Member shall be entitled to three votes for each Lot in which he holds the interest required for Membership in Section 4.

The Class B Member shall be entitled to appoint all of the Members of the Board of Directors of the Association so long as the Class B Membership exists.

Class B Membership may be converted to Class A Membership at the option of the Class B Member, his heirs, personal representatives, successors and assigns by his written notice to the Secretary of the Association, and shall be converted to Class A Membership without further act or deed on December 31, 1982.

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 attorney's 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 Member of the Association, except those exempt under Section 6 of this Article, by acceptance of a deed to their Lot or Living Unit, agrees to pay the Association certain 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 residents of The Properties and the Members of the Association, which include, but are not limited to, the following, the expense of repair and maintenance of the Common Areas, to include the mowing of grass, the caring for grounds and gardens, and the operation and maintenance of the sprinkling systems, to provide casualty and public liability insurance for the Common Areas and insurance on the attached Dwelling Units, 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 responsible Member and failure of such Member to make such reimbursement to the Association within thirty (30) days, then the cost of the repairs shall be chargeable to such Member by Individual Assessment in accordance with ARTICLE V, Section 2, paragraph (c) 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 Lots or Living Units owned by a Member bears to the total number of Lots or Living Units within The Properties.

For the purposes of determining such proportionate share under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

(b) Insurance Assessment: The Association shall assess against each owner of an attached Dwelling Unit located upon The Properties the cost of procuring and maintaining fire and all risk coverage insurance on such owner's attached Dwelling Unit. Said cost of insurance to be paid by the owners of such attached Dwelling Unit in the proportion which the gross square foot finished area within such owner's attached Dwelling Unit bears to the total gross square foot finished area of all of the attached Dwelling Units located upon The Properties. This insurance assessment shall not be applicable to the Condominium Units located on Lots 1 through 4 and 31 through 37 of The Properties which shall be insured by their Condominium Association.

(c) 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 for the benefit of any individual Lot or Living Unit and the owner thereof, including, but not limited to, fines, repairs and replacements caused by the negligent or willful acts of any Member, his family, guests, employees, licensees, lessees or invitees and all other expenditures or charges provided for by this Declaration, to include but not be limited to, charges assessed under ARTICLE V, Section 2, ARTICLE VI, Section 5 and Section 12, ARTICLE XI, Section 2 and ARTICLE XII, Section 11. Individual Assessments are exempt from the voting requirements required for other special assessments called for under this Declaration.

(d) Fines: The Board of Directors of the Association shall have the right to assess a fine against a Member not exceeding \$50 for each violation of this Declaration, the Bylaws or 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) Levy of Assessments: Within the first three months of each calendar year, the Board of Directors 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 of Directors, but no more than twice in any one year. Fines and Individual Assessments may be assessed at any time as required.

(f) 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 Living Unit.

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 Lot or Living Unit 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), at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent to each Membership 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 of the due date, they shall bear interest from the date of delinquency at the rate of twelve (12%) percent 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 otherwise, the delinquent Member shall pay, in addition to the assessment 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) The Association is hereby granted a lien against the Member's Lot or Living Unit for any payment or payments which the Member fails to make as required by this Declaration; 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 Member, by accepting a deed to his Lot or Living Unit, 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

(iii) 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 or Living Unit; provided however, the lien shall also be subject and subordinate to the rights of any First Mortgagee of a Lot or Living Unit under any assignment of rents given in connection with a first deed of trust. In the event of a foreclosure, the 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 Maker's Dwelling Unit is left vacant, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without notice to the Owner. In addition to the lien herein granted, the Board shall have the right to bring an action at law against his Lot or Living Unit and pay any amounts assessed against his Lot or Living Unit 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) In the event a Member is in default on any obligation secured by an encumbrance on his Lot or Living Unit, the Board, at its option, may pay the amount due on said obligation and file a lien against the Lot or Living Unit in the manner as provided for herein for unpaid assessments.

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

(e) In the case of the conveyance of a Lot or Living Unit 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 Member.

Section 6. EXEMPT PROPERTY.

