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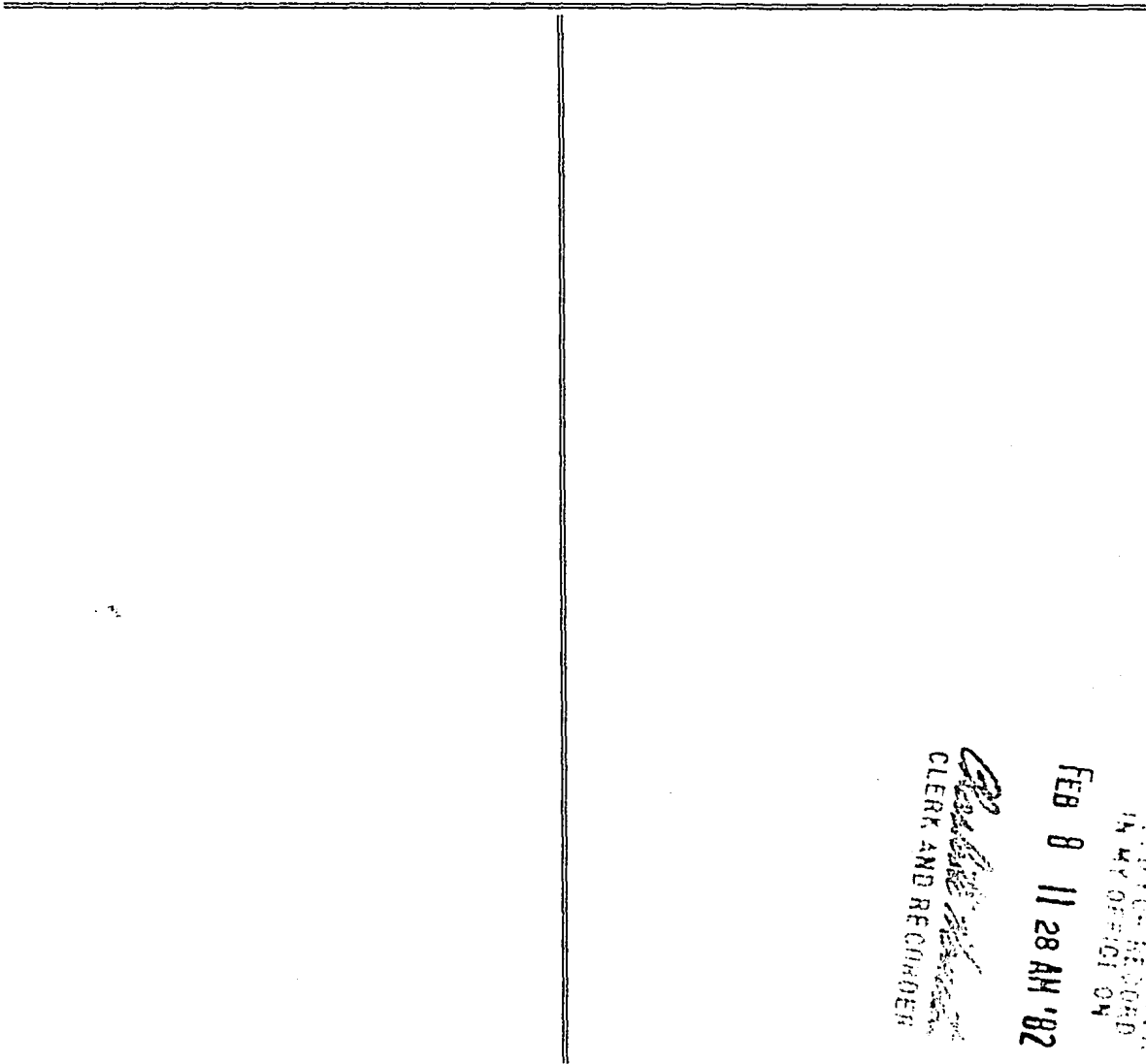
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE SPRING CREEK TOWNHOUSES REPLAT

(A Townhouse Project Located in the City and County of Boulder, Colorado)



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE SPRING CREEK TOWNHOUSES REPLAT

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by D.E.H. COOKE CONSTRUCTION, INC., a Colorado Corporation, hereinafter referred to as "Declarant",

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

Block A, SPRING CREEK TOWNHOUSES REPLAT, a resub-division of a portion of Talisman Filing No. Two, located in the N 1/2 of the NE 1/4 of the SE 1/4 of Section 20, T1N, R70W of the 6th P.M., according to the recorded plat thereof recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

The real property described above shall hereinafter be referred to as "The Properties".

WHEREAS, Declarant will construct a residential community on The Properties, together with other improvements thereon; and

WHEREAS, Declarant will convey The Properties, subject to the protective covenants, restrictions, reservations, and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that The Properties shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, use and obligations, all of which are declared and agreed to be for the protection of the value of The Properties and for the benefit of any person having any right, title or interest in The Properties 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 ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 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 FIVE hereof.

1.2 ASSOCIATION shall mean and refer to The Spring Creek Homeowners Association, a Colorado Corporation not for profit, its successors and assigns.

1.3 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.

1.4 BUILDING shall mean and refer to any structure containing two or more Dwelling Units, each such Dwelling Unit to be situate upon its own individual Lot, separated by a party wall.

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

1.6 COMMON AREAS shall mean that portion of The Properties (including all improvements thereon) owned by the Association for the common use and enjoyment of the Owners more specifically described as Block A less Lots 1 through 18 of The Properties.

In the event that additional property is made subject to this Declaration in the manner provided in Paragraph 2.2 hereof, "Common Areas" shall from and after the date such additional real property is made subject to this Declaration include any parts thereof designated as "Common Areas" (including all improvements thereon) in such Supplemental Declaration.

1.7 DECLARANT shall mean and refer to D.E.H. Cooke Construction, Inc., a Colorado Corporation, its successors or assigns, if such successors or assigns shall acquire any portion of The Properties for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant for the purpose hereof by a duly recorded written instrument. Any such designation by the Declarant or a successor Declarant may include the right of redesignation by such successor or further successors.

1.8 DECLARATION shall mean this Declaration of Covenants, Conditions and Restrictions of The Spring Creek Townhouses Replat, as may be amended from time to time, together with any and all Supplementary Declarations that may be recorded from time to time pursuant to the provisions of Paragraph 2.2 hereof.

