

3 1 9 6 / 8

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SOUTH CREEK EIGHT

STATE OF COLORADO
COUNTY OF BOULDER
FILED FOR RECORD
IN MY OFFICE ON
JAN 19 1 22 PM '79
CLERK AND RECORDER

KNOW ALL MEN BY THESE PRESENTS, that whereas McStain Enterprises, Inc., a Colorado corporation, hereinafter sometimes called "McStain" is the owner of South Creek Eight, a subdivision of the City of Boulder, County of Boulder, State of Colorado; and

WHEREAS, McStain intends to improve part of the property described above by constructing townhouses thereon, such construction to occur in four separate and distinct phases which when complete will contain fifty-two units; and

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

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

ARTICLE I
DEFINITIONS

- 1. "Association" means South Creek Eight Homeowners' Association, its successors and assigns.
- 2. "Properties" means and refers to that certain real property hereinbefore described.
- 3. "Common Area" means Outlot A-1, Outlot A-2 and Outlot C.
- 4. "Lot" means and refers to the following:
 - (a) any plot of land as shown on the recorded subdivision map of properties which is to be used to construct a townhouse; and
 - (b) the plot of land shown on the recorded subdivision map of properties which is to be used to construct a garage or furnish parking for such townhouse, the number of which plot corresponds to the number of the townhouse lot and has the suffix A.
- 5. Construction of townhouses shall be completed in four separate and distinct phases, construction of each phase to be on those lots designated hereafter:
 - Phase 1: Lots 1-12 consisting of 12 units;
 - Phase 2: Lots 13-26 consisting of 14 units;
 - Phase 3: Lots 27-40 consisting of 14 units;
 - Phase 4: Lots 41-52 consisting of 12 units.

6. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

7. "Townhouse" shall mean and refer to any portion of a building situate on the properties designed and intended for use as a residence by a single family.

8. "McStain" shall include McStain's successors and assigns if such successors or assigns acquire a sufficient number of undeveloped lots to build a structure consisting of townhouses.

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

ARTICLE II

PROPERTY RIGHTS

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

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

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

(c) the Association has the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for public purposes consistent with the intended use of the Common Area;

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

(e) the Association has the right to borrow money for the purpose of improving the Common Area and facilities, subject to the restrictions set forth in paragraph 11 of Article VII hereafter, and in aid thereof to encumber said property, provided that the borrowing of any money for the purpose of improving the Common Area shall require the consent of three-fourths of each class of members described in Article V hereafter and, provided further, the rights of the holder of any encumbrance shall be subject to rights of the members of the Association while any encumbrance is current and not in default.

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

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

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

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

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

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

ARTICLE III

INSURANCE, DAMAGE, DESTRUCTION AND OBSOLESCENCE

1. Association to Maintain Insurance. The Association or its agent shall obtain and maintain at all times liability insurance, insurance coverage against loss or damage by fire and such other hazards as are covered under standard coverage provisions for the full replacement cost of the general common elements, buildings, recreational facilities and each townhouse (including insurance against loss or damage by vandalism or malicious mischief) in the amount of the full replacement value, without deduction for depreciation, issued by a responsible insurance company authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Association the insured, shall identify each Owner and the address of his townhouse, shall provide a standard, non-contributory mortgagee clause in favor of each first mortgagee, and shall provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice is given to each Owner and each first mortgagee. The Association shall furnish a certified copy of such blanket policy and the certificate identifying his interest to any party in interest at his request. All policies of insurance shall provide that the insurance covering the interest of a particular owner shall be invalidated or suspended only if such Owner is guilty of a breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including nonpayment of the insurance premium applicable to his interest, or if he permits or fails to prevent the happening of any event, either before or after a loss, which under the provisions of such policy would invalidate or suspend the entire policy, but the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

The insurance described in this paragraph shall be inflation coverage insurance, if such insurance is available, which insurance at all times represents 100% of the replacement value of each townhouse and all facilities in the Common Area. If inflation coverage insurance is unavailable, the Association shall, at least every three years, obtain an appraisal for insurance purposes which shall be maintained as a permanent record, and insurance in that year shall be adjusted to represent 100% of the replacement value of each townhouse and the facilities in the Common Area.

2. Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and casualty and public liability insurance coverage within each townhouse shall be the responsibility of the Owner thereof.

3. Appointment of Attorney in Fact. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead, for the purpose of repairing and reconstructing improvements should they be damaged or destroyed as more fully hereinafter set forth. Repair and reconstruction of the improvements as used in this Article means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each townhouse having the same boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement as is provided hereinafter. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of any owner which may be necessary and appropriate to exercise the powers herein granted.

4. Damage or Destruction.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power to cause the repair and restoration of the improvements.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association using the proceeds of insurance on the townhouses which have been damaged or destroyed and the proceeds of an assessment against all the owners whose townhouses have been damaged or destroyed, each owner being assessed the difference between the insurance proceeds on his townhouse and the cost of repairing his townhouse. Any such assessments shall be made by the Board of Directors after consultation with such owners, appraisers, contractors and other persons as it deems appropriate. Any assessments so made shall be due and payable as provided by the Board of Directors' resolution. The Association shall have full authority, right and power to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. Any assessment not paid shall be collected as provided in Article IV.

ARTICLE IV

COVENANT FOR ASSESSMENTS

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

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes set forth in Article III above and for the following purposes:

(a) Exterior Maintenance. The Association shall provide exterior maintenance upon structures on each lot and shall paint, repair, replace and care for roofs, gutters, down spouts, fences, exterior building surfaces and other exterior improvements excepting glass surfaces and screens. If the need for maintenance or repair is caused through the wilful or negligent act of the owner, his family, guests, or tenants, the cost of such maintenance or repairs shall be added to and become a part of the assessment paid by such owner and shall not be assessed against other owners. In addition, the Association shall care for and replace, as necessary, trees, shrubs, grass and walks other than those situate on owners' lots, care and replacement of those situate on owners' lots being the sole responsibility of owners. The owner shall not paint or otherwise decorate any of the exterior part of any building and shall promptly report to the Association any defects or need for repairs the responsibility for which is that of the Association pursuant to the provisions of this Article.

(b) General Expenses. The Association shall pay all administration and management expense, maintenance of all driveways, parking areas, maintenance and replacement of sidewalks, curbs, water, sewer, and other utilities, and payment of all water bills incurred by the Association. The Association shall have the right to enter into agreements for professional management of the Association, provided that any such agreement may be terminated for cause on ninety days' written notice to the manager and provided that the term of any such agreement shall not exceed three years.

The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis. Such reserve shall be funded by regular monthly payments and not by special assessments.

3. Special Assessments for Capital Improvements. In addition to the assessments authorized herein, the Association may levy, in any year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-fourths of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose of authorizing construction of such a capital improvement.

4. Notice and Quorum for any Act Authorized Under Paragraph 3. Written notice of any meeting called for the purpose of taking any action described in paragraph 3 above shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent 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 presence of members or of proxies entitled to cast fifty per cent of all the votes of each class of membership shall constitute a quorum. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5. Uniformity of Assessments. Annual assessments shall be fixed at a uniform rate for all lots other than those described in the following sentence. The annual assessment against any lot owned by McStain on which there is no townhouse ready for occupancy on the last day of a fiscal year shall not include any maintenance costs described in paragraph 2(a) of this Article, provided, however, within 30 days after there is such a townhouse on any lot, the assessment for such lot shall be increased for the remainder of the fiscal year so that the amount of the monthly payments thereafter made in connection with its ownership will be the same as the monthly payment being made by owners of lots other than those described in the first clause of this sentence.

6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area and shall be payable in equal monthly installments. The annual assessment period shall commence with the first day of the Association's fiscal year as established by the Board of Directors and shall terminate on the last day of such year. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year and the Board of Directors shall fix the amount of the first assessment against each lot on or before the 15th day of the month following the conveyance of the Common Area. Thereafter the annual assessment shall be determined as provided in paragraph 7 of this Article. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive and the Association shall not be permitted to deny any facts set forth in such certificate.

