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FILM 1279

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

WOODRIDGE TOWNHOMES

A Resubdivision of Lot 3, Ferguson's, a Subdivision
in the City of Boulder, County of Boulder, State of Colorado

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by JAMES CONSTRUCTION CO., INC., a Colorado corporation, having its primary business office in Boulder, Colorado, hereinafter referred to as "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following property, situate in the County of Boulder, State of Colorado, more particularly described on Schedule A, attached hereto and incorporated herein by this reference as if set out herein verbatim; and,

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

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

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

ARTICLE I
DEFINITIONS

Section 1. "ASSOCIATION" shall mean and refer to the WOODRIDGE TOWNHOMES OF BOULDER HOMEOWNERS' ASSOCIATION, INC., A Colorado Corporation, not for profit.

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

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

Section 4. "COMMON AREAS" shall mean the portion of the Properties owned by the Association for the common use and enjoyment of the Members more specifically described on the Subdivision Map of Woodridge Townhomes, Boulder, Colorado, recorded with the Clerk and Recorder of Boulder County, Colorado on the 18th day of August, 1983, in Plan File P-14, F-1, as Nos. #44 on Film 1266 as Reception No. 569749, delineating thereon the common areas marked "Common Area", together with all facilities and improvements thereon, including recreational facilities.

Section 5. "DECLARANT" shall mean JAMES CONSTRUCTION CO., INC., a Colorado corporation, its assigns and transferees.

Section 6. "DECLARATION" shall mean this Declaration of Covenants, Conditions, and Restrictions of Woodridge Townhomes, as may be amended from time to time.

Section 7. "DWELLING UNIT" shall mean and refer to the residence constructed or to be constructed on each Lot within the properties and any replacement thereof, including the patio, fence, garage, and basement. Due to the fact that this Project

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COUNTY OF BOULDER
STATE OF COLORADO

contains only attached Dwelling Units, "Dwelling Units" shall include the following definition of "attached DWELLING UNITS", which shall mean and refer to any Dwelling Unit which comprises a portion of a building as defined in Section 19 of this Article, and which is situated upon its own individual lot and separated from one or more of the other attached Dwelling Units which comprise that building by a party wall or series of party walls.

Section 8. "DWELLING UNIT EXTERIOR" shall mean and refer to the roof, foundation, steps, footings, patios, fences, balconies, crawl spaces, and outer surface of exterior walls of Dwelling Unit.

Section 9. "LOT" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas.

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

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

Section 12. "ASSESSMENTS" shall mean all monies due the Association from members as duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE V of this Declaration.

Section 13. "FIRST MORTGAGEE" shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns, or receives a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering any Lot located within the Properties.

Section 14. "THE PROPERTIES" shall mean and refer to all Common Areas, Lots, and all improvements thereon and thereto which constitutes or shall constitute the entire project herein created, known as "Woodridge Townhomes," A resubdivision of Lot 3, Ferguson's, a subdivision in the City of Boulder, County of Boulder, State of Colorado, being a part of the Southwest Quarter (SW1/4) of Section 21, Township 1 North, Range 70 West of the 6th P.M., having been subdivided and platted under the name and style of Woodridge Townhomes, pursuant to the recorded plat thereof recorded with the Clerk and Recorder of Boulder County, Colorado, on the 18th day of August, 1983, in Plan File P-14, F-1, #44as Reception No. 569749;

Section 15. "RECREATIONAL FACILITIES". There shall be no recreational facilities constructed within the properties.

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

Section 17. "SINGLE-FAMILY RESIDENCE" shall mean and refer to a single house-keeping unit, which includes not more than three adults who are legally unrelated, together with their legal children, and shall include all rights and restrictions of the applicable zoning of the City of Boulder, Colorado.

Section 18. "PARTY WALL" shall mean the entire wall or fence, including the foundations thereof, which is built as part of the improvement on a lot and is intended to be placed on the boundary line between adjoining lots. Such wall or fence, including the foundation thereof which constitutes a party wall, shall be shared or used in common by the owners of two (2) or more attached Dwelling Units located in the same building, as defined in Section 19 of this Article.

Section 19. "BUILDING" shall mean and refer to any structure containing two (2) or more attached Dwelling Units, each such attached Dwelling Unit to be situated upon its own individual lot, separated from other attached Dwelling Units by at least one (1) party wall.