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

1.10 FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns or receives a permanent mortgage or permanent deed of trust, which mortgage or deed of trust

is of record and is a first and prior lien encumbering any Lot within The Properties, and shall mean the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

1.11 GUEST shall mean and refer to any agent, tenant, guest, licensee, or invitee of an Owner and members of such Owner's household.

1.12 LOT shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties which is subject to this Declaration with the exception of the Common Areas. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is defined in Paragraph 1.9 hereof.

In the event additional property is made subject hereto in the manner as provided in Paragraph 2.2 hereof, "Lot" shall also mean from and after the date such additional property is made subject to this Declaration such additional parcels, plots, and lots designated as "Lots" in such Supplemental Declaration.

1.13 MEMBER shall mean and refer to all those who are members of the Association as provided in Paragraph 4.4 hereof.

1.14 OWNER shall mean and refer to the record Owner of the fee simple title or a seller under a Land Installment Contract of any Lot which is a part of The Properties, whether one or more persons or entities, excluding those having an interest merely as security for the performance of an obligation.

1.15 PARTY WALL shall mean and refer to each wall or fence, including the foundations thereof, which is built as a part of the improvements on a Lot within The Properties and placed on the boundary line between adjoining lots. Such wall or fence, including the foundations thereof, which constitute a party wall shall be shared or used in common by the Owners of two or more Dwelling Units located in the same Building.

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

1.17 THE PROPERTIES shall mean and refer to such real property and the improvements located thereon which constitute or shall constitute Block A of the Spring Creek Townhouses Replat, a subdivision of a part of the City of Boulder, according to the recorded plat thereof on file in the office of the County Clerk and Recorder of Boulder County, Colorado.

In the event that additional property is made subject to this Declaration in the manner provided in Paragraph 2.2 hereof, "The Properties" shall, from and after the date such additional real property is made subject to this Declaration include any parts thereof designated as "The Properties" (including all improvements thereon) in such Supplemental Declaration.

1.18 VA AND/OR FHA APPROVAL shall mean that The Properties have been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within The Properties.

ARTICLE TWO: SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT

2.1 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.

2.2 Annexation. Additional property within the area described as Block B, together with Outlot A of the said Spring Creek Townhouses Replat may be annexed by Declarant without the consent of the Owners or Members of the Association or the consent of First Mortgagees, within five years of the date of recording this Declaration, provided that the Federal Home Administration and Veterans Administration determine that the annexation is in accordance with the general plan heretofore approved by them. Said annexation shall occur when the Declarant records Supplemental Declaration describing the real property to be annexed, and on the date of recording said Declaration, said real property shall be deemed part of The Properties as defined herein and shall be subject to all of the terms and conditions of this Declaration.

2.3 Conveyances Subject to Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and 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, 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.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in The Properties shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.4 Member's Rights Subject to the Provisions of This Declaration. Each 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.

2.5 Common Area Dedication. The Declarant in recording the plat of The Properties as herein defined, in the records of the County Clerk of Boulder, Colorado, has designated certain areas of The Properties as Common Areas which are landscaped open spaces, sidewalks, driveways and carports intended for the use solely by the Owners of Lots located within The Properties and the Owners Delegees as defined in Paragraph 3.3 hereof.

The designated Common Areas are not dedicated for the use by the general public, but are dedicated to the common use and enjoyment of the Owners of Lots located within The Properties as more fully provided for in this Declaration.

Said plat is hereby incorporated herein and made a part of this Declaration.

ARTICLE THREE: PROPERTY RIGHTS

3.1 Member's Easements. Every Member and his delegees as described in Paragraph 3.3 below, shall have the right and easement of use and enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot of such Member subject to the following rights:

a) The right and easement of the Association to make such use of the Common Areas 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 the Declarant, the Members and the Association.

d) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas.

e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of each class of Members has been recorded.

f) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published Rules.

3.2 Title to the Common Areas. The Declarant hereby covenants that it will convey fee simple title to the Common Areas to the Association, free and clear of all liens and encumbrances, prior to the conveyance of the first Lot within The Properties and furnish and pay for a title insurance policy reflecting same.

3.3 Delegation of Use. Any Member may delegate, in accordance with the Bylaws and Rules and Regulations of the Association, his right of enjoyment of the Common Areas to the members of his household, to his tenants or to contract purchasers who reside upon his Lot within The Properties and to his guests as defined in Paragraph 1.11. 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 household, guests, contract purchasers, tenants or invitees.

3.4 Lease of a Dwelling Unit. Any Member shall have the right to lease his Dwelling Unit 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.

Such lease shall state that the failure of the lessee to comply with the terms of the Declaration or Bylaws of the Association or Rules shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them; provided however, that the provisions of this Paragraph shall not apply to a First Mortgagee who comes into possession of a Unit through foreclosure or a deed in lieu thereof.

ARTICLE FOUR: THE ASSOCIATION

4.1 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. The Association shall have all the powers necessary or desirable to effectuate such purposes.

4.2 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, provided no such delegation shall relieve the Board of final responsibility.

4.3 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 of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.4 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 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 which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person hold interest in any Lot, all such persons shall be Members.

4.5 Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest in the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost. In no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. Class B Membership may be converted to Class A Membership at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall be converted to Class A Membership without further act or deed not later than:

- (a) when seventy-five percent (75%) of the Lots have been conveyed to Purchasers other than Declarant; or
- (b) five (5) years following the recording of this Declaration, whichever shall first occur.

4.6 Indemnification. 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 proceedings 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. The amount of the indemnification shall be limited to the extent covered by Directors and Officers Errors and Omissions Liability Insurance Policies, obtained in advance by the Association, and only to the extent payable from such policy. The indemnification shall not apply if the said person is legally adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the indemnification 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.

The words "director" and "officer" shall not include any officer, director, agent, or employee of the Declarant or any managing agent, or any officer, director, employee or agent of any managing agent heretofore or hereafter employed by the Association.

4.7 Professional Management. Any agreement for professional management of The Properties, or any contracts providing for services of the Declarant, may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days' or less written notice.

4.8 Rights of Association/Transfer of Functions. With respect to the Association Property, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other condominium associations and other homeowners associations, both within and without The Properties.

Unless otherwise specifically prohibited herein or within the Articles of Incorporation or Bylaws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners association or condominium association.

Any of the above actions shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association and shall not relieve the Board from any responsibility thereof.