7. Determination of Amount of Annual Assessments. Within 30 days prior to the end of a fiscal year, the Board of Directors shall determine by estimate the amount of the assessment necessary to pay those expenses required to be paid by the Association pursuant to the provisions of these covenants, provided, however, the assessment in any one year may not be increased by more than fifteen percent over the preceding year's assessment without approval of three-fourths of each class of members of the Association. Within 15 days after making such determination, the Board of Directors shall give written notice to each owner of the amount of his estimated annual assessment. In any year in which a new townhouse becomes ready for occupancy on any lot owned by McStain, the board of directors shall increase the assessment against such lot for the remainder of the fiscal year as provided by paragraph 5 above.

Within 30 days after the beginning of the fiscal year, the Board of Directors shall calculate the total expenditures made during the preceding fiscal year for expenses paid through the assessments provided for by this Article and shall compute the exact amount owed by each owner. The Board of Directors shall thereupon notify each owner of the amount of any excess payment made by such owner during the preceding year and give the owner credit for such excess payments on monthly payments remaining to be made by the owner during that year. If the payments made during the preceding year were insufficient to pay each owner's share, the amount of such deficiency shall be added on to the monthly payments remaining to be made by owner during that year. Any deficiency shall be paid in full on or before the end of the fiscal year following the year in which it occurred.

8. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of law eight per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his lot. The Association shall give notice in writing to the first mortgagee of any owner who is in default in the payment of any assessment hereunder or is otherwise in default hereunder and who has not cured such default within thirty days after the due date, provided that such first mortgagee has previously given notice in writing to the Association of the existence of such mortgage.

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

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

11. Effect of Nonpayment of Expenses by the Association. The first mortgagees of townhouses may, jointly or singly, pay taxes or any other expenses which the Association is required by this Declaration to pay and has failed to pay and which may or have become charges against the Common Area and such mortgagees may pay overdue premiums on insurance policies which the Association is required by this Declaration to obtain and maintain or obtain new insurance coverage on the lapse of a policy which the Association is required by this Declaration to obtain and maintain and, in any such event, the first mortgagee or mortgagees making such payments shall be owed immediate reimbursement therefor by the Association.

12. Restrictions on Powers of the Association. Without the approval in writing previously given by three-fourths of the holders of recorded first mortgages based upon one vote for each first mortgage owned, and three-fourths of the votes of each class of members who are voting in person or by proxy, the Association shall have no power or authority to do any of the following:

(a) By act or omission seek to abandon, partition, encumber, subdivide, sell or transfer the real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the owners of lots. The granting of easements for public utilities or for public purposes consistent with the intended use of the Common Area by Association shall not be deemed a transfer within the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walks and party walls or common fences and driveways or the upkeep of the Common Area including but not limited to its lawns and plantings;

(d) Fail to maintain fire and extended coverage insurance on the insurable Common Area on a current replacement cost basis in an amount not less than 100 per cent of the insurable value (based on current replacement cost);

(e) Use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement, or reconstruction of improvements thereon.

ARTICLE V
MEMBERSHIP

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

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

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

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

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

(b) On June 1, 1983.

ARTICLE VI
PARTY WALLS

1. Party Wall Easements. Mutual reciprocal easements are hereby established, declared and granted for all party walls between improvements constructed or to be constructed on lots, which reciprocal easements shall be for mutual support and shall be governed by this Declaration and more particularly the succeeding Sections of this Article. Every deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

2. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

4. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

5. Weatherproofing. 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.

6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be apurtenant to the land and shall pass to such Owner's successors in title.

7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision resolving the dispute shall be by a majority of all the arbitrators. The cost of any such arbitration shall be borne equally by the Parties thereto. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the provisions pertaining to arbitrators have been met. The appointment of arbitrators hereunder shall be made within twenty (20) days after notice by one party to the other party that a dispute exists.