Section 20. "RULES" shall mean and refer to the rules and regulations adopted and promulgated by the Association and as amended from time to time.

Section 21. "VA AND/OR FHA APPROVAL" shall mean that the properties have been approved by the Veteran's Administration (VA) and/or the Federal Housing Administration (FHA) so that such governmental agencies will insure or guarantee loans secured by Deeds of Trust upon the lots within the Properties. At the time of recordation of this Declaration, FHA approval has been applied for and conditionally obtained.

ARTICLE II
SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT

Section 1. PROPERTY SUBJECT TO DECLARATION:

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

Section 2. CONVEYANCES SUBJECT TO DECLARATION:

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

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

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

ARTICLE III
PROPERTY RIGHTS

Section 1. MEMBERS' EASEMENTS OF ENJOYMENT:

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

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

Section 2. TITLE TO COMMON AREAS:

The Declarant may retain the legal title to the Common Areas until such time as in the opinion of the Declarant, it has completed improvements thereon. Notwithstanding anything contained herein to the contrary, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas, as delineated upon the recorded Plat Map of Woodridge Townhomes to the Woodridge Townhomes of Boulder Homeowners' Association, Inc., free and clear of all encumbrances and liens,

no later than December 31, 1985, or sooner if required to make such transfer by any requirements demanded by Housing and Urban Development, Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporation, and/or the Administrator of Veteran's Affairs. In the event of transfer prior to completion of all improvements on such common areas, the Declarant reserves the right of access for itself, its successors and assigns, to complete the improvements to the common areas as well as any improvements on any lot within the subdivision.

Section 3. DELEGATION OF USE:

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

Section 4. LEASE OF DWELLING UNIT:

Any member shall have the right to lease his Dwelling Unit 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 of the Association.
- (b) Only an entire Dwelling Unit may be leased, not any portions thereof, and only for single family residential use, as defined by this Declaration.

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

ARTICLE IV
THE ASSOCIATION

Section 1. GENERAL PURPOSES AND POWERS:

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

Section 2. BOARD OF DIRECTORS:

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

Section 3. ARTICLES AND BYLAWS:

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

Section 4. MEMBERSHIP:

Every person or entity who is a record owner of a fee interest in any Lot 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.

Section 5. VOTING RIGHTS:

The Association shall have two (2) classes of voting membership:

CLASS A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they shall determine between such owners, but in no event shall more than one (1) vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

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

(b) December 31, 1985.

Section 6. INDEMNIFICATION:

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

Section 7. PROFESSIONAL MANAGEMENT:

Any agreement for professional management of the Properties or any other contracts providing for services for the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on sixty (60) days' or less written notice.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS:

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: 1) annual assessments or charges; and, 2) special assessments for capital improvements; and, 3) individual assessments to be established and collected as hereinafter provided. The annual, special and individual assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by such successor in title in writing.

Section 2. PURPOSE OF ASSESSMENTS:

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Properties and the Members of the Association, which include, but are not limited to, the following: the expense of repair and maintenance of the Common Areas, as well as to provide Blanket Property and Casualty Insurance for each Unit; to provide casualty and public liability insurance for the Common Areas, including the recreational facilities located thereon; maintenance, repair and upkeep of the Dwelling Unit Exteriors; and for any other purpose reasonable, necessary, or incident to such purposes. Such assessment shall include the establishment and maintenance of a cash reserve and a

sinking fund for all of the foregoing purposes, including, but not limited to, an adequate reserve fund for the maintenance, replacement, or repair of those elements of the Common Areas and Dwelling Unit exteriors which must be repaired on a periodic basis.

In the event repairs are required resulting from negligent acts of a Member, the Member's family, guests, employees, invitees, or lessees, the Association shall be reimbursed forthwith by such Member therefor. Upon due notice to the responsible Member and failure of such Member to make such reimbursement to the Association within thirty (30) days, then the cost of the repairs shall be chargeable to such Member by Individual Assessment in accordance with ARTICLE V, Section 4, Paragraph (b) against such Member.

