

CLERK AND RECORDER

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STATE OF COLORADO
COUNTY OF BOULDER
IN M. OFFICE
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386557

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WILLOW GREEN

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

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Boulder, State of Colorado, described as:

A tract of land in the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 20, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

Commencing at the Northeast corner of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of said Section 20; thence South 0°06'45" East, 431.38 feet along the East line of the Northwest Quarter of the Southeast Quarter of said Section 20 to the TRUE POINT OF BEGINNING; thence South 89°45'50" West, 402.38 feet to the Easterly line of THE REMINGTON POST CONDOMINIUM, according to map filed January 12, 1978, in Planfile P-6 F-3 No. 10; thence Southerly along said Easterly line of THE REMINGTON POST CONDOMINIUM, the following courses and distances: South 0°14'10" East, 85.01 feet; South 30°42' East, 70.25 feet; South 0°14'10" East, 85.01 feet to the South line of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter of said Section 20; thence North 89°45'50" East, 366.01 feet along the South line of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of said Section 20 to the Southeast corner thereof; thence North 0°06'45" West, 231.00 feet along the East line of the Northwest Quarter of the Southeast Quarter of said Section 20 to the TRUE POINT OF BEGINNING; EXCEPT that portion conveyed to the City of Boulder by instrument recorded June 13, 1975, Reception No. 141090, a proposed subdivision to be known as WILLOW GREEN. A subdivision of part of the NE1/4, NW1/4, SE1/4 of section 20, T.1N., R.70W., of the 6th P.M., City of Boulder, Boulder County, Colorado.

WHEREAS, Declarant will convey the Property, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and

protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Unless the context clearly requires a different interpretation, the following terms as used in this instrument shall have the meaning indicated.

Section 1. "Association" shall mean THE WILLOW GREEN TOWNHOMES ASSOCIATION, INC., its successors and assigns.

Section 2. "Property" shall mean that real property described above.

Section 3. "Common Area" shall mean all of the Property except the Lots as hereinafter defined.

Section 4. "Lot" shall mean a building site, together with the improvements thereon and all rights and easements appurtenant thereto, constituting an individual residence, title to which has been or hereafter may be conveyed in fee simple by reference to the numerically designated or alphabetically lettered plots of land within the Property as shown and described on the plat of the Property which is attached hereto as Exhibit A and by this reference incorporated herein.

Section 5. "Member" shall mean every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract buyers, but excluding those having an interest in all or any part of the Property as security for the performance of an obligation.

Section 7. "F.H.L.M.C." shall mean the Federal Home Loan Mortgage Corporation.

Section 8. "Declarant" shall mean D.E.H. COOKE CONSTRUCTION, INC., its successors and assigns if such successors or assigns acquire all unsold Lots of the Declarant for the purpose of development.

Section 9. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.

Section 10. "Encumbrancer" shall mean the beneficiary of a first deed of trust or holder of a first mortgage.

ARTICLE II

MEMBERSHIP

Every owner as defined in Article I, Section 6, under this Declaration shall be a Member of the Association. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III

VOTING RIGHTS

The Association shall have one class of voting membership. All members shall be entitled to vote on all matters, with one vote per lot. If title to any lot shall be held by two or more co-tenants, then the membership and vote appurtenant to such lot shall not be severable, and the vote shall be voted as all of the co-tenants agree. Cumulative voting in the election of Directors shall not be permitted.

Notwithstanding anything to the contrary provided for herein, however, until D.E.H. Cooke Construction, Inc. ("Declarant") has sold 66 2/3% of the lots or two years

from this date, the members of the Board of Directors of the Association shall be appointed by D.E.H. Cooke Construction, Inc., its successors or assigns, unless such right is relinquished earlier.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive equal right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to limit the number of guests of Owners that may be admitted to the Common Area;

(b) The right of the Association to charge reasonable amounts for the use of any recreational facility situated upon the Common Area;