ARTICLE FIVE: ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of the Assessment. The Declarant, subject to the provisions of Paragraph 5.11 below, for each Lot owned, within The Properties, hereby covenants, and each Owner other than the Declarant of any Lot by acceptance of a deed therefore, whether of not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain assessments to be fixed, established and collected from time to time as herein provided. All assessments created and defined in this Declaration, together with interest, costs, and reasonable attorney's fees shall be:

a) a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made, which lien shall attach as of the date the assessment is made, and shall continue until such assessment, together with any penalties and interest, costs of collection, and attorneys' fees are paid; and

b) a personal obligation of the person who was the Owner or of the persons jointly and severally, who were the Owners of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of the 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, and for the improvement and maintenance of the Common Areas to include the carports located thereon, providing insurance therefore and providing for the exterior maintenance and blanket casualty insurance for the Dwelling Units located within The Properties. Such assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of the Common Areas and of Dwelling Unit exteriors which the Association has an on going duty to replace, repair and/or maintain on a periodic basis.

5.3 Basis of Assessments.

a) Annual Assessment for Common Expenses. The Board of Directors shall assess against each Owner of a Lot within The Properties, an Annual Assessment for Common Expenses to pay for the common expenses of the Association. Said assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of those portions of the Common Areas which the Association has a duty to replace, repair and/or maintain on a periodic basis. Such assessment shall be paid by the Owners in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties. Said assessment shall commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

The Annual Assessment for Common Expenses shall not include the expense of procuring and maintaining the insurance coverages required by Paragraph 11.2 hereof, but shall be assessed as provided for in Paragraph 5.3(d).

b) Exterior Maintenance Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located upon The Properties the cost of providing exterior maintenance and exterior repair of the Dwelling Unit in accordance with

Paragraph 12.2 hereof. Such assessment shall include the establishment and maintenance of a reserve fund for maintenance, replacement and repair of the Dwelling Units' exterior which the Association has an on going duty to replace, repair and maintain on a periodic basis.

Such assessment shall be paid by Owners of Dwelling Units in the proportion which the gross square foot finished area within such Owner's Dwelling Unit bears to the total gross square foot finished area of all of the Dwelling Units located upon The Properties. Said assessment shall commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

c) Individual Assessments. The Board of Directors shall have the right to individually assess any Owner amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 6.14, 7.5, 7.11, 11.3, 11.4, 11.7, 12.1 12.3 hereof. No Individual Assessment shall be assessed until: the affected Owner have been given thirty (30) days' written notice as to the reason for the assessment, the affected Owner have had an opportunity for a hearing before the Board of Directors, and the Board of Directors levy the assessment by a two-thirds vote of the total votes of all Directors of the Association.

d) Insurance Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located upon The Properties the cost of procuring, maintaining and administrating the blanket property and casualty insurance for such Dwelling Units.

Such assessment shall be paid by the Owners of Dwelling Units in the proportion which the gross square foot finished area within such Owner's Dwelling Unit bears to the total gross square foot finished area of all of the Dwelling Units located upon The Properties. Said assessment shall commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

e) Fines. The Board of Directors of the Association shall have the right to assess a fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such fine shall be assessed until the affected Owner or Owners: have been given notice as to the reason for the fine, the affected Owner or Owners have had the opportunity for a hearing before the Board of Directors, and the Board of Directors levy the fine by a two-thirds vote of the total votes of all Directors of the Association.

No fine may be assessed for more than one percent of such Dwelling Unit Owner's total yearly assessment (Annual Assessment for Common Expenses, plus Exterior Maintenance Assessment plus Insurance Assessment) for any one violation, but each day a violation continues after the fine has been assessed against an Owner, is a separate violation.

f) Levy of Assessments. At least thirty days prior to the close of the Association's fiscal year, the Board of Directors shall determine the Insurance Assessment; and subject to the provisions of Paragraph 5.4, the Annual Assessment for Common Expenses and the Exterior Maintenance Assessment, all of which are payable monthly by each Owner; 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. The Board of Directors shall have the right to establish an escrow account for each Unit to which all assessments shall be paid. Written notice of such Assessments shall be sent to every Owner subject thereto.

Fines and Individual Assessments may be assessed at any time as required. Both assessments are exempt from any voting requirements for assessments required for other assessments called for under the Declaration.

As soon as practicable after the close of each fiscal year, actual expenses shall be totalled and any overages or shortages of actual expenses and assessments made shall then be charged or credited to each Owner against the following year's assessment.

The omission or failure of the Board of Directors to fix the Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

g) Non-exemption. No Owner may waive or otherwise escape liability for any assessments provided for herein by the non-use of the Common Areas or abandonment of his Lot.

5.4 Maximum Assessments. (a) Until January 1, 1983, the maximum assessments, also referred to as the Base Assessments, which may be assessed by the Board of Directors, excluding the Individual Assessments and the Insurance Assessments, shall be:

- i) Two hundred eighty-five and 00/100 dollars (\$285.00) per Lot per year as the Annual Assessment for Common Expenses; and
- ii) One hundred forty-five and 00/100 dollars (\$145.00) per Lot per year as the Exterior Maintenance Assessment.

b) Each maximum assessment may be increased effective January 1 of each year thereafter without a vote of the membership as required by Paragraph 5.4(c) in accordance with the rise in the Revised Consumer Price Index for the previous year as determined below.

Commencing in December of 1982 and during the same month of each and every year thereafter for the duration of this Declaration, or as soon thereafter as practical, each maximum assessment may be reviewed in accordance with the Revised Consumer Price Index, All Items U.S. 1967-100, as published by the Bureau of Labor Statistics of the United States Department of Labor, hereinafter referred to as the "Index". The Index number indicated in the column All Items U.S. for October 1981, shall be the "Base Index Number" and the corresponding Index number for the twelfth month thereafter, and the same month of each and every year thereafter for the duration of this Declaration shall be the "Current Index Number".

The difference between the Current Index and Base Index Number shall be divided by the Base Index Number resulting in the percentage of increase or decrease in the cost of living over the Base Index Number. In the event the cost of living shall increase between the Base Index Number month and the Current Index Number month during the term of this Declaration, each maximum assessment may be increased at the option of the Board of Directors, in accordance with the increase between the then Current Index Number and Base Index Number as divided by the Base Index Number.

The Board of Directors may increase each maximum assessment to a sum of money equal to the Base Assessment as provided for above multiplied by the percentage of increase in the cost of living which the sum may be added to the Base Assessment contained in this Paragraph 5.4.