Section 3. MAXIMUM ANNUAL ASSESSMENT:

Until January 1, of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be Four Hundred Fifty-Six dollars (\$ 456.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. BASIS OF ASSESSMENTS:

- (a) Common Expense. The expense of the maintenance, repair, and replacement of the Common Areas and of Dwelling Unit exteriors, and all insurance coverages, as well as the operation of the common areas, all of which expenses shall take into account any sinking fund established for future expected expenditures shall be paid by the Members in the proportion which the number of Lots owned by a Member bears to the total number of Lots within the Properties.
- (b) Individual Assessments. The Board of Directors of the Association shall have the right to add to any Member's assessment as provided in this Article those amounts expended by the Association for the benefit of any individual Lot and the owner thereof, including, but not limited to, fines, repairs, and replacements caused by the negligent or willful acts of any Member, his family, guests, employees, licensees, lessees, or invitees, and all other expenditures or charges provided for by this Declaration, to include, but not be limited to, charges assessed under ARTICLE V, Section 2; ARTICLE VI, Sections 6, 8 and 13; and ARTICLE X, Section 2. Individual Assessments are exempt from the voting requirements required for other special assessments called for under this Declaration.
- (c) Fines. The Board of Directors of the Association shall have the right to assess a fine against a Member not exceeding \$50 for each violation of this Declaration, the Bylaws or the Rules of the Association. Such fine may be assessed additionally for each day the violation continues after written notice thereof is given the Member.
- (d) Levy of Assessments. Within the first three months of each calendar year, the Board of Directors shall determine the estimated annual assessment payable periodically at least quarterly during the year based on each lot; provided, however, that said assessments may be adjusted upon a finding of necessity by the Board of Directors, but no more than twice in any one year. Fines and Individual Assessments may be assessed at any time as required.

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- (e) Non-Exemption. No Member shall be relieved from payment of any assessment by waiver or suspension of the use of any of the Common Areas or by the abandonment of his Lot.

Section 5. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS:

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement 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 two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4:

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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 (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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT:

(a) Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

(b) Assessments on unimproved and improved lots owned by Declarant shall, notwithstanding anything contained to the contrary in Article V, Section 7 (a) immediately above, be at a rate equal to twenty-five percent (25%) of the assessment rate applicable to lots owned by Owners other than Declarant. After any Lot under the Declarant's control becomes occupied, the Declarant shall be required to be charged at a rate equal to the full assessment on that Lot. Declarant shall also covenant and agree to underwrite any differences between actual expenses of the Association and assessments levied subject to the annual assessment increases as determined pursuant to Article V, Section 3, above, until the Association control passes to Class A members as described in Article IV, Section 5, above.

Section 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES:

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. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 9. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION:

- (a) All assessments shall be due and payable on the first day of the period fixed for payment of the assessment and shall become delinquent unless paid thirty (30) days thereafter. The first assessment amount shall be set by Declarant at the time that the first Deed is issued to an Owner for his lot. All unpaid assessments shall be subject to a late charge for non-payment as may be determined from time to time by the Board. If such assessments are not paid within thirty (30) days of the due date, they shall bear interest from the date of delinquency at the rate of fifteen

percent (15%) per annum or other reasonable rate as fixed by the Board and uniformly applied. Failure to make payment within thirty (30) days of the due date thereof also shall cause the full amount of such Member's estimated assessment for the remainder of that year to become due and owing at once, at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent assessments, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Member shall pay, in addition to the assessment and late charge and interest herein provided, all costs of collection, including a reasonable attorney's fee and costs incurred by the Association in enforcing payment.

- (b) The Association is hereby granted a lien against the Member's Lot for any payment or payments which the Member fails to make as required by this Declaration; provided, however, that (1) such lien shall be effective only upon recordation of a notice thereof in the Office of the Clerk and Recorder of Boulder County, State of Colorado, and each Member, by accepting a deed to his Lot, designates any one of the officers of the Association or its duly appointed Manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (2) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Colorado for foreclosure of mortgages on real property; and (3) such lien shall be subject and subordinate to and shall not affect the rights of a First Mortgagee. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall also be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust. In the event of a foreclosure, the Member shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Member's Dwelling Unit is left vacant, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without notice to the Owner. In addition to the lien herein granted, the Board shall have the right to bring an action at law against his Lot and pay any amounts assessed against his Lot and obtain judgment for the amount of the assessments due plus costs as herein provided. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.
- (c) In the event a Member is in default on any obligation secured by an encumbrance on his Lot, the Board, at its option, may pay the amount due on said obligation and file a lien against the Lot in the manner as provided for herein for unpaid assessments.
- (d) Sale or transfer of any interest by a Member shall not affect or release any lien granted the Association herein.
- (e) In the case of the conveyance of a Lot pursuant to foreclosure proceedings or by deed in lieu of foreclosure to a First Mortgagee, such transfer of title shall extinguish the lien for all unpaid assessments made by the Board becoming due before the date of transfer of title. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a Common Area Expense collectible from all the Members as such, without prejudice to the right of the Association to recover such amount from the delinquent Member.