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purposes of improving the Common Area and facilities and in aid thereof to mortgage or grant other security interest in the Common Area, provided, however, that the rights of any mortgagee shall be subject to the rights of the Members of the Association while any mortgage is current and not in default, provided further that the Common Area shall not be mortgaged without the written consent of two-thirds of all Encumbrancers or owners of the individual Lots;

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his lot remains unpaid, and for a period not to exceed Thirty (30) days for any infraction of its published rules and regulation. This provision shall not apply to the

voting rights assigned to any Encumbrancer;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area, subject to ingress and egress requirements of Articles VIII (e) to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by two-thirds of all Encumbrancers and by Members entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance. Declarant shall have the right at any time to use so much of the Common Area as it may reasonably deem necessary or advisable for the purpose of aiding in the construction and development of the Lots, and shall have the further right with written consent of two-thirds of the Encumbrancers to dedicate such easements and rights-of-way in the Common Area as it may deem necessary or advisable for the purpose of the development, provided, however, that Declarant shall repair and pay for any damage to improvements which have been installed upon the Common Area and resulting from his construction and development.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on any Lot owned by him.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Area to the Association,

prior to the delivery of the first mortgage for sale to F. H. L. M. C., subject to all easements and rights-of-way now existing or subsequently granted by Declarant.

Section 4. Development of Common Area. So long as Declarant holds a Class B membership in the Association all development of the Common Area shall rest in the sole discretion of the Declarant.

ARTICLE V

EASEMENTS

Section 1. Common Area. The easements over and across the Common Area shall be those shown, or provided for, upon the recorded Plat of the Property, and such other easements as may be established in or pursuant to the provisions of this Declaration.

Section 2. Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments of buildings onto adjoining Lots or the Common Area or encroachment of the Common Area onto any Lot, overhangs, and for stairs for egress and ingress to any Lot, as designed or constructed by the Declarant, and for any encroachment occurring hereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments, overhangs and stairways, and for their maintenance, repair, and replacement. If any structure is partially or totally destroyed, and then rebuilt, the Owners of Lots agree that minor encroachments of parts of construction onto adjacent Lots or the Common Area due to construction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

Section 3. Utilities. There is hereby created a blanket easement upon, across, over and under the Lots and Common Area for 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 utility companies to erect and maintain the necessary equipment on said property and to affix and maintain water and sewer pipes, electrical and telephone wires, circuits, conduits and meters on, in, above, across, through and under the roofs, walls and floors of structures on the Lots.

Section 4. Easement for Maintenance. Each Lot and the Common Area shall be subject to an easement for the Association (including its agents, employees and contractors) for providing maintenance described in Article VII.

Section 5. Ingress and Egress. The Owner of each Lot shall have a valid easement for ingress and egress over and across the Common Area for vehicle and pedestrian use from public streets to the individual Lots.

ARTICLE VI

PARTY WALLS

Section 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. Every Deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

Section 2. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property 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.

Section 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.

Section 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 of omissions.

Section 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.

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

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance and repair of improvements upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, entry doors and frame or glass in sliding glass doors and windows and exterior building

surfaces, staining of exterior doors, planting and maintaining trees, shrubs, grass, sidewalks, and front and rear entrance stairs and walks including snow removal and other exterior improvements. Determination of whether such repairs or maintenance is necessary shall rest solely with the Association which shall also have sole responsibility for determining the kind and type of materials used in such repair and maintenance.

If the need for maintenance or repair is caused through the willful or negligent act of any Owner, his agent, family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject.

ARTICLE VIII

INSURANCE

Section 1. The Association shall, on behalf of the Owners:

(a) Maintain in effect at all times a multi-peril type policy covering the entire project providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than 100% (one hundred percent) of the insurable value of all the lots and common areas. Said policy must carry an agreed-amount endorsement and inflation guard coverage. All hazard insurance coverage must apply to the entire living unit including interior surfaces and fixtures. Said policy of insurance shall be written with the named insured being: WILLOW GREEN TOWNHOMES ASSOCIATION, INC. for use and benefit of the individual owners. Said policy or policies must contain

the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the WILLOW GREEN TOWNHOMES ASSOCIATION, INC. for use and benefit of mortgagees as their interest may appear or otherwise be endorsed to fully protect the mortgagee's interest.