If said Index should no longer be recognized or published during the term hereof, then another index generally recognized as authoritative shall be substituted by the Board of Directors. The Base so used by any Index, or as revised on the existing Index, shall be reconciled to the 1967 Index.

If the Board of Directors shall elect not to increase the maximum assessments for any year(s) in whole or in part, the Board shall have waived its rights to such increase, and shall not be entitled to the cumulative increase for preceding years as hereinabove provided.

c) The maximum assessments may be increased above that established by the rise in the Revised Consumer Price Index formula by a vote of sixty-seven percent (67%) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

d) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the Annual Assessment for Common Expenses and the Exterior Maintenance Assessment at an amount not in excess of the maximum without any voting or approval requirements of the Membership.

5.5 Maximum Insurance Assessment. The maximum Insurance Assessment shall be the insurance premium paid by the Association to insure the Dwelling Units within The Properties in accordance with Paragraph 11.2 hereof prorated to each Owner in accordance with Paragraph 5.3(d).

5.6 Special Assessments. In addition to the assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable for that year only for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, repair or replacement of any of the Common Areas provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.7 Notice and Quorum Required to Increase the Maximum Assessments or Assess a Special Assessment. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 5.4(c) and 5.6 shall be sent to all Members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of Members or

of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5.8 Uniform Manner of Assessment. All Assessments must be assessed in a uniform manner upon all Lots which are subject to such Assessment, subject to the provisions of Paragraph 5.11 hereof.

5.9 Date of Commencement of Assessments; Prorations. The Annual Assessments for Common Expenses provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas to the Association. The Exterior Maintenance Assessment and Insurance Assessment as to a Dwelling Unit shall commence upon the issuance of a Certificate of Occupancy for that Dwelling Unit.

The Annual Assessment for Common Expenses and Exterior Maintenance Assessment shall be prorated respectively according to the number of months remaining in the Association's fiscal year at the time the Common Areas are conveyed or at the time of the issuance of a Certificate of Occupancy for that Dwelling Unit. The Insurance Assessment shall be prorated in accordance with Paragraph 11.7 hereof.

5.10 Due Dates, Non-Payment of Assessments, Remedies of the Association.

a) Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

b) All other assessments shall be due and payable on the first day of the period fixed by the Board of Directors for payment of the assessment which shall be monthly.

c) Written notice of all assessments shall be sent to each Owner subject thereto specifying the type of assessment, the amount and the date such assessment is due.

d) All assessments shall become delinquent unless paid within thirty (30) days of their due date. If such assessments are not paid within thirty days of its due date, the assessment shall bear interest from its date of delinquency at a rate as fixed by the Board and uniformly applied not to exceed, however, the rate of ten percent (10%) per annum.

Failure to make payment within sixty (60) days of the due date thereof shall cause the full amount of such Owner's total yearly Assessment (Annual Assessment for Common Expenses, Exterior Maintenance Assessment plus Insurance Assessment) for the remainder of that fiscal 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 Owner shall pay, in addition to the Assessment and interest as herein provided, all costs of collection including a reasonable attorney's fee and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is required to be filed to enforce collection, the cost of preparation, filing and release shall be considered a cost of collection.

e) The Association is hereby granted a lien against the Owner's Lot for any payment of an Assessment which the Owner fails to make as required by this Declaration. The lien of the Assessments provided for herein shall be subordinate to the lien of any loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Such lien to attach at the time of the levy of the Assessment, and continue until such Assessment, together with interest, all costs of collection including reasonable attorneys' fees are paid.

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.

If a foreclosure action is filed to foreclose any assessment lien, and an Owner abandons or leaves vacant his Dwelling Unit, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee as set forth in its deed of trust or mortgage (including any assignment of rents) which creates that First Mortgagee's Interest in the Lot.

In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Lot, and obtain judgment for the amount of the Assessments due together with interest and late fees incurred, plus all costs of collection, including reasonable attorneys' fees and costs incurred by the Association in enforcing payment.

In the event an Owner 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 shall have a lien against the Lot which lien shall attach in the manner as provided for unpaid assessments.

f) The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property. 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.

g) The lien of all assessments created and defined by this Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against such assessment lien.

h) Sale or transfer of an interest in any Lot shall not affect the liens for unpaid assessments except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of all unpaid assessments as to assessments which became due prior to such transfer of title or cancellation or forfeiture of executory land sales contract i.e. the date the First Mortgagee acquires fee simple title to the Lot. Provided however, the Association shall still have the right to recover such amount from the delinquent Owner. No transfer of title, or cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

i) The Association shall upon demand, and for a reasonable charge, furnish to an Owner or his First Mortgagee, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the Assessments against a Lot is binding upon the Association as of the date of its issuance.

5.11 Declarant's Obligations. The Declarant, for each Lot owned within The Properties, shall pay to the Association twenty-five percent (25%) of the Annual Assessment for Common Expenses paid by the Class A Members until such time as a Certificate of Occupancy is issued for the Dwelling Unit located on such Lot. Upon the issuance of such Certificate, the Declarant shall be obligated as any other Class A Member to pay the full Annual Assessments for Common Expenses, Exterior Maintenance Assessment and Insurance Assessment for that particular Lot.

The Declarant agrees to subsidize the Association the sum equal to the difference between the cost of operating the Association and maintaining the Common Elements, exclusive of funding the reserve funds, and the amount of money received by the Association from its Members. Any amounts so advanced to the Association as a subsidy shall be a credit against the Declarant's obligations to pay the Annual Assessment for Common Expenses as set forth above. The obligation of the Declarant to subsidize the obligations of the Association shall terminate upon the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof.

ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW COMMITTEE

6.1 Approval of Improvements Required. The approval of the Design Review Committee, hereinafter referred to as the Committee, shall be required for any Improvement to Property, defined below, other than an original first built Improvement to Property made by Declarant.

6.2 Improvement to Property. "Improvement to Property" requiring approval of the Committee shall mean and refer to, without limitation, the construction, reconstruction, remodeling, addition to or alteration of the exterior of any building, wall, fence or any exterior structure whatsoever located upon The Properties; the demolition or destruction, by voluntary action, of any building, structure or other improvement located upon The Properties; the grading, excavation, filling or similar disturbance of the surface of the land including without limitation change of grade, or change of drainage pattern; landscaping and the removing of trees, plants, and shrubs; and any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

6.3 Members of Committee. The 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 in accordance with Paragraph 4.5 hereof. 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, such terms shall be for a period of three years respectively.