Section 10. EXEMPT PROPERTY:

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

- (a) All properties dedicated to and accepted by a local public authority; and,
- (b) All Common Areas.

ARTICLE VI
USE AND OTHER RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE:

No Lot within the Properties shall be used for any purpose other than single-family residential purposes as defined in ARTICLE I, Section 17. No residential or other structure shall be erected on any part of the Properties which is not compatible with the character, quality; and amenities associated with the neighborhood and approved in writing by the Architectural Control Committee in accordance with ARTICLE VII hereof.

Section 2. BUILDING LOCATIONS AND HEIGHT RESTRICTIONS:

No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines of the recorded plat and Planned Unit Development Agreement and other documentation appertaining thereto, and appropriate building regulations of the City of Boulder, State of Colorado. For the purposes of this covenant, steps and open porches shall not be considered as part of a building.

The Architectural Control Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE VII hereof. The Architectural Control Committee shall have all power at law or in equity to stop any construction or alteration if contrary to its approval or not in accordance with its approval.

Section 3. TREES AND SHRUBS:

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

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

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

Section 6. TRASH:

Each Owner shall be responsible for his own trash removal, 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, through its agents and employees, shall have the right and duty to enter upon any Lot and remove such unsightly objects and materials at the expense of the Owner and upon due notice, as set forth in Article IV, Section 2, to the Owner and failure of the Owner to comply with this Section, such entry shall not be deemed a trespass. The cost of such removal shall be chargeable by the Board of Directors to such Owner, by Individual Assessment in accordance with ARTICLE V, Section 4, Paragraph (b).

Section 7. DAMAGE OR DESTRUCTION:

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

Section 8. 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 and cats and unremoved excrement therefrom, shall be deemed a nuisance. Patios and balconies shall not be used for storage of other than patio furniture and firewood. No activity shall be conducted on any part of the Properties which is or might be unsafe or hazardous to any person.

Boats, trailers, campers, motor homes, wrecked cars, tractors, equipment, etc., shall not be kept or stored on the lots or common areas.

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

Section 9. TEMPORARY USE BY THE DECLARANT:

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

Section 10. UTILITIES:

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

Section 11. SIGNS:

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

Section 12. FENCES AND MAILBOXES:

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

Section 13. ANIMALS WITHIN THE PROPERTIES:

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Properties, except that dogs, cats, or household animals may be kept thereon if they are allowed by the Association, and then kept pursuant to the rules and regulations of the Association, and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of the Properties. The Association may, under its powers to promulgate rules and regulations, require any owner of a dog or cat or other allowable pets to pay an extra amount per month as part of that Owner's assessment. under Article V, Section 4, Paragraph b, to defray any possible costs of damage to the Properties caused by such animal. In the event a dog, cat, or other household animal shall constitute a nuisance or inconvenience to a resident of the Properties, then the Board of Directors shall have the right to direct that the animal be permanently removed from the Properties.

Dogs, cats, and other household animals shall not litter the Common Areas. It shall be the duty of the Association to keep the Common Areas free from litter caused and left by pets. The owner of pets known to be at large shall be properly assessed by the Board of Directors for the clean-up expenses incurred, together with the costs of collection and enforcement to include reasonable attorney's fees, as an Individual Assessment against the Owner of such pets causing such litter in accordance with ARTICLE V, Section 4, Paragraph (b).

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

Section 14. PARKING:

Automobile parking will be subject to regulation and restriction by the Board of Directors of the Association; however, even though the driveways are Common Areas, the driveway areas immediately adjacent to each lot shall be the exclusive parking space of the owner of such immediately adjacent lot.

Section 15. RULES:

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

ARTICLE VII
ARCHITECTURAL CONTROL

Section 1. RESTRICTIONS:

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

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading, or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications, or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final, subject to an appeal to the Board of Directors, in which case, the Board's decision shall be final. No member of the Committee by virtue of his membership thereon or in the discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted in accordance with the foregoing, nor for any defects in any work done according to such approved plans or specifications. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, such approval shall be implied to be given.