The following property subject to this Declaration shall be exempt from the assessment, charges and liens granted herein:

(a) all Lots, Living Units and Memberships owned by the Declarant; provided however the Declarant shall be obligated until his Class B 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.

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

(c) all Common Areas.

ARTICLE VI

USE AND OTHER RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE.

No Lot or Living Unit within The Properties shall be used for any purpose other than single family residential purposes as defined in ARTICLE I, Section 19. No residential structure shall be erected on any part of The Properties which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Architectural Control Committee in accordance with ARTICLE VII hereof.

Section 2. BUILDING LOCATIONS AND HEIGHT RESTRICTIONS.

No building shall be located on any Lot nearer to the front lotline or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

No building on any Lot shall be located within six feet of a building located on an adjacent or adjoining Lot without the requisite firewall construction required by the then local Building and Fire Codes as promulgated by the Building Department of the City of Boulder, Colorado. For the purposes of this covenant, steps and open porches shall not be considered as part of a building.

The Architectural Control Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE VII hereof.

No building, primary or assessory, no fence nor improvement of any kind except landscaping shall be built on Lots 18, 19, 21, 22, 23, 25, 27, 28, and 29 within the "No Build Easements" as shown on the recorded plat of The Properties.

Section 3. TREES AND SHRUBS.

The removal of trees and shrubs from the Common Areas shall be prohibited without the express written permission from the Architectural Control Committee.

Section 4. TEMPORARY STRUCTURES.

No temporary house trailer, tent, garage, outbuilding or clotheslines shall be placed or erected upon any part of The Properties and no residence located upon The Properties shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth; provided however, that during the actual construction or alteration of a building within

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The Properties, reasonable and necessary temporary buildings for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration or remodeling.

The work of constructing, altering and remodeling any improvement upon The Properties shall be prosecuted diligently from its commencement and completed within one year from commencement.

Section 5. TRASH.

Each Lot and/or Living Unit shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each Owner must provide for regular removal of garbage, and each Lot or Living Unit at all times shall be kept in a clean, sightly, and wholesome condition and grass and weeds shall be kept mowed. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or from the street, except as reasonably necessary during the period of construction. The Board of Directors, through its agents and employees, shall have the right and duty to enter upon any Lot or Living Unit and remove such unsightly objects and materials at the expense of the Owner and upon due notice to the Owner and failure of the Owner to comply with this Section, such entry shall not be deemed a trespass. The cost of such removal shall be chargeable by the Board of Directors to such Owner, by Individual Assessment in accordance with ARTICLE V, Section 3, paragraph (c).

Section 6. DAMAGE OR DESTRUCTION.

In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all debris and remaining portions of the structure, including the foundation, shall be promptly removed from The Properties.

Section 7. NUISANCES.

No noxious or offensive activity shall be carried on upon The Properties or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance. Patios and balconies shall not be used for storage other than patio furniture and firewood. No activity shall be conducted on any part of The Properties which is or might be unsafe or hazardous to any person.

Boats, trailers, campers, motor homes, wrecked cars, tractors, equipment, etc., shall not be kept or stored so they are visible from neighboring Lots or Living Units or from the street.

No tanks of any kind shall be erected, placed or permitted upon any part of The Properties.

Section 8. TEMPORARY USE BY THE DECLARANT.

Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant to maintain upon The Properties, without charge, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business office, storage area, nursery, construction yard and structures, signs, model Dwelling Units and sales offices.

Section 9. UTILITIES.

All electric, television, radio and telephone lines installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed. All types of refrigerating, cooling or heating apparatus must be concealed.

Section 10. SIGNS.

No sign or advertising of any character except for those of the Declarant and its sales' agents shall be erected, placed, permitted or maintained on any Lot or Living Unit except for a "For Sale" or "For Rent" sign not exceeding the size permitted in residential areas in the City of Boulder.

Section 11. FENCES AND MAILBOXES.

Fences and mailboxes and property identification shall be approved by the Architectural Control Committee.

Section 12. ANIMALS WITHIN THE PROPERTIES.