Members of the Committee shall not be entitled to any compensation for services performed but shall receive reimbursement for out of pocket expenses incurred by them in the performance of their duties hereunder.

6.4 Address of Committee. The address of the Committee shall be at the principal office of the Association.

6.5 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Committee, at its offices, plot plans showing the location of the 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. The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Committee of all required materials in connection with the proposed Improvement to Property, the Committee may postpone review of any materials submitted for approval.

No Improvement to Property 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 by the Committee as herein provided.

6.6 Delegation/Waiver. The Committee may at its discretion delegate to the Board of Directors any of its powers granted to it by this Article by written notice to the Board of Directors indicating what powers and authority are granted to the Board subject to the provisions of Paragraph 13.5(b) hereof. Such delegation shall be effective from the date such notice is recorded. The Committee may waive any provision of this ARTICLE SIX in the event there is a practical difficulty or unnecessary hardship, subject to the provisions of Paragraph 13.5(b) hereof.

6.7 Criteria for Approval. The Committee shall have the right to disapprove any proposed Improvement to Property which is not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon the Improvement to Property, the Committee shall have the right to take into consideration the suitability of the proposed Improvement to Property 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 Improvement to Property 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 the proposed Improvement to Property if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement to Property upon the making of such changes thereon as the Committee may deem appropriate.

6.8 Decision of Committee. The decision of the Committee shall be made within thirty (30) days after receipt by the Committee of all materials required by the Committee. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority of the Members of the Committee shall constitute a quorum and a majority vote of the quorum shall constitute the action of the Committee.

6.9 Appeal to Association Board. If the Committee denies approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Association and the Committee within ten (10) days after such denial. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement to Property shall be approved. The decision of the Board of Directors shall be final and binding on all parties.

6.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information is transmitted to the Applicant by the Committee within thirty (30) days after the date of receipt by the Committee of all necessary materials as determined by the Committee.

6.11 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate ten (10) days after the Improvement has been completed.

6.12 Notice of Noncompliance. If, the Committee finds that any Improvement to Property has been done without obtaining the approval of the Committee or was not done in substantial compliance with the plans and specifications furnished by the Applicant to the Committee, the Committee shall notify the Applicant in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.13 Appeal to Association Board of Finding of Noncompliance. If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Committee within ten (10) days after receipt of the Notice of Noncompliance by the Applicant. If, after the receipt of a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Board of Directors and the Applicant within ten (10) days after delivery to the Applicant of a Notice of Noncompliance from the Committee. In either event, the Board of Directors shall hear the matter with reasonable promptness after the reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The decision of the Board of Directors shall be final and binding on all parties.

6.14 Correction of Noncompliance. If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty (30) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the noncomplying Improvement to Property or may otherwise remedy the noncompliance. The Board may levy an Individual Assessment in accordance with Paragraph 5.3(c) hereof against the Owner of such Lot for such costs and expenses incurred. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration.

6.15 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to any Improvement to Property. Specifically, the approval by the Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

6.16 Records of Actions. The Committee shall report in writing to the Board of Directors all final action of the Committee and the Board shall keep a permanent record of such action.

6.17 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary

facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.18 Nonliability for Committee Action. No Member of the Committee, or any Member of the Board of Directors or the Declarant shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee unless it be due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or being in conformance with building codes or other governmental laws or regulations.

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Land Use and Building Type. No Lot within The Properties shall be used for any purpose other than single family residential purposes as generally defined. 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 Design Review Committee in accordance with ARTICLE SIX hereof.

7.2 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 shall be located within six feet of any other building 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 a part of a building.

The Design Review 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 SIX hereof.

7.3 Trees and Shrubs. The removal of trees and shrubs from The Properties shall be prohibited without the express written permission from the Design Review Committee.

7.4 Temporary Structures. No temporary house trailer, tent, garage, outbuilding or clothesline 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 The Properties, reasonable and necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. Such temporary storage structures 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.

Until the completion of all of the improvements on the last Lot platted within The Properties any amendment to this Paragraph 7.4 must have the prior written assent of the Declarant.

7.5 Trash. Each Lot shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each Owner must provide for regular removal or garbage, and each Lot 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 shall have the right and duty, through its agent and employees, upon thirty (30) days' written notice to the Owner thereof, and after a hearing before the Board of Directors, to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c).

7.6 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, unsightly, unhealthy, 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 from the street.

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

7.7 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 or its designees to maintain upon The Properties, without charge, such facilities as 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.

No maintenance of such facilities or use or activity by Declarant or its designees shall unreasonably interfere with the access, enjoyment or use of the common area; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

Until the completion of all of the improvements on the last Lot platted within The Properties any amendment to this Paragraph 7.7 must have the prior written assent of the Declarant.

7.8 Utilities. All electric, television, radio and telephone line 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.

7.9 Restriction on Signs. No signs or advertising of any character except for those of Declarant and its sales' agents, shall be erected, placed, permitted or maintained on any part of The Properties without the prior written consent of the Board of Directors. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify The Properties.

7.10 Fences and Mailboxes. Fences and mailboxes and property identification shall be approved by the Design Review Committee.

7.11 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 other 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 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 of the Association shall have the right to direct that the animal be permanently removed from The Properties. No removal of an animal shall be made until the animal's owner has been given ten days' written notice as to the reason for such animal's removal, such owner has had an opportunity for a hearing before the Board of Directors and the Board of Directors direct that the animal be removed from The Properties by a two-thirds vote of the total vote of all of the Board of Directors.

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 assessed for cleanup expenses incurred, as an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

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 not within its Owner's Dwelling Unit or fenced Lot area. It shall be the duty of the Association, or its representative, to notify the City Warden of pets found at large within The Properties in violation of City Ordinances.

7.12 Parking. Automobile parking will be subject to regulations and restrictions by the Board of Directors.

7.13 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.

7.14 Carports. All carports and parking spaces are located on the Common Areas. Each carport shall be limited to and reserved for the exclusive use of the Owners of a particular Lot as designated by the Association; provided however, that the Association shall maintain control thereof and shall have the continuing right to assign and reassign carports to Owners within The Properties so long as there is always at least one carport per Lot.

Each Owner shall maintain the interior of his assigned carport in a clean, safe and attractive condition and shall keep the same free from litter and debris. The Association shall have the power to establish reasonable rules and regulations relating to the sightliness of the carports and the use thereof by its Owner.