Section 2. ORGANIZATION:

The Architectural Control Committee shall consist of three persons. Declarant shall have the right to appoint the initial Committee Members whose terms shall expire

upon completion of construction of the final dwelling unit built upon the properties, or December 31, 1985, whichever shall occur first. Said members need not be Owners. Thereafter, Committee Members shall be appointed by the Board of Directors and must be Owners. One Committee Member shall serve for one year; one Committee Member shall serve for two years; and one Committee Member shall serve for three years; and the Board of Directors shall appoint Committee Members to replace those whose terms expire. Members of such Architectural Control Committee shall not be entitled to any compensation for services performed.

Section 3. LANDSCAPING:

Any landscaping, except as installed by the Declarant, shall be approved by the Committee prior to installation.

Section 4. FENCES:

All fences, except those to be constructed by Declarant, shall be approved by the Committee and be designed and approved as an integral part of the design of the Dwelling Unit.

Section 5. EXTERIOR PAINTING:

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

Section 6. WAIVER:

The Committee may, at its discretion, waive any provision of ARTICLE VII of these Protective Covenants in the event there is a practical difficulty or unnecessary hardship.

ARTICLE VIII
PARTY WALLS

Section 1. EXISTENCE:

The Owner shall possess, in fee simple, that portion of the party wall, as defined in Article I, Section 18 hereof, lying and setting 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 any written agreement between such Owners. In the event that any portion of any structure originally constructed by Declarant, including any party wall, shall extend into an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot nor shall any cause of action be maintained for the removal of or for damage because of such extension. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by Declarant.

Section 2. REPAIR AND MAINTENANCE OF PARTY WALL:

If a Party Wall is destroyed or damaged by any casualty, the Owners abutting such Party Wall jointly shall restore it substantially to its original form, and each abutting Owner shall contribute in proportion to such Owner's use of such Party Wall to the cost of restoration thereof with prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner(s) under any rules of Colorado law regarding liability for negligent or willful acts or omissions. Destruction or damage to the Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a Party Wall. If one of the Owners who uses the Wall refuses to pay his proportionate share of the costs of such repair or maintenance, then the Owner of any other Lot abutting such Party Wall may cause the Party Wall to be repaired and shall be entitled to assess the costs attributable against the non-paying Owner's Lot and the same shall become and remain a lien against such Lot until fully paid. Said lien may be foreclosed in any manner provided

for the judicial foreclosure of a mortgage upon real property. Such lien shall bear interest at Fifteen Percent (15%) per annum from date that the costs of repair are incurred and shall also include reasonable attorneys' fees and costs incurred by the Owner foreclosing such lien. Any such lien shall have the same priority as an assessment lien described in Article V, above. 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 provided that the right of such Owner to any contribution shall, in any event, be subordinate to the First Mortgagee's interest in such attached Dwelling Unit.

Section 3. ARBITRATION:

In the event that any dispute arises concerning a Party Wall, or under the provisions of this Article, the dispute will be settled by arbitration. Arbitration shall be commenced by one Owner notifying the other Owner that a dispute exists and submitting the name of an Arbitrator. The adjoining Owner must respond within thirty (30) days by the submitting of a second Arbitrator. The two Arbitrators so chosen, within twenty (20) days, shall choose a third Arbitrator, and a decision as to the dispute will be given by the majority of the Arbitrators within twenty (20) days of hearing of said dispute. Such majority decision of the Arbitrators shall be binding on all parties. The costs of the arbitration and the manner of payment will be decided by the Arbitrators as part of their decision.

ARTICLE IX
EASEMENTS

Section 1. UTILITY EASEMENT:

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

Section 2. DECLARANT'S EASEMENT:

Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve an easement and right-of-way over all Lots for the sole use of constructing improvements, utilities, and other matters including the right to erect temporary buildings. This reservation shall terminate upon conveyance of the last Lot platted in the Properties and the completion of construction of the final dwelling Unit within the Properties. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office or model home for demonstration purposes. In any event, this reservation of easement shall cease on December 31, 1985.

Section 3. EASEMENTS FOR ENCROACHMENT:

If any part of a Dwelling Unit unintentionally encroaches or shall hereafter (whether because of original construction, reconstruction, settling, shifting, or otherwise) encroach upon the Common Areas, or upon an adjoining Lot, the Owner of that encroaching Dwelling Unit shall and does have a perpetual easement for such encroachment and for the maintenance of the same. The Owner of the Lot upon which such encroachment extends shall not maintain a cause of action for the removal of such encroachment, or for any damages because of such extension. For title and other purposes, such encroachment shall not be considered or be deemed to be a defect in title to either Lot.