No animals, livestock, or poultry of any kind shall be raised, bred or kept on The Properties, except that dogs, cats or household animals may be kept thereon if they are not raised, bred, or maintained for any commercial purpose, and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of The Properties. In the event a dog, cat or other household animal shall constitute a nuisance or inconvenience to a resident of The Properties, then the Board of Directors shall have the right to direct that the animal be permanently removed from The Properties.

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 owner of pets known to be at large shall be properly assessed by the Board of Directors for the cleanup expenses incurred, together

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with the costs of collection and enforcement to include reasonable attorney's fees, as an Individual Assessment against the owner of such pets causing such litter in accordance with ARTICLE V, Section 3, Paragraph (c).

Dogs, cats and other household animals shall not be allowed to run at large within The Properties, 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 Properties in violation of City Ordinances.

Section 13. MINERAL EXPLORATION.

No portion of The Properties shall be used to explore or to remove any water, soil, hydrocarbons or other minerals of any sort.

Section 14. PARKING.

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

Section 15. 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.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. RESTRICTIONS.

Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, wall, fence, or any structure whatsoever located upon The Properties there shall be submitted to the Architectural Control Committee (herein referred to as the "Committee"), two complete sets of plans and specifications for said improvements, the erection or alteration of which is desired. No such structure or improvement of any kind shall be erected, altered, placed or maintained within The Properties unless and until the final plans elevations and specifications therefore have received written approval as herein provided. Such plans shall include plot plans, locations of structures and improvements, floor plans, fence plans, elevations showing all aspects of the Dwelling Unit and the development of the Lot as an architectural unit, together with the proposed color scheme and materials for fences, roofs, and exteriors. In order to avoid unnecessary hardships, it is mandatory that all Owners contemplating such construction or alteration, as mentioned above, should submit preliminary drawings in duplicate of such work to the Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans or specifications or incurring substantial expense. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same within thirty (30) days and the other copy thereof shall be retained by the Committee.

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final, subject to an appeal to the Board of Directors, in which case, the Board's decision shall be final. No member of the Committee by virtue of

his membership thereon or in the discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted in accordance with the foregoing, nor for any defects in any work done according to such approved plans or specifications. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, such approval will be deemed to be given.

Section 2. ORGANIZATION.

The Architectural Control Committee shall consist of three persons. Declarant shall have the right to appoint the initial Committee Members whose terms shall expire upon the conversion of Class B Membership to Class A Membership as provided for in ARTICLE IV, Section 5. Said members need not be Owners. Thereafter, Committee Members shall be appointed by the Board of Directors and must be Owners. One Committee Member shall serve for one year; one Committee Member shall serve for two years; and one Committee Member shall serve for three years; and the Board of Directors shall appoint Committee Members to replace those whose terms expire. Members of such Architectural Control Committee shall not be entitled to any compensation for services performed.

Section 3. LANDSCAPING.

A landscaping plan shall be submitted to the Committee at the time the house and lot plans are submitted or within sixty (60) days prior to the date of occupancy. Said landscaping plans to be approved by the Committee before commencement of landscaping. Approval or disapproval of such landscaping plans shall be in the same manner as set forth in ARTICLE VII, Section 1 hereof.

Section 4. FENCES.

All fences shall be approved by the Committee and be designed and approved as an integral part of the design of the Dwelling Unit.

Section 5. EXTERIOR PAINTING.

No exterior painting of the Dwelling Units located upon The Properties shall be allowed without prior written approval of the Committee.

Section 6. WAIVER.

The Committee may, at its discretion, waive any provision of ARTICLE VII of these Protective Covenants in the event there is a practical difficulty or unnecessary hardship; subject to the provisions of ARTICLE XIV, Section 6, paragraph (f).

ARTICLE VIII

PARTY WALLS

Section 1. PARTY WALLS.