ARTICLE VII

RESTRICTIVE COVENANTS

1. No structures of a temporary character, trailer, basement, tent, shack, barn, or other outbuilding shall be erected or used on any portion of the premises at any time either temporarily or permanently. *Does this mean we can't build a storage area under the deck?*

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

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

4. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any building, nor shall any building be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any building or any resident thereof, provided, however, "For Rent" or "For Sale" signs may be placed upon a building when such building is for sale or for rent. No such sign shall be more than

five square feet. No business activities of any kind whatever shall be conducted in any building on any portion of the properties. The foregoing covenants, however, shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns in furtherance of its powers and purposes as herein set forth. Signs indicating public pedestrian access shall be located in such a way as to be readily visible but shall be designed in such a manner as to be in character with the general architecture of the development.

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

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

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

8. No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said property, other than an aerial for a master antenna system for each building should any such system or systems be utilized and require any such exterior antenna, unless written permission is obtained from the Association.

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

10. No trailers, detached campers, boats or mobile homes shall be parked or stored on any site unless parked or stored in a closed garage.

11. No tennis Court, swimming pool, club house or other major recreational facility shall be constructed on any part of the Common Area except on Outlot A-2.

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

ARTICLE VIII

EASEMENTS

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

There is hereby created a blanket easement upon, across, over and under Outlots A-1, A-2 and C for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the companies providing electrical and telephone service to erect and maintain the necessary equipment on said property and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of structures on said outlots. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by said builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

An easement is also reserved in, on and over each lot to permit the Association or its designees to effect any desired or necessary maintenance or repairs to any structure or other improvement on any lot.

ARTICLE IX

CONDEMNATION

In the event of a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be payable to the Association. If two-thirds of the owners duly and promptly approve the repair and restoration of the Common Area, the Association shall arrange for the same and shall

disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If two-thirds of the owners do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award to the owners, the owner of each lot receiving one equal share, provided that the Association shall first pay out of the share of each owner the amount of any unpaid liens or encumbrances on his lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to South Creek Eight shall be deemed to give an owner or any other party priority over the rights of a first mortgagee pursuant to the mortgage on such owner's lot in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or a taking of lots or Common Area, or both. The Association shall give notice in writing to the Federal Home Loan Mortgage Corporation of any loss to or taking of the Common Area if the award for such loss or taking exceeds \$10,000.00 and such notice may be given by delivery of notice to the mortgagees of record.

ARTICLE X

GENERAL PROVISIONS

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

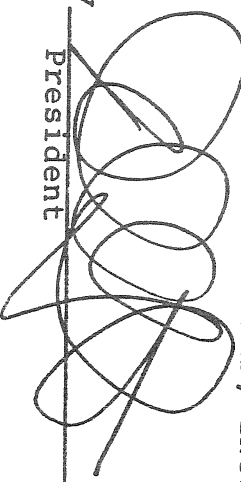
2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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

ATTEST:



McSTAIN ENTERPRISES, INC.

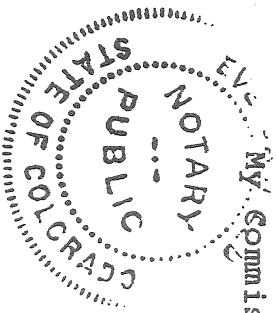
By  President

State of Colorado)
)
County of Boulder) ss.

The foregoing instrument was acknowledged before me this 19th day of January, 1978, by Thomas R. Hoyt as President and Caroline Hoyt as Secretary of McStain Enterprises, Inc., a Colorado corporation.

Witness my hand and official seal.

My Commission expires: June 1, 1982



Eve Canfield
Notary Public

FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
SOUTHCREEK EIGHT

KNOW ALL MEN BY THESE PRESENTS, that whereas McStain Enterprises, Inc., a Colorado corporation, hereinafter sometimes called "McStain" is the owner of Southcreek Eight, a subdivision of the City of Boulder, County of Boulder, State of Colorado; and

WHEREAS, McStain has heretofore recorded a Declaration of Covenants, Conditions and Restrictions affecting the above described property, which Declaration was recorded January 19, 1979, on Film 1046 as Reception No. 319676 of the records of the Clerk and Recorder of the County of Boulder, State of Colorado; and

WHEREAS, McStain is the sole owner of the property described above; and

WHEREAS, McStain wishes to amend paragraph 4(b) of Article I;

NOW, THEREFORE, paragraph 4(b) of Article I of the above described Declaration of covenants, Conditions and Restrictions is amended to read as follows:

"(b) the plot of land shown on the recorded subdivision map of properties which is to be used to construct a garage or furnish parking for a townhouse, the number of which plot has the suffix A. Each owner shall be deeded one such plot but the number of such plot need not correspond to the number of the plot on which such owner's townhouse is constructed."