Section 4. SPECIAL EASEMENTS:

Due to the anticipated style of the Dwelling Units to be placed on certain Lots, a Dwelling Unit may be located on or so near its property line that a Dwelling Unit's roof overhang may actually encroach upon an adjoining Lot or Lots so as to make entry upon an adjoining Lot or Lots a necessity incident to the construction and maintenance of such Dwelling Unit. In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement, provided such construction shall commence within twenty (20) years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of

such overhang if one shall encroach and for the construction, maintenance, repair, replacement, and/or reconstruction of such Dwelling Unit which encroaches or is so located on or near its property line. Said easement or easements (1) shall be over and across the Lot or Lots immediately adjoining the Lot upon which such Dwelling Unit is so located, and (2) shall extend the full depth of the adjoining Lot or Lots, and (3) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such Dwelling Unit so located with an easement or such width that, when added to the space lying between the Dwelling Unit and its property line, such easement shall be ten (10) feet in width; provided that such Owner shall immediately repair, and be liable for any damage caused by any failure immediately to repair any damage to such Lot or the Dwelling Unit or other property thereon resulting from the exercise of this easement. Construction of any structure shall be prohibited within these easements except as such structure shall be approved in writing by the Architectural Control Committee of the Association. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

Section 5. ASSOCIATION'S EASEMENTS:

The Association shall have the right to have access over each Lot, from time to time during reasonable hours, as may be necessary for the inspection, maintenance, repair or replacement or prevention of damage to the Common Areas or any improvements thereon.

Section 6. EASEMENTS DEEMED APPURTENANT:

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

ARTICLE X
MAINTENANCE

Section 1. MAINTENANCE OF THE COMMON AREAS:

The Association shall provide for the care, operation, management, and repair of the Common Areas. Without limiting the generality of the foregoing and by way of illustration only, the Association shall keep the Common Area in good, clean, attractive, and sanitary order and repair; may maintain and replace all or any portion of the landscaping; shall keep the Properties safe, attractive, and desirable; and may make necessary or desirable alterations or improvements to the Common Areas. Nothing herein shall be construed as a waiver of any right by the Association to recover for any damage or expense incurred as the result of the willful or negligent action or omission of any person.

Section 2. EXTERIOR MAINTENANCE:

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

The cost of such restoration, repair, or maintenance shall be chargeable to such Owner by Individual Assessment in accordance with ARTICLE V, Section 4, Paragraph (b).

Section 3. EASEMENT FOR MAINTENANCE:

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

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ARTICLE XI
INSURANCE

Section 1. INSURANCE REQUIREMENTS GENERALLY:

(a) The Board of Directors shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado and having a Best's Insurance Report Policyholders rating of A or better, with a financial size category of Class 10 or higher of such equal classification if such ratings are later changed covering the risks set forth below.

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

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

(d) The insurance purchased in accordance with paragraphs hereof shall be Inflation Coverage Insurance and shall contain an "Agreed Amount Endorsement" if such insurance is available, which insurance at all times represents one hundred percent (100%) of the replacement value based on the most recent appraisal of (a) each Attached Dwelling Unit, and (b) all insurable improvements in the Common Areas. The replacement value shall not include values for land, foundation 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, showing that the insurance represents one hundred percent (100%) of the replacement value as defined above, and for each Attached Dwelling Unit, and all insurable improvements in the Common Areas.

Section 2. CASUALTY INSURANCE:

(a) The Board of Directors shall obtain and maintain at all times insurance coverage providing all risk coverage or the nearest equivalent available for the full replacement cost of the general Common Area Improvements and personal property of the Association. The Association shall furnish a certified copy of such blanket policy and a certificate identifying each party's interest, to any party in interest at his request.

(b) Rebuilding of Damaged Common Areas: (1) 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 one hundred percent (100%) of the First Mortgagees is recorded within one hundred (100) 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.

(2) The cost of repair or replacement of the Common Areas in excess of insurance proceeds received and reserves shall be assessed as an Individual Assessment in accordance with Article V, Section 4 (b) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership.