The Owner shall possess, in fee simple, that portion of the Party Wall lying within his Lot. Each Owner having a Party Wall is hereby granted a mutual reciprocal easement for repair or replacement of said Party Wall. No Owner shall commit or omit any act, the result of which is infringement of the adjoining Owner's rights in the Party Wall absent written agreement between such Owners. In the event that any portion of any structure originally constructed by Declarant, including any Party Wall, shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot nor shall any action be maintained for the removal of or for damage because of such protrusion. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by Declarant.

Section 2. DESTRUCTION.

If a Party Wall is destroyed or damaged by any casualty, the Owners abutting such Party Wall jointly shall restore it substantially to its original form, and they shall contribute equally to the cost of restoration thereof without the prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rules of law regarding liability for negligent or willful acts or omissions. Destruction or damage to the Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a Party Wall. Owners abutting such a Party Wall are obligated hereby to restore it in its substantially original condition. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the Party Wall to be damaged shall bear the whole cost of repairing such damage and shall diligently prosecute all such repairs and reconstruction. If such Owner shall fail to do so, then any other Owner abutting such Party Wall may do so at the sole cost and expense of the Owner causing such damage. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE IX

EASEMENTS

Section 1. UTILITY EASEMENT.

Easements for public utilities over and across The Properties shall be those shown upon the recorded plat of The Properties and such other easements as may be established pursuant to the provisions of this Declaration or as may hereinafter be granted over and across The Properties by the Board of Directors of the Association.

Section 2. DECLARANT'S EASEMENTS.

Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve an easement and right of way over all Lots not conveyed for the sole use of constructing improvements, utilities and other matters including the right to erect temporary buildings. This reservation shall terminate upon conveyance of the last Lot platted in The Properties. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office or model home for demonstration purposes.

Section 3. SPECIAL EASEMENTS.

Due to the anticipated style of the Dwelling Units to be placed on certain Lots, a Dwelling Unit may be located on or so near its property line or a Dwelling Unit's roof overhang may actually encroach upon an adjoining Lot or Lots so as to make entry upon an adjoining Lot or Lots a necessity incident to the construction and maintenance of such Dwelling Unit. In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement, provided such construction shall commence within twenty (20) years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of such overhang if one shall encroach and for the construction, maintenance, repair, replacement and/or reconstruction of such Dwelling Unit which encroaches or is so located on or near its property line. Said easement or easements (1) shall be over and across the Lot or Lots immediately adjoining the Lot upon which such Dwelling Unit is so located, and (2) shall extend the full depth of the adjoining Lot or Lots, and (3) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such Dwelling Unit so located with an easement of such width that, when added to the space lying between the Dwelling Unit and its property line, such easement shall be six feet in width; provided that such Owner shall immediately repair, and be liable for any damages caused by any failure immediately to repair any damage to such Lot or the Dwelling Unit or other property thereon resulting from the exercise of this easement. Construction of any structure shall

be prohibited within these easements except as such structure shall be approved in writing by the Architectural Control Committee of the Association. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

Section 4. EASEMENTS FOR ENCROACHMENTS.

If any part of a Dwelling Unit unintentionally encroaches or shall hereafter (whether because of reconstruction, settling, shifting or otherwise) encroach upon the Common Areas, or upon an adjoining Lot the Owner of that encroaching Dwelling Unit shall and does have a perpetual easement for such encroachment and for the maintenance of the same.

Section 5. EASEMENTS DEEMED APPURTENANT.

The easements and rights herein created for an Owner shall be appurtenant to the Lot or Living Unit of that Owner and all conveyances and instruments affecting title to a Lot or Living Unit shall be deemed to grant and reserve the easements and rights as provided herein, as though set forth in said document in full, even though no specific reference to such easements or restrictions appears.

Section 6. CREATIONS OF OUTLOTS FOR THE USE AND BENEFIT OF CERTAIN LOTS WITHIN THE PROPERTIES.

Declarant reserves unto himself, his heirs, personal representatives or assigns, a nonexclusive easement over and across the following Outlots located within The Properties. Such Outlots being described as follows:

- a) OUTLOT E: The Westerly 20 feet of Lot 31 of The Properties.