(b) Maintain in effect at all times a comprehensive policy of public liability insurance covering all of the common elements and public ways including entrance walks and stairways on the property. Said liability insurance coverage shall be carried for at least \$1,000,000.00 per occurrence for personal injury and/or property damage. Said policy or policies shall contain a "severability of interest" endorsement precluding the insurer from denying the claim of an owner because of negligent acts of the association or other owners.

(c) Maintain in effect at all times fidelity insurance or bonding coverage against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds, belonging to or administered by the association. Said bonding or insurance must name the WILLOW GREEN TOWNHOMES ASSOCIATION, INC. as the insured and shall be in an amount not less than one and one-half times the annual budget of the Association. Bonding or insurance coverage must have an appropriate endorsement to cover any persons who serve without compensation if said bond or insurance would not otherwise cover volunteers.

Section 2. Any insurance carrier insuring WILLOW GREEN TOWNHOMES ASSOCIATION, INC. must have a financial rating by Best's Insurance Reports of Class IX B or better and be specifically licensed to engage in the insurance business within the State of Colorado.

Section 3. Any insurance on the property must include an endorsement providing that the carrier notify all first mortgagees at least ten days prior to the effective date of any reduction in coverage or cancellation of the policy.

Section 4. Each Owner shall be responsible for all insurance covering loss or damage to Owners' personal property on his Lot and liability for injury, death or damage occurring inside his Lot. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby. Each policy covering casualty damage to improvements on a Lot shall name the Association as an insured party to the extent of its interest pursuant to Section 2(b) of Article XII of this Declaration.

ARTICLE IX

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, is deemed to covenant and agree to pay, to the Association or to any properly designed agent acting on behalf of the Association, commencing at such time as this Declaration is recorded, the following:

(1) annual assessments or charges, (2) special assessments for capital improvements, such assessments to be established and (3) special assessments for damage as provided in Article IX, Section 5. The annual and special assessments for capital improvements, together with such interest thereon and costs of collection thereof, as provided herein, shall be a

charge on the land and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Property, and in particular, for the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Without limiting the generality of the foregoing, the Association may make assessments for the purpose of providing funds with which the Association may pay costs and expenses incurred by it in acquiring, performing or undertaking:

(a) Insurance policies required or permitted hereunder;

(b) Utility services such as water, sewer, gas and electricity provided in connection with the Common Area or to any Lot to the extent such utility services are not provided to any Lot on a separate meter and account;

(c) Trash removal from one or more common collection points on the Property;

(d) Snow removal from the Common Area, to the extent determined necessary and appropriate by the Board of Directors of the Association;

(e) Exterior repair and maintenance of the townhouses situated on the Property;

(f) Repairing, reconstructing, replacing and maintaining driveways, common parking areas, sidewalks, paths, landscaping, common utility services, recreational facilities and any other such maintenance or improvement obligations which may be deemed

necessary for the common benefit of the Owners and the maintenance of property values;

(g) Providing such reserves as may be deemed necessary in order to accomplish the objects and purposes of the Association. The regular monthly Association dues shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common property that must be replaced on a periodic basis. Said reserve payment shall be paid in regular installments rather than by special assessment.

(h) Paying real or personal property taxes levied upon the Common Area and any improvements thereon.

Section 3. Basis and Payment of the Annual Assessments.

(a) The annual assessments with respect to each Lot shall be estimated by the Board of Directors prior to the conveyance of the first Lot and shall be payable in equal monthly or quarterly installments.

(b) The Board of Directors of the Association shall determine as of the close of such assessment year as it may adopt whether or not a deficiency of funds exists, including deficiencies in any proper and customary reserves. Should the Board determine that a deficiency exists, it shall bill all Owners at a uniform rate for any such deficiency with the next succeeding monthly or quarterly bill following such determination, or, in its discretion may increase the assessments for such time as it shall determine until such deficiency of funds has been restored. If the Board determines that there is a surplus of funds created by assessments, it may make a refund of said funds or apply the same to the next assessment period.