(3) If the entire damaged Common Area is 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 proportion as Annual Assessments for Common Expenses are assessed. Proceeds hereunder shall be paid to the Owners and their respective First Mortgagees by checks made jointly payable to Owners and their respective First Mortgagees. No Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

Section 3. PROPERTY AND CASUALTY INSURANCE, ATTACHED DWELLING UNIT

(a) The Board of Directors is required to obtain and continue in effect on behalf of all Owners of Attached Dwelling Units, a Blanket Property and Casualty Insurance Policy for each Attached Dwelling Unit within The Properties. Such insurance shall be in the amount of the full replacement value, as defined in Article XI, Section 1(d) above, without deduction for depreciation and with no provision for co-insurance, to include all fixtures, installations or additions comprising part of an individual Attached Dwelling Unit within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Attached Dwelling Unit initially installed or replacements thereof, in accordance with the original plans and specifications, or installed by or at the expense of the Attached Dwelling Unit Owner.

(b) The insurance shall be carried in blanket policy naming the Association as the owner and beneficiary thereof as trustees for the Attached Dwelling Unit Owners, shall identify each Attached Dwelling Unit Owner and the address of his Attached Dwelling Unit and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. The Association shall furnish a certified copy of such blanket policy and a certificate identifying each party's interest, to any party in interest at his request.

(c) Title to each Attached Dwelling Unit's Lot 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 Delcarant or from any Owner shall constitute appointment of the attorney in fact herein provided. All of the Owners of Attached Dwelling Units located upon The Properties appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their Attached Dwelling Unit's Lot upon their damage and destruction as is herein provided. As attorney in fact, the Board of Directors of this Association shall have full and complete authorization, power and right to make, execute and deliver any contract, or any other instrument with respect to the interest of an Attached Dwelling Unit's Owner's Lot which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Attached Dwelling Unit shall be done in accordance with Paragraph (d) of this Section, below.

(d) Such appointment of the Association as attorney in fact for all Owners may be revoked and a new attorney in fact appointed by an amendment to this Declaration signed by ninety percent (90%) of the Attached Dwelling Unit Owners and seventy-five percent (75%) of their respective First Mortgagees based on one (1) vote for each mortgage owned.

(e) In the event of damage to or destruction of any Attached Dwelling Unit by fire or any other casualty for which the Association has agreed (pursuant to this Section 3), to carry insurance, the Board of Directors shall within a reasonable time repair or rebuild the same in a workmanlike manner with materials comparable to those used in the original structure and conformity in all respects with the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. The Attached Dwelling Unit, when rebuilt or repaired, shall be substantially similar to the architectural design of the original Attached Dwelling Unit and the surrounding Attached Dwelling Units which are not so damaged or destroyed. Neither the Owner nor the Board of Directors shall be relieved of this obligation to repair or rebuild by the fact that proceeds received from the insurer to repair or rebuild are not sufficient to cover the cost thereof. If the proceeds received from the insurer by the Association are insufficient, it shall be the duty of the Owner to pay to the Association any deficiency required to accomplish the rebuilding or repair. Upon the failure of such Owner to provide such funds within thirty (30) days after demand by the Association therefor, the Board of Directors shall cause the repair or rebuilding as provided, and the amount of the deficiency shall be chargeable to such

Owner by Individual Assessment in accordance with Article 5, Section 4(b) hereof. Such lien to have the same priority as that provided for in Article 5 hereof.

(f) In the event one hundred percent (100%) of the Attached Dwelling Unit Owners and First Mortgagees based on one (1) vote for each mortgage owned decide not to rebuild, then the insurance proceeds shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagees.

Section 4. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

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

Section 5. WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

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

Section 6. FIDELITY INSURANCE:

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

Section 7. FLOOD INSURANCE:

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

Section 8. OTHER INSURANCE:

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

Section 9. PAYMENT OF INSURANCE PREMIUMS:

(a) The cost and expense of insurance obtained by the Association to insure the Common Areas and the improvements thereon and the personal property owned by it shall be paid from Association funds and be collected from the Members as part of the Common Expense Assessments as provided for in ARTICLE V, Section 4, Paragraph (a).

(b) In the event that insurance is obtained by the Association pursuant to Section 3 of this Article, such premiums shall be deemed as being part of the annual assessment.

(c) 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 Article V, Section 4(b) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership.