Such reservation is made for the purpose of providing possible ingress and egress to and from and for the use and benefit of Lots 31 and 38 of The Properties.

- b) OUTLOT F: All of that portion of Lots 16 and 17 of The Properties lying Easterly of the line connecting the Southwest corner of Lot 15 with the Northwest corner of Lot 18 of The Properties.

Such reservation is made for the purpose of providing possible ingress and egress to and from and for the use and benefit of Lots 15, 16, 17, and 18 inclusive of The Properties.

- c) OUTLOT G: All that portion of Lot 29 of The Properties lying Easterly of the Westerly lot line of Lot 28 of The Properties.

Such reservation is made for the purpose of providing possible ingress and egress to and from and for the use and benefit of Lots 28, 29 and 3 of The Properties.

Such easements shall be granted subject however, to the duty of the Owners who are granted such easements to bear their proportionate share with the other users of the maintenance, repair and other expenses of their respective Outlot and subject to their duty in no way to obstruct or hinder the utilization of said Outlot for its stated purpose of ingress and egress to the specified lot or lots which it serves.

ARTICLE X

SOLAR EASEMENTS

Lots 6, 22, 24 and 33 of The Properties, hereinafter referred to as Solar Lots, are locations for solar collector panels for the active and passive use of solar energy for the heating, cooling, hot water and power systems of the Dwelling Units constructed thereon. Direct unobstructed access to sunlight is necessary for these solar energy systems.

Lot 6 shall have a solar easement which shall benefit said Lot 6 and shall burden Lots 1, 2, 3, 4, 5, and 33 of The Properties.

Lot 22 shall have a solar easement which shall benefit said Lot 22 and shall burden Lots 6, 21, 23, 24, and 25 of The Properties.

Lot 24 shall have a solar easement which shall benefit said Lot 24 and shall burden Lots 31, 32, and 33 of The Properties.

Lot 33 shall have a solar easement which shall benefit said Lot 33 and shall burden Lots 34, 35, 36, 37, and 38 of The Properties.

No building or structure of any nature, landscaping, vegetation nor other object of any type except original first-built structures and deciduous trees may be erected, maintained, planted or cultivated on any Lot which is subject to these Solar Easements in such a manner as to cause shade on a solar collector located on a Solar Lot between the hours of 9:30 A.M. and 2:30 P.M. Mountain Standard Time on any day of the year. In addition, no original first-built structures shall be altered so as to cause shade on a solar collector in accordance with the above.

The Declarant hereby reserves unto himself, his personal representatives, heirs, successors and assigns the right, without the consent of the Owners subject to these Solar Easements, upon the substantial completion of the first-built structure on a Solar Lot to grant a more definitely described Solar Easement for the benefit of each Solar Lot and burdening the above described Lots. Such easement shall be recorded and that description shall be deemed definitive.

It is probable that certain other Lots within The Properties will be locations for solar collector panels to enable the improvements constructed thereon to utilize solar energy. To encourage the use of such solar energy the Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them to grant solar easements over any portion of The Properties. The acceptance by any person of any interest in any Lot shall constitute an appointment of the Association as attorney-in-fact as provided above. The Association shall be granted all of the powers necessary to grant such easements.

An Owner of a Lot within The Properties other than a Solar Lot who wishes to install a solar collector shall submit his plans and specifications describing the new construction to the Architectural

Control Committee in accordance with ARTICLE VII. Upon approval of the new construction by the Architectural Control Committee, the Owner will submit his plans and specifications along with the Architectural Control Committee's approval to the Board of Directors with a request that he be granted a solar easement for his collector. The Board of Directors after due notice to the Owners of all the Lots within The Properties which shall be burdened by such solar easement and after giving them an opportunity to be heard, may grant the solar easement requested.

The Owner requesting such solar easement shall be entitled to have his solar collector protected from shade in the same manner as the shade existed on the date the Board of Directors granted the easement i.e. if no shade existed on his proposed solar collector at the time the easement was granted, his easement would entitle him to no shade, but if shade existed from existing structures or existing landscaping, then the easement would be granted subject to such shade. Landscaping planted at the time the easement was granted would be allowed to grow into the easement without being an encroachment. Original first-built structures and deciduous trees, other structures and landscaping existing at the time the solar easement is granted shall not be considered or deemed to be encroachments for title and other purposes.