IN WITNESS WHEREOF, McStain Enterprises, Inc. has caused its corporate name to be hereunto subscribed by its president, and its corporate seal to be hereunto affixed, attested by its secretary, this 23rd day of February, 1979.

~~McSTAIN ENTERPRISES, INC.~~

By 
President

Attest:


Secretary

State of Colorado)
) ss.
County of Boulder)

The foregoing instrument was acknowledged before me this 23rd day of February, 1979, by Thomas R. Hoyt as President and Caroline Hoyt as Secretary of McStain Enterprises, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: June 1, 1982


Eve Campbell
Notary Public

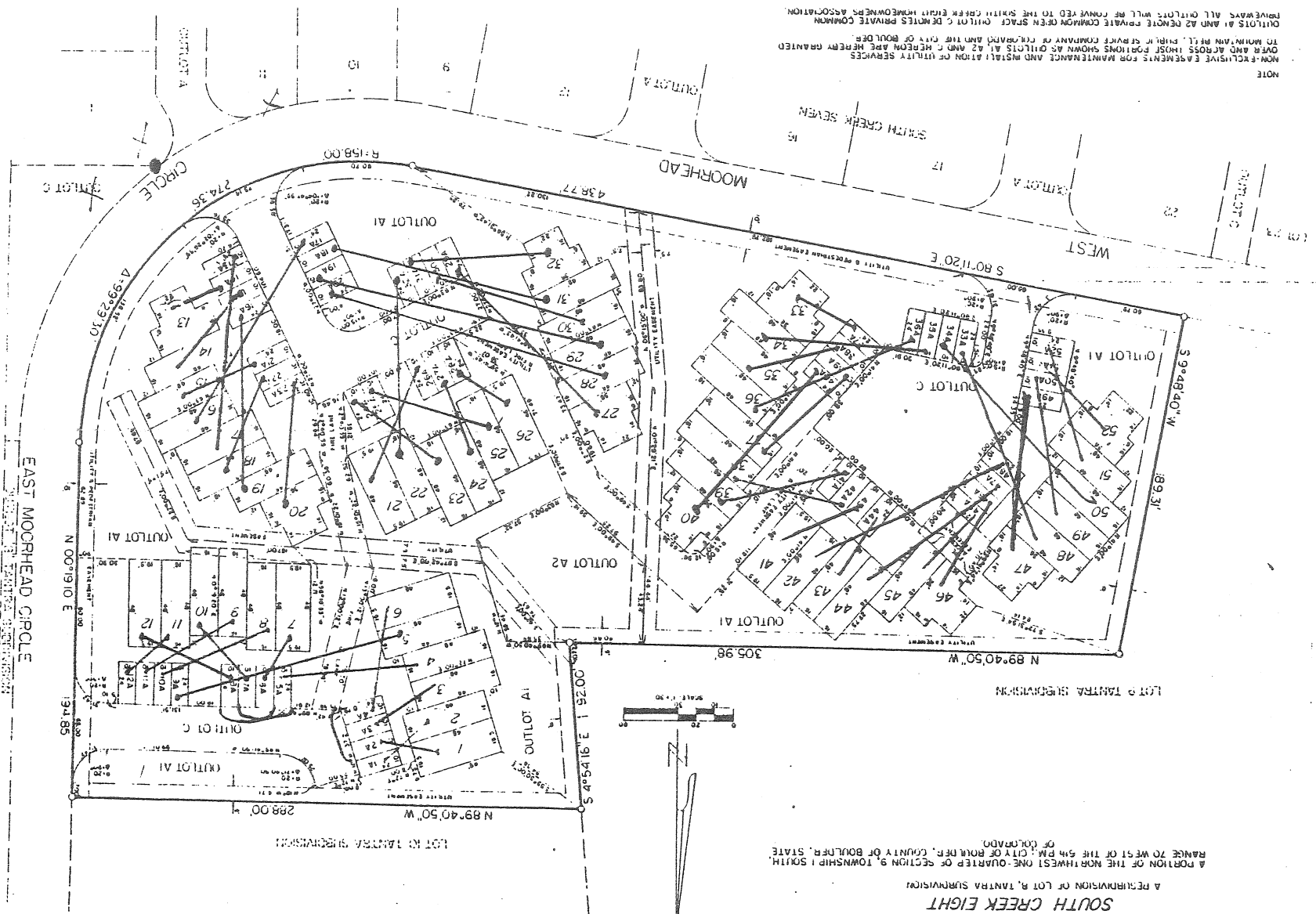


First American Title Company

2040 FOURTEENTH STREET BOULDER, COLORADO 80302 443-8822

OF BOULDER COUNTY

A REVISION OF LOT 8, TANTRA SURVEY
SOUTH CREEK EIGHT
RANGE 70 WEST OF THE 5th P.M.; CITY OF BOULDER, COUNTY OF BOULDER, STATE
OF COLORADO.



NOTE
NON-EXCLUSIVE EASEMENTS FOR MAINTENANCE AND INSTALLATION OF UTILITY SERVICES
OVER AND ACROSS THOSE PORTIONS SHOWN AS OUTLOTS A1, A2 AND C HEREBY ARE HEREBY GRANTED
TO MOUNTAIN HILL, PUBLIC SERVICE COMPANY OF COLORADO AND THE CITY OF BOULDER.
OUTLOTS A1 AND A2 DENOTE COMMON GREEN SPACE. OUTLOT C DENOTES PRIVATE COMMON