(c) At the time the Board of Directors of the

Association makes the determinations set forth above in paragraph (b), it shall also determine the assessment rate for the next ensuing year and shall apply the new annual assessment rate for quarterly or monthly installments effective as of the next billing following such determination.

(d) Installments of annual assessments shall be payable on or before the 10th day of each month following billing, but shall be and become a lien as of the date of the annual assessment as provided herein. Written notice of the annual assessment shall be sent to every Owner promptly after the assessment date as provided in paragraph (c) page 13.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction of any capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. Any such special assessment shall be payable in equal monthly installments together with the regular assessment installment over such a period of time as the Association may determine.

Section 5. Special Liens for Damage. If the Association is entitled, pursuant to these Declarations, to receive contributions or money damages from any Owner, such sums shall be a lien against such Owner's lot in the same manner as the foregoing assessments.

Section 6. Uniform Rate of Assessment. Both annual and special assessments for capital improvements in the Common Area must be fixed at a uniform rate for all Lots.

Section 7. Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the date due, the installment may at the discretion of the Association bear interest from the date of delinquency at the rate of twelve (12) percent per annum, and the Association may sue the Owner personally obligated to pay the same, or foreclose the lien against his Lot. Interest, costs, and reasonable attorneys' fees of any such action may be added to the amount of such assessment installment. The lien of the Association may be foreclosed in the same manner as a statutory mortgage foreclosure under the statutes of the State of Colorado. No owner may avoid liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust or first mortgage covering the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot occurring as a result of court foreclosure of a first mortgage or deed of trust, foreclosure through the Public Trustee, or any similar proceeding in lieu of foreclosure, shall extinguish the lien of such assessment as to payments thereof which became due prior to such sale or transfer, but no such transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Further, no

first mortgagee of a lot shall be liable for any unpaid assessments which accrue prior to the date of acquisition of title to a lot by such mortgagee as a result of foreclosure of its mortgage or deed of trust, foreclosure or any similar proceeding in lieu of foreclosure, including the taking of a deed in lieu thereof.

Section 9. Notice of Default to First Mortgagees.

A first Mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual lot owner of any obligation under this declaration of covenants, the Association articles or bylaws which is not cured within sixty (60) days.

ARTICLE X

USE RESTRICTIONS

Section 1. The use of the Common Area, Lots, and structures thereon shall be subject to the restrictions set forth in Article IV, Section 1, and to those restrictions hereinafter set forth.

Section 2. The use of the Common Area shall be subject to such uniformly applied rules and regulations, as may be adopted from time to time by the Board of Directors of the Association or the Association Members.

Section 3. No use shall be made of the Common Area which will in any manner violate statutes, rules, regulations, orders or decrees of any governmental authority having jurisdiction over the Common Area.

Section 4. Except as otherwise permitted herein, no Owner shall place any structure upon the Common Area, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Area to all Owners.

Section 5. No use shall be made of the Common Area

which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right to ingress and egress to such Lot, by vehicle and otherwise, is hereby expressly granted.

Section 6. The Property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No business activities of any kind whatever shall be conducted on any portion of the Property, except the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Declarant, its agents and assigns during the period of construction and sale of the Lots, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth. All structures erected upon the Property shall be of new construction. Except for trailers and buildings used by Declarant in connection with construction and sales activities, no structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 7. No animals of any kind shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats and other customary household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 8. No advertising sign except one containing less than five square feet of surface area on any one side and containing the words "For Rent" or "For Sale", billboards, clotheslines or unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for

any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof.

Section 9. All rubbish, trash and garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. No motor homes, boats, motorcycles, trailers, abandoned cars or similar items shall be stored on the Property, except in such portions of the Property, if any, as may have been developed by Declarant specifically for such storage and designated for such on the plat attached hereto as Exhibit A, or as may hereafter have been approved and designated by the Association.

Section 10. Except within the boundaries of a Lot, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors. The Owners of Lots are hereby prohibited and restricted from using any land or air space outside the Lot lines, except as may be allowed by the Association's Board of Directors or as provided in this Declaration.