No gasoline, gasahol, distillate, diesel, kerosine, naphtha or similar volatile, combustible or explosive materials shall be stored in any carport except in the fuel tanks of vehicles parked therein and used for transportation purposes or one container of outdoor grill fuel starter of no more than two liter capacity.

ARTICLE EIGHT: EASEMENTS

8.1 Utility Easements. Easements for utilities over and across the Common Areas 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 Common Areas by the Board of Directors of the Association.

8.2 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve reasonable easements and rights-of-ways over all Common Areas and all Lots not conveyed for the sole use of constructing improvements, utilities or for any other reason, including the right to erect temporary buildings to store any and all materials. Such easements and rights-of-way however shall not inhibit the use of the Common Areas by the Owners and his delegees. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office, construction office or model home for demonstration purposes.

These reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such reservations shall terminate without further act or deed not later than:

- (a) The completion of all of the improvements on the last Lot platted within The Properties; or
- (b) Five years following the recording of this Declaration, whichever shall first occur.

Until the termination of these reservations as provided for above, any amendment to this Paragrph 8.2 must have the prior written assent of the Declarant.

8.3 Zero Lot Line 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 (a) shall be over and across the Lot or Lots immediately adjoining the lot upon which such Dwelling Unit is so located, and (b) shall extend the full depth of the adjoining Lot or Lots, and (c) 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 Design Review Committee of the Association. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

8.4 Easements for Maintenance. Each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for providing maintenance, repair and replacement to the Lot and the exterior of a Dwelling Unit as provided in ARTICLE TWELVE hereof.

8.5 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 an adjoining Lot or Common Area, the Owner of that encroaching Dwelling Unit shall and does have a perpetual easement for such encroachment and for the maintenance of same.

8.6 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by him. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

ARTICLE NINE: CONDEMNATION

9.1 Condemnation of Common Area. In the event of a proceeding in condemnation or partial condemnation of the Common Area by any governmental authority authorized to do so, then the proceeds from such condemnation attributable to the Common Area shall be distributed to the Association for repair of the Common Area after condemnation and the balance remaining shall be distributed to all Owners in the same proportion as the Annual Assessments for Common Expenses are assessed in accordance with Paragraph 5.3(a) hereof; subject to the provisions of Paragraph 9.3 below.

9.2 Condemnation of Dwelling Units. If a Dwelling Unit or Dwelling Units are condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner of such Dwelling Unit or Dwelling Units and the entity performing the condemnation, subject however, to the provisions of 9.3 below.

9.3 Lien Holders. When a condemnation occurs, either to the Common Areas or to a Dwelling Unit within The Properties and such Dwelling Unit is subject to an encumbrance, the proceeds payable thereunder shall be distributed by checks made jointly payable to Owners and their respective First Mortgagees. No Owner or other parties shall be entitled to priority over First Mortgagees with respect to any such distribution.

ARTICLE TEN: PARTY WALLS

10.1 Existence. The Owner shall possess, in fee simple, that portion of the Party Wall, as defined in Paragraph 1.15 hereof, 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.

10.2 Repair and Maintenance. If a Party Wall is in need of repair or is destroyed or damaged by any casualty, the Owners of Lots abutting such Party Wall jointly shall repair, restore or reconstruct it substantially to its original form, and they shall contribute in proportion to such Owner's use of such Party Wall to the cost of repair, restoration or reconstruction thereof without the prejudice, however, to the right of any such Owner to call for a larger contribution from any other Owner under any rules of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to any contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title; provided however, the right of such Owner to any contribution shall in any event be subordinate to the First Mortgagees of any Lots. 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.

10.3 Arbitration. All claims, demands, disputes, controversies and misunderstandings arising concerning a Party Wall, or under the provisions of this Article, shall be submitted to and be determined and settled by arbitration. As established hereunder each party shall select one arbitrator and the two arbitrators so selected shall jointly select a third arbitrator. In the event one of the parties refuses to select an arbitrator in the time frame outlined below, then the Board of Directors shall act on such parties behalf and appoint such arbitrator. The appointment of arbitrators hereunder shall be made within thirty (30) days after notice by one party to the other party and to the Association that a dispute exists. The three arbitrators shall meet and shall give opportunity to each party to present his case in the presence of the other party and shall then make their award. The award of a majority of the arbitrators shall be final and binding upon the parties and judgment may be entered thereon in any court having jurisdiction. The cost of arbitration, the party or parties responsible for payment thereof, and the manner of payment will be decided by the arbitrators. In the event the arbitration award is for money damages, then such award, together with any attorneys' fees and costs awarded shall be a lien against the losing parties' Lot in favor of the prevailing party, which lien shall attach in the manner as provided for in Paragraph 5.10 hereof for unpaid assessments until paid. Any lien hereby created shall have the same priority as the lien provided for in Paragraph 5.10 hereof.

ARTICLE ELEVEN: INSURANCE

11.1 Authority to Purchase/General Requirements. Except as otherwise provided in Paragraph 11.8 hereof, all insurance policies relating to The Properties shall be purchased by the Board of Directors. The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Dwelling Unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where 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 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 the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the the Dwelling Unit Owners, members of their households and the Declarant in its capacity as a Dwelling Unit Owner.
- b) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Dwelling Unit Owner (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within thirty (30) days after such demand;
- c) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all First Mortgagees.
- d) The Declarant, so long as Declarant shall own any Dwelling Unit, shall be protected by all such policies as a Dwelling Unit Owner.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado and having a BEST'S Insurance Report rating of Class X-B or higher.

The deductible, if any, on any insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the Federal Home Loan Mortgage Corporation. Any loss falling within the deductible portion of a policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which was damaged or destroyed. In the event of a joint duty of repair and maintenance of the property damaged or destroyed then the deductible shall be borne by the Association.

11.2 Physical Damage Insurance.

The Board of Directors shall obtain and maintain a Blanket, "All-Risk" Policy of Insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), and water damage endorsements, insuring all of the Dwelling Units located upon The Properties including all insurable improvements located on the Common Areas and any personal property owned by the Association and used in conjunction therewith. Such insurance shall be in the amount of the full replacement value, as defined below, to include, among other things, all fixtures, installations or additions comprising a part of a Dwelling Unit within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Dwelling Unit initially installed or replacements thereof, in accordance with the original plans and specifications or installed by or at the expense of the Dwelling Unit Owner.