Upon approval of the easement, the Board of Directors shall promptly prepare, execute and record the Solar Easement reflecting the Lots benefited and burdened. The easement granted will be similar in dimensions to the easements granted the Solar Lots except that said dimensions shall be such as are necessary for the operation of that particular solar equipment involved. Such easement must be granted within twenty years of the recording of this Declaration.

Each solar easement is an interest in land and shall run with the land benefited and burdened and shall pass to such Lot's Owner and successors in title. Each solar easement shall be recorded and that description shall be deemed definitive. Each solar easement may be enforced by the Owner of any affected Lot, the Board of Directors, the Architectural Control Committee, an affected First Mortgagee and/or the Declarant by proceedings at law or in equity against any person or persons violating any of the restrictions and limitations of this Article, either to restrain such violation or attempted violations or to recover such damages as may ensue because of such violation or any combination thereof including costs of suit and reasonable attorneys' fees.

Failure to enforce any covenant or restriction contained within this Article shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XI
MAINTENANCE

Section 1. 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 Area in good, clean, attractive and sanitary order and repair; may maintain and replace all or any portion of the landscaping; shall keep The Properties safe, attractive and desirable; and may make necessary or desirable alterations or improvements to the Common Areas. Nothing herein shall be construed as a waiver of any right by the Association to recover for any damage or expense incurred as the result of the willful or negligent action or omission of any per. n.

Section 2. EXTERIOR MAINTENANCE.

The Association shall provide exterior maintenance and exterior repair for each attached Dwelling Unit located on The Properties as follows: paint or stain; repair, replacement and exterior repair as follows: paint or stain; repair, replacement, and care of roofs, gutters, and downspouts; repair of exterior building surfaces and exterior of the patio fence, if any; and the repair of walks and driveways, if they are jointly used. Such exterior maintenance shall not include entry doors and frame or glass in sliding glass doors and windows which shall be the sole responsibility of the attached Dwelling Unit's Owner. Determination of whether such repair or maintenance is the obligation of the Association, or if the Association obligation is necessary, shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

In the event an Owner of any Dwelling Unit within The Properties fails to maintain his Lot and/or the Dwelling Unit located thereon in a manner satisfactory to the Board of Directors of their Association, the Board of Directors shall have the right, through its agents and employees, upon ten (10) days' written notice to the Owner thereof, to enter upon said Lot and Dwelling Unit and to repair, maintain, and restore the Lot and the exterior of the Dwelling Unit.

This Section shall not apply to Lots 1 through 4 and Lots 34 through 37 in The Properties in that the exterior maintenance for the Living Units located thereon shall be the responsibility of their Condominium Association.

The cost of such restoring, repair or maintenance shall be chargeable to such Owner by Individual Assessment in accordance with ARTICLE V, Section 3, paragraph (c).

Section 3. SPECIAL MAINTENANCE AREAS.

The Association shall manage, maintain and be fully responsible for (1) the entry island located at the entrance of The Properties on 22nd Street, (2) the cul-de-sac head island located on Jordan

Place, (3) the cul-de-sac head island located on Jonathan Place, such islands will be landscaped areas with sprinkling systems and are to be considered as Common Areas of the Association, (4) that portion of The Properties lying Southeasterly of the fence as constructed between Lot 34 and 22nd Street as shown on the recorded plat of The Properties, (5) that portion of The Properties lying Southwesterly of the fence as constructed between Lots 3 and 4 and 22nd Street as shown on the recorded plat of The Properties, (6) that portion of The Properties designated on the recorded plat as "no build easements" being a portion of Lots 18, 19, 21, 22, 23, 25, 27, and 29 of The Properties, (7) that portion of The Properties lying south of the fences as constructed on Lots 1 through 4 and 34 through 37 as shown on the recorded plat of The Properties; and (8) the landscaped area between the bike way and the curb and gutter in the City of Boulder's right-of-way for 22nd Street which is located in the northerly portion of The Properties.