Section 11. No permanent structure except for walks and access stairways and porches shall be built within three feet of the exterior of any Lot line.

ARTICLE XI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the

Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE XII

DAMAGE, DESTRUCTION AND OBSOLESCENCE

Section 1. Association - Attorney in Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney in fact to deal with the Property upon its damage, destruction or obsolescence. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a Deed from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided. 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 dealing with their property upon its damage, destruction or obsolescence as is hereinafter provided. 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 an Owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Lot having the same boundaries as before. The proceeds of any insurance collected shall, to the extent hereinafter provided, be available to the Association for

the purpose of repair, restoration or replacements as is provided hereinafter.

Section 2. Damage or Destruction.

(a) In the event of damage or destruction due to fire or other disaster of improvements on any one or more Lots, the Owner or Owners of such Lot or Lots shall cause such improvements to be promptly repaired and reconstructed unless a plan is adopted under Section 3 of this Article XII.

(b) In the event such Owner or Owners fail to promptly commence and diligently prosecute such repair and restoration, the Association shall have full authority, right and power, as attorney in fact, to cause the repair and restoration of the improvements, and all insurance proceeds payable to such Owner or Owners as a result of such casualty shall be made available to the Association for such purpose. If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed (unless a plan is adopted under Section 3 of this Article XII) by the Association as attorney in fact using the proceeds of insurance on the Lot or Lots which have been damaged or destroyed and the proceeds of an assessment against the Lot or Lots on which such casualty damage occurred. Any such assessments, which shall only be made by the Board of Directors, shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. Such deficiency assessment shall be in an amount determined exclusively and finally by the Association (after consultation with such Owners, contractors, appraisers and others as it deems appropriate). The Association shall have full authority, right and power as attorney in fact 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. The assessment provided for herein shall be a debt of the Owner and a lien on his Lot and may be enforced and collected as is provided in Article VIII. In addition thereto, the Association, as attorney in fact, shall have absolute right and power to sell the Lot of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Lot of the delinquent Owner shall be sold by the Association, as attorney in fact, under the provisions hereof. The proceeds derived from the sale of such Lot shall be used and disbursed by the Association, as attorney in fact, in the following order: 1. For payment of the balance of the lien of a first mortgage; 2. For payment of taxes and special assessment liens in favor of any assessing entity; 3. For payment of the cost of repair and restoration out of which such deficiency assessment arose; 4. For payment of unpaid common expenses; 5. For payment of junior liens and encumbrancers in the order of and to the extent of their priority; and 6. The balance remaining, if any, shall be paid to the Lot Owner.

Section 3. Continuity of Common Property.

(a) Unless at least two-thirds of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than sponsor, developer or builder) of the individual Lots on the Property have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by the Association for the benefit of the Lots on

the Property (the granting of easements for public purposes consistent with the intended use of such common Property by the Lot owners shall not be deemed a transfer within the meaning of this clause);

(2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

(3) 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 the improvements on the Lots, the exterior maintenance of said units, the maintenance of the common area party walks or common fences and driveways, or the upkeep of lawns and planting on the property;

(4) Fail to maintain fire and extended coverage on insurable common 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);

(5) Use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such common Property.

(b) The Owners representing two-thirds of the Lots or more, of all the Owners (the Owners of each Lot being entitled collectively to one vote) may agree that the improvements on the Lots are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the unanimous approval of all Encumbrancers of record at the time of the adoption of such plan. If a plan for the renewal of reconstruction is adopted, notice of such plan

executed by the President and Secretary of the Association shall be recorded, and the expenses thereof shall be payable by all of the Owners as common expenses, whether or not they may have previously consented to the plan of reconstruction. Any insurance proceeds available to the Association pursuant to Section 2(b) of this Article XII may be applied by the Association in furtherance of the plan of renewal or reconstruction.