Such insurance shall at all times represent one hundred percent (100%) of the replacement value based on the most recent appraisal of each Dwelling Unit, and all insurable improvements in the Common Areas. The replacement value shall not include values for land, foundation, excavation and other items normally excluded thereof and shall be without deduction for depreciation and shall contain no provision for co-insurance. The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall also at least every two years obtain an appraisal for insurance purposes, which shall be maintained as a permanent record, showing that the insurance represents one hundred percent (100%) of the replacement value as defined above for the Dwelling Units located upon The Properties and all insurable improvements on the Common Areas, together with any personal property owned by the Association.

Such policies shall also provide:

a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Inflation Guard Endorsement, Agreed Amount Endorsement and Cost of Demolition Endorsement.

b) That any "no other insurance" clause expressly exclude individual Dwelling Unit Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Dwelling Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Dwelling Unit Owners or their First Mortgagees, unless otherwise required by law.

A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any First Mortgagee requesting the same, at least thirty days prior to expiration of then current policy.

The insurance shall be carried in blanket policy form naming the Association as the owner and beneficiary thereof in respect to the Common Areas and as trustee for the Owners of the Dwelling Units within The Properties and shall identify each Dwelling Unit Owner and the address of his Dwelling Unit and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this Article shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association as attorney-in-fact for the Owners.

Title to each Lot within The Properties 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 Dwelling Units located upon The Properties constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their Dwelling Units upon its damage or destruction as is hereinafter provided. As attorney-in-fact, the Board of Directors of the 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 such Dwelling Unit which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the damaged Dwelling Units and Common Areas shall be done in accordance with Paragraph 11.3 and 11.4 below.

Such appointment of the Association as the attorney-in-fact for all Owners may be revoked and a new attorney-in-fact appointed by an amendment to this Declaration in accordance with Paragaraph 14.2 hereof.

11.3 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 percent (75%) or more of the total votes hereunder and by one hundred percent (100%) of the First Mortgagees is recorded within one hundred days of the date of damage or destruction indicating their intention not to rebuild in the office of the County Clerk and Recorder, Boulder, Colorado.

In the event of any repair and/or reconstruction of any portion of the Common Areas, the Board of Directors shall repair or reconstruct the same in a workmanlike manner with materials comparable to those used in the original construction and in conformity in all respects with the laws or ordinances regulating construction in force at the time of such repair or reconstruction. The Common Areas, when built or repaired, shall be substantially similar to the architectural design of the original Common Areas.

The Board of Directors shall not be relieved of this obligation to repair and/or reconstruct by the fact that proceeds received from the Insurer to repair or rebuild are not sufficient to cover the cost thereof.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of such repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Common Areas, such excess cost shall be assessed as an Individual Assessment against all Members in accordance with paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall

be exempt from any special voting requirements of the Membership. Such Individual Assessment shall be assessed in the same proportion as the Annual Assessment for Common Expenses is assessed in Paragraph 5.3(a) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment was levied.

If the entire damaged Common Areas are not repaired or replaced (a) the insurance proceeds shall be used to restore the damaged Common Areas to a condition compatible with the remainder of the Common Areas, and (b) the remainder of the proceeds shall be distributed to all Owners in the same proportions as Annual Assessments for Common Expenses are assessed. Proceeds hereunder shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagee. No Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

11.4 Rebuilding of Damaged Dwelling Units. In the event of damage to or destruction of a Dwelling Unit or any other casualty for which the Association is carrying insurance in accordance with the above, the Board of Directors shall promptly repair or reconstruct 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 Dwelling Unit, when built or repaired, shall be substantially similar to the architectural design of the original Dwelling Unit and the surrounding 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.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of such repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Dwelling Units, such excess cost shall be assessed as an Individual Assessment against all Members in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership. Such Individual Assessment shall be assessed in the same proportion as the Insurance Assessment is assessed in Paragraph 5.3(d) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and reconstruction. In the event amounts collected are in excess of the amounts required for such repair and reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment levied.

11.5 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage insurance in such limits as the Board may from time to time determine, insuring each director, the Managing Agent, each Dwelling Unit Owner and the Declarant in its capacity as a Dwelling Unit Owner against any liability to the public or to the Dwelling Unit Owners,

members of their households (and their invitees, agents and employees) arising out of, or incident to the ownership or use of the Common Areas. Such insurance shall be issued on a comprehensive liability basis and shall contain the following endorsements or the equivalent: Cross Liability Endorsement, Hired And Non-Owned Vehicle Endorsement, Host Liquor Liability Endorsement and Severability Of Interest Endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

11.6 Other Insurance. The Board of Directors shall obtain and maintain:

a) Adequate fidelity coverage, if available, and deemed necessary and consistent with good business practices, to protect against dishonest acts on the part of the directors, officers, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association, provided however, the Board of Directors shall not maintain fidelity coverage to cover any paid professional management;

Such fidelity coverage shall name the Association as an obligee, be written in an amount which the Association deems consistent with good business practices and satisfies the requirements of the First Mortgagees, or the Federal Home Loan Mortgage Corporation, whichever is greatest, and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

b) if required by any governmental or quasi-governmental agency, including without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

c) Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to any employee of the Association in the amounts and in the forms now or hereafter acquired by law.

d) adequate Directors and Officers Liability Insurance, if available, and if deemed necessary, for errors and omissions on all Directors and Officers to be written in an amount which the Association deems adequate.

e) such other insurance of a similar or dissimilar nature, as the Board of Directors deem appropriate with respect to The Properties.

11.7 Payment of Insurance Premiums. The cost of insurance obtained by the Association in accordance with this Article other than the insurance referred to in Paragraph 11.2 hereof pertaining to the Blanket "All Risk" Policy insuring the Dwelling Units, shall be paid from Association funds and be collected from the Owners as part of the Annual Assessment for Common Expenses as provided for

in Paragraph 5.3(a) hereof.

In the event there are not sufficient funds generated for the Annual Assessment for Common Expenses to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by Individual Assessment in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership.

The cost of procuring and maintaining the Blanket "All Risk" Policy, as provided in Paragraph 11.2 hereof, insuring the Dwelling Units, shall be paid for from Association funds and be collected from the Owners of such Dwelling Units in the following manner: the cost of insurance attributable to the Owner's Dwelling Unit for one full year shall be prorated according to the number of days remaining between closing and that Dwelling Unit's insurance policy Renewal Date and shall be paid at closing. Thereafter, the cost of such insurance shall be paid by the Owners as an Insurance Assessment in accordance with Paragraph 5.3(d) hereof commencing with the first assessment after closing. The Board of Directors shall have the right to create an insurance escrow account for each Dwelling unit within The Properties.