Section 4. EASEMENT FOR MAINTENANCE.

Each Lot and the Common Area shall be subject to an easement in favor of the Association (including its agents, employees, and contractors) for providing maintenance as described in this ARTICLE XI.

ARTICLE XII

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 business in the State of Colorado and having a BEST'S Insurance Report rating of 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 affected Attached Dwelling Unit Owner and each affected 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.

This Article shall not apply to Lots 1 through 4 and Lots 34 through 37 of The Properties in that all of their insurance requirements are the responsibility of their Condominium Association.

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: (1) the full replacement cost of the general Common Area Improvements and personal property of the Association, and (2) each attached Dwelling Unit in the amount of the full replacement value without deduction for depreciation. The insurance shall be carried in blanket policy form naming the Association as the insured,

shall identify each Attached Dwelling Unit Owner and the address of his Attached Dwelling Unit 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 and a certificate identifying each party's interest, to any party in interest at his request.

All policies of insurance shall provide that the insurance covering the interest of a particular Attached Dwelling Unit Owner shall be invalidated or suspended only if such Attached Dwelling Unit Owner is guilty of a breach of warranty, act, omission, negligence or non-compliance with any provisions of such policy, including non-payment of the insurance premium applicable to his interest, or if he permits or fails to prevent the happening of any event, either before or after a loss which under the provisions of such policy would invalidate or suspend the entire policy, but the insurance under any such policy as to the interest of all other insured Attached Dwelling Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

The insurance described in this paragraph shall be inflation coverage insurance, if such insurance is available, which insurance at all times represents one hundred per cent (100%) of the replacement value of each Attached Dwelling Unit and 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 per cent (100%) of the replacement value of each Attached Dwelling Unit and 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. INSURANCE BY OWNERS.

Each Attached Dwelling Unit Owner shall be responsible for obtaining property, hazard and liability insurance for each Owner's Attached Dwelling Unit and all personal property and furnishings belonging to such Owner and the improvements thereon (except the parts thereof, if any, the Association is required to insure pursuant to this Article), and, except as provided in Section 2 above, the Association shall not be responsible for providing any such insurance. Nothing herein shall be construed as requiring any Attached Dwelling Unit Owner to obtain any insurance whatsoever as to his own Attached Dwelling Unit or personal property.

Section 6. 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 (a) name the Association as an obligee, (b) be written in an amount equal to at least one hundred fifty per cent (150%) of the estimated annual operating expenses of the Association, including reserves, (c) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar express, and (d) 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 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 may 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. OTHER INSURANCE.

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

Section 9. PAYMENT OF INSURANCE PREMIUMS.

The cost and expenses of insurance obtained by the Association to insure the Common Areas and the improvements thereon and

the personal property owned by it shall be paid from Association funds and be collected from the Members as part of the Common Area Expense Assessments as provided for in ARTICLE V, Section 3, Paragraph (a).

The cost and expenses of insurance obtained by the Association to insure the attached Dwelling Unit shall be paid for from Association funds and be collected from the Attached Dwelling Unit Owners in the following manner: an amount equal to the cost of such insurance attributable to an Owner's Attached Dwelling Unit for one full year shall be paid by such Owner at closing, and thereafter, the cost of such insurance shall be paid by the Owners as an Insurance Assessment in accordance with ARTICLE V, Section 3, Paragraph (b) commencing with the first assessment after closing. The Board of Directors has the right to increase premiums chargeable to Owners provided the cost of insurance has so increased. In addition, the Board of Directors shall have the right to create an insurance escrow account for each Attached Dwelling Unit.

Section 10. ASSOCIATION AS ATTORNEY IN FACT.

This Declaration does hereby make mandatory the irrevocable appointment of an attorney in fact to deal with the Attached Dwelling Units located upon The Properties upon their destruction, repair or reconstruction.