(c) The Owners representing two-thirds of the Lots or more, of all the Owners (the owners of each Lot being entitled collectively to one vote) may agree that the Lot improvements are obsolete and that the same should be sold. Such plan must have the unanimous approval of every Encumbrancer of record at the time of the adoption of such plan. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the entire premises shall be sold by the Association, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and such apportioned proceeds shall be paid into separate accounts, each such account representing one Lot. Each such account shall be in the name of the Association, and shall be further identified by number of the Lot and the name of the Owner. From each separate account, the Association, as attorney in fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b) of Section 2.

ARTICLE XIII
CONDEMNATION

Section 1. If the entire Common Area shall be taken

for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase in lieu thereof, the Association (as attorney in fact for the Owners) shall collect the award made in such taking and shall divide said award equally among the Owners. The proceeds paid to an Owner shall be paid to the Owner and any Encumbrancer with a recorded lien upon the Lot of the Owner.

Section 2. If such taking shall be partial only, the Association (as attorney in fact for the Lot Owners) shall collect the award and shall promptly cause the part of the Common Area not so taken to be restored as nearly as possible to its condition prior to the taking, applying the award to that purpose. Any part of the award not required for such restoration shall be divided equally among the Owners. The proceeds paid to an Owner shall be paid to the Owner and any Encumbrancer with a recorded lien upon the Lot of the Owner.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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 or by any Owner to enforce any rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Membership Succession. Any person, firm, corporation or other entity which shall succeed to the title of any Owner through foreclosure of a Deed of Trust or other type of security instrument or through other legal proceedings, shall upon issuance of a proper deed to any Lot, become thereupon a member of the Association as Owner and shall succeed to the rights, duties and liabilities of the previous Owner as herein provided. Conveyance by such person, firm, corpora-

tion or other entity shall pass membership in the Association to the Buyer as herein provided.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than two-thirds of the Encumbrancers or two-thirds of the Lot Owners. Any amendment must be properly recorded. No part of the Declaration may be amended in such a manner that it will adversely affect the existing rights of any Owner or Encumbrancer with particular respect, but not limited to party walls, unpaid assessments or the lien of any mortgage.

Section 4. Declarant's Easements. Anything to the contrary herein notwithstanding, Declarant hereby reserves an easement and right-of-way over all Common Area and all Lots not conveyed for its use for the purpose of construction improvements, utilities, and other matters including the right to erect temporary buildings to store any and all materials. Declarant further reserves the right to use any completed structure for the purpose of a sales office or model home for demonstration purposes. This easement shall cease when Declarant has conveyed the last Lot platted in the Property. In addition to the easements herein reserved and to those shown upon the Plat, the Declarant reserves the right to grant such easements as it may deem necessary to and for the benefit of all future Owners with respect to utility installation, including by way of illustration and not by way of limitation, water, sewer, gas, electricity, cable television and telephone services.

Section 5. Severability. The invalidity of any provisions of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 6. Headings. The article and section headings herein are for convenient reference only and in no way define, limit or describe the scope of this Declaration or the intent of any provision herein.

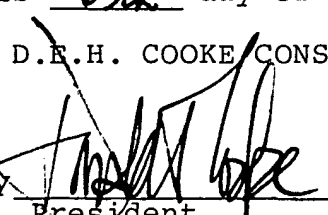
ARTICLE XV

LIEN LIMITATION

All taxes, assessments and charges which may become liens prior to the first mortgage or Deed of Trust under Colorado law shall relate only to the individual townhome lot and not to the subject property as a whole.

IN WITNESS WHEREOF, the parties hereto have signed the foregoing Declaration this 6th day of March, 1980.

D.E.H. COOKE CONSTRUCTION

By  _____
 President


 Assistant Secretary

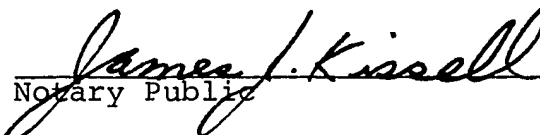
STATE OF COLORADO)
) ss.
 COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 6th day of March, 1980 by DONALD T. COOKE, as President, and MARY E. COOKE, as Assistant Secretary, of D.E.H. COOKE CONSTRUCTION INC., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: My Commission Expires May 5, 1981




 Notary Public