11.8 Separate Insurance. Each Owner shall have the right, at his own expense, to obtain insurance for his own Dwelling Unit, for his own benefit and to obtain insurance coverage upon his personal property, furnishings and for his personal liability provided, however, that no Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this paragraph.

ARTICLE TWELVE: MAINTENANCE

12.1 Maintenance of the Common Areas. The Association shall provide for the repair, maintenance and/or replacement of the Common Areas. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas safe, attractive, clean, functional and in good repair; and may make necessary or desirable alterations or improvements thereon.

In the event the repair, maintenance and/or replacement to the Common Areas is resulting from the act or negligence of an Owner or such Owner's delegees, as defined in Paragraph 3.3 hereof, the cost of such maintenance, replacement, repair and restoration shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c).

12.2 Exterior Maintenance by the Association. To provide and maintain exterior harmony for all of the Dwelling Units within The Properties, the Association shall provide exterior maintenance and exterior repair for each Dwelling Unit as follows: repair, replacement and care of roofs, gutters and downspouts; repair and paint or stain the exterior building surfaces and exterior of the patio fences if any. Such exterior maintenance shall not include maintenance of glass doors and windows and hardware which shall be the sole responsibility of the Dwelling Unit's Owner.

Determination of whether such repair, maintenance and/or replacement is the obligation of the Association, and whether the repair, maintenance and/or replacement is necessary, shall rest solely with the Board of Directors in their discretion, who shall also have the sole responsibility for determining the kind and type of materials used in such repair, maintenance and/or replacement.

All other Dwelling Unit maintenance, repair and/or replacement shall be the sole responsibility and expense of the Owner.

12.3 Failure to Properly Maintain. In the event any Owner shall fail to maintain his Lot in a manner satisfactory to the Board of Directors, the Board of Directors shall have the right and duty, upon approval by a 2/3 vote of the total votes of all of the Directors, to enter upon said Lot and repair, maintain, replace or restore the Lot. The cost of such maintenance, repair and restoration shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c) hereof.

12.4 Maintenance Easements. Each Lot shall be subject to a maintenance easement in accordance with Paragraph 8.4 hereof.

ARTICLE THIRTEEN: FIRST MORTGAGEE'S RIGHTS

13.1 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 an 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 its Members.
- c) Copies of notices of meetings of the Membership and the right to be represented at any meetings by a 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 Lot or any portion thereof in which a First Mortgagee has a security interest.
- f) Notice of any failure to pay an assessment which is not cured by an Owner of a Dwelling Unit in which a First Mortgagee has a security interest within sixty (60) days given notice by the Association.

13.2 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 therefore 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.

13.3 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 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 therefore 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.

13.4 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.

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13.5 Restrictions.

a) If there are insurable improvements located in the Common Areas, the prior written approval of all First Mortgagees will be required for the failure to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost as defined by Paragraph 11.2 hereof); and the use of hazard insurance proceeds received for losses to any part of the Common Area property for other than repair, replacement or reconstruction of such improvements.

b) The prior written approval of all First Mortgagees will be required for:

- (i) An amendment to the Declaration which changes the manner in which assessments are assessed against Members or amends this Paragraph or any other Paragraph which specifically grants rights to First Mortgagees hereunder;
- (ii) The abandonment, partition, subdivision, sale or transfer or 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;
- (iii) The abandonment of the planned unit development or the removal of any part or all of The Properties from the provisions of this Declaration;
- (iv) The waiver or abandonment of the scheme of Architectural Approval or the enforcement thereof; or any scheme of regulations or enforcement thereof, pertaining to the architectural design of the Buildings, the exterior maintenance of the Buildings, the maintenance of common property party walks or common fences and driveways, or the upkeep of the lawns or plantings.

ARTICLE FOURTEEN: DURATION AND AMENDMENTS

14.1 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.

14.2 Amendments. Except in case of amendments that may be executed by the Declarant pursuant to paragraph 2.2 hereof, this Declaration may be amended, except as limited by Paragraphs 7.4, 7.7, 8.2 and 13.5 hereof, by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and seventy-five percent (75%) of the First Mortgagees based on one vote for each mortgage owned. All amendments must be recorded with the Clerk and Recorder of Boulder County, Colorado.

If The Properties have been or are to receive Veterans Administration and/or Federal Housing Administration approval as defined by paragraph 1.18 hereof, then until the Class B Membership is converted into Class A Membership in accordance with Paragraph 4.5 hereof, the following actions will require the prior written approval of the Federal Housing Administration and/or the Veterans Administration: (a) annexation of additional properties, (b) dedication of Common Areas, and any amendment of this Declaration.

14.3 Annexation. Except as provided by Paragraph 2.2 hereof, additional residential property and/or Common Areas may be annexed to The Properties with the consent of two-thirds (2/3) of each class of Members.

ARTICLE FIFTEEN: GENERAL PROVISIONS

15.1 Enforcement. The failure of any Member to comply with the provisions of this Declaration, the Bylaws, the Articles of Incorporation or the Rules and Regulations of the Association will give rise to a cause of action in the Association by its Board of Directors and/or in any aggrieved Member for the recovery of damages or injunctive relief and any other recovery available in any proceeding at law or in equity.

15.2 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.

15.3 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.

15.4 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.

15.5 Attorneys' Fees and Costs. If any action is brought in a court of law or placed 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 attorneys' fees as well as all costs incurred in the prosecution or defense of such action. Attorneys' fees and costs may be paid by mutual stipulation of the parties in the event that any such action is resolved by stipulation and agreement of the parties.

15.6 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 or the intent of any of its provisions.

15.7 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.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 5th day of February, 1982.

ATTEST:
[Signature]
as Secretary

D.E.H. COOKE CONSTRUCTION, INC.
a Colorado Corporation
By: [Signature]
President



STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 5th day of February, 1982, by Ronald F. Cooke as President and William H. [unclear] as Secretary of D.E.H. Cooke Construction, Inc., a Colorado Corporation.

WITNESS my hand and official seal.

My commission expires: January 31, 1983.

[Signature]
Notary Public

Address: 207 Canyon Blvd.

- 36 - Denver CO 80302