Title to each Attached Dwelling Unit is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided. All of the Owners of Attached Dwelling Units located upon The Properties irrevocably constitute and appoint the Association, their true and lawful attorney in their name, place and stead for the purpose of dealing with their Attached Dwelling Units upon their destruction, repair or reconstruction as is hereinafter provided. As attorney in fact, the Board of Directors of this Association shall have full and complete authorization, power and right to make, execute and deliver any contract, or any other instrument with respect to the interest of an Attached Dwelling Unit's Owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Attached Dwelling Unit shall be done in accordance with Section 11 below.

Section 11. REBUILDING OF DAMAGED ATTACHED DWELLING UNITS.

In the event of damage to or destruction of any Attached Dwelling Unit by fire or any other casualty for which the Association is required to carry insurance, the Board of Directors shall within a reasonable time repair or rebuild the same in a workmanlike manner with materials comparable to those used in the original structure and conformity in all respects with the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. The Attached Dwelling Unit, when rebuilt or

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repaired, shall be substantially similar to, and its architectural design and landscaping shall be in conformity with, the design of the original Attached Dwelling Unit and the surrounding Attached Dwelling Units which are not so damaged or destroyed. Neither the Owner nor the Board of Directors shall be relieved of this obligation to repair or rebuild by the fact that proceeds received from the insurer to repair or rebuild are not sufficient to cover the cost thereof. If the proceeds received from the insurer by the Association are insufficient, it shall be the duty of the Owner to pay to the Association any deficiency required to accomplish the rebuilding or repair. Upon the failure of such Owner to provide such funds within thirty (30) days after demand by the Association therefor, the Board of Directors may cause the repair or rebuilding as provided, and the amount of the deficiency shall be chargeable to such Owner by Individual Assessment in accordance with ARTICLE V, Section 3, Paragraph (c) hereof.

Section 12. 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 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, 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 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 any such distribution.

ARTICLE XIII

CONDEMNATION PROCEDURE

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 to all Members in the same proportion as Common Area Expenses are assessed in accordance with ARTICLE V, Section 3, paragraph (a) hereof.

Section 2. CONDEMNATION OF DWELLING UNITS.

If an attached Dwelling Unit is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner of such Unit and the entity performing the condemnation, without prejudice to the right of such Owners to negotiate or agree jointly.

Section 3. LIEN HOLDERS.

When a condemnation occurs, either to the Common Areas or to a Lot within The Properties and such Lot is subject to an encumbrance, the proceeds due the Member by reason of such condemnation shall be paid to the Members and their First Mortgagees as their interests may appear and no Member or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

ARTICLE XIV

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) Notice of damage exceed \$1,000 to a Dwelling Unit in which the First Mortgagee has a security interest, or damage exceeding \$10,000 to the Common Areas.
- (b) Copies of budgets, notices of assessments, or any other notices or statements provided for under this Declaration, by the Association to the owner of the Dwelling Unit in which a First Mortgagee has a security interest.
- (c) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Members.
- (d) Copies of notices of meetings of the Membership and the right to be represented at any meetings by a designated representative.
- (e) 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.
- (f) Notice of commencement of any condemnation proceedings with respect to any part of the Common Area or with respect to a Dwelling Unit in which the First Mortgagee has a security interest.
- (g) Notice of any default which is by the owner of a Dwelling Unit in which a First Mortgagee has a security interest within thirty (30) days after the giving of notice by the Association to the owner of the existence of the default.

Section 2. FORM OF REQUEST.

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 Mortgagee 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 per cent (100%) 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 Members, 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.
- (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 . 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 XV

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 XV, Section 3, and except as restricted by ARTICLE XIV, 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 seventy-five per cent (75%) 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 XVI

GENERAL PROVISIONS

Section 1. 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 or injunctive relief, or both.

Section 2. 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 3. 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 4. 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 5. 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 an Member on the records of the Association at the time of such mailing.

Section 6. ATTORNEYS' 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

Dated: 6/30/79

My commission expires: April 22 1981

ATTEST:

Ada K Morton

By :

My commission expires:

Anna M. [Signature]
Notary Public