PARKWAYS. ALL OUTLOTS WILL BE CONVEYED TO THE SMITH CREEK EIGHT HOMEOWNERS ASSOCIATION.
EASINGS ARE REFERRED TO THE RECORDS FILED ON THE RECORDED PLAN FOR TANTRA SURVEY.
ALL LOT CORNERS HAVE BE MARKED.
FIRE ACCESS EASEMENT INDICATES THOSE AREAS WHERE NO PERMANENT STRUCTURES OR GARAGES
SHALL BE CONSTRUCTED.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT ACSTAIN ENTERPRISES, INC., A COLORADO CORPORATION, BEING THE OWNER OF
THE REAL PROPERTY OF 3.725 ACRES DESCRIBED AS LOT 8, TANTRA SURVEY,
WAS LAID OUT, SUBDIVIDED AND PLATTED SAID AND BEING DRAWING THE REASON
CONTRAD TANTRA AND STYLE OF SOUTH CREEK EIGHT, A SUBDIVISION OF A
PART OF THE CITY OF BOULDER, AND BY THE PRESENTS DEEDS DEDICATE TO
THE CITY OF BOULDER AND THE MAINLAND STATE TELEGRAPH
COMMUNICALLY FRANCHISE UTILITIES AND

On Contacts
On Deeds * Blinds 24th
21-26A

* 2-1A * 3-3A * 4-5A * 5-9A * 6-4A * 7-6A * 8-10A * 9-11A * 10-7A * 11-12A * 12-8A * 13-14A * 14-15A * 15-21A * 16-17A * 17-13A * 18-22A * 19-16A * 20-23A * 21-26A * 22-32A * 23-24A * 24-27A * 25-25A * 26-28A * 27-29A * 28-20A * 29-19A * 30-30A * 31-18A * 32-31A * 33-37A * 34-35A * 35-38A * 36-36A * 37-39A * 38-38A * 39-39A * 40-40A * 41-43A * 42-48A * 43-44A * 44-44A * 45-45A

* Starred units have deeded parking spaces