(d) Since the Association is required to maintain Blanket Property and Casualty Insurance as provided for in Section 3 of this Article, the cost of such insurance shall be paid for from Association funds and be collected from the Attached Dwelling Unit Owners in the following manner: an amount equal to the cost of such insurance attributable to an Owner's Attached Dwelling Unit for one (1) full year shall be paid by such Owner at closing, and thereafter, the cost of such insurance shall be paid by the Owner as an common expense Assessment in accordance with Article V, Section 4 (a) here- of commencing with the assessment after closing. The Board of Directors shall have the right to create an insurance escrow account for each Attached Dwelling Unit, or pool such escrow account for all Attached Dwelling Units.

Section 10. INSURANCE BY OWNERS:

Each Attached Dwelling Unit Owner shall, at such Owner's option, be responsible for obtaining and maintainting property and casualty insurance for all personal property and furnishings belonging to such Owner and obtaining his own respective liability insurance.

ARTICLE XII
CONDEMNATION PROCEDURE

Section 1. CONDEMNATION OF COMMON AREA:

In the event of a proceeding in condemnation or partial condemnation of any Common Area by any governmental authority authorized so to do, then the proceeds from such condemnation attributable to the Common Areas shall be distributed to all Members in the same proportion as Common Area Expenses are assessed in accordance with ARTICLE V, Section 4, Paragraph (a) hereof.

Section 2. CONDEMNATION OF DWELLING UNITS:

If a Dwelling Unit is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner condemned. The proceeds so payable shall be paid by joint check to the Owner and his respective First Mortgagee. The entity performing the condemnation shall not be prejudiced to the right of such Owners to negotiate or agree jointly.

Section 3. LIEN HOLDERS:

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

ARTICLE XIII
FIRST MORTGAGEE'S RIGHTS

Section 1. NOTICE TO FIRST MORTGAGEE:

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

- (a) Notice of damage exceeding \$1,000 to a Dwelling Unit in which the First Mortgagee has a security interest, or damage exceeding \$10,000 to the Common Areas.
- (b) Copies of budgets, notices of assessments, or any other notices or statements provided for under this Declaration, by the Association to the Owner of the Dwelling Unit in which a First Mortgagee has a security interest.

- (c) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Members.
- (d) Copies of notices of meetings of the Membership and the right to be represented at any meetings by a designated representative.
- (e) Notice of the decision of the Members to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.
- (f) Notice of commencement of any condemnation proceedings with respect to any part of the Common Area or with respect to a Dwelling Unit in which the First Mortgagee has a security interest.
- (g) Notice of any default which is by the owner of a Dwelling Unit in which a First Mortgagee has a security interest within thirty (30) days after the giving of notice by the Association to the owner of the existence of the default.

Section 2. FORM OF REQUEST:

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

Section 3. PAYMENT OF CHARGES:

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

Section 4. BOOKS AND RECORDS:

The Association shall maintain accurate books and records according to commonly accepted accounting principles, describing therein income and expenditures, as well as, the creation of reserve accounts for items in the Common Areas which must be replaced on a periodic basis. All Owners shall have reasonable access to inspect the books, records and financial statements of the Association. Any Mortgagee or Insuror of any Mortgage affecting a lot shall be entitled, upon request, to: (a) inspect the books and records of the Association during normal working hours; (b) require the preparation of and, if preparation is required, receive an annual financial statement of the Association, except that such a statement need not be furnished earlier than ninety (90) days following the end of the Association's fiscal year; and, (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 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 Article XI, Section 1(d) above, and the use of hazard insurance proceeds 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) Any change in the manner in which assessments are assessed against members or amends this paragraph or any other provision which specifically grants rights to First Mortgagees hereunder;

(ii) The abandonment, partition, subdivision, sale or transfer or the encumbrance of the Common Areas; except that the consent of the First Mortgagees shall not be required for action by the Board of Directors to grant easements for utilities and similar or related purposes;

(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 any scheme of Architectural Control or the enforcement thereof;

(v) The waiver of abandonment of any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of th the Dwelling Units, the exterior maintenance of the Dwelling Units, the mainten-ance of common property party walks or common fences and driverways, or the upkeep of lawns and planting.

ARTICLE XIV
DURATION AND AMENDMENTS

Section 1. DURATION:

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

Section 2. AMENDMENTS:

Except in cases of amendments that may be executed by the Declarant pursuant to ARTICLE XIII, Section 3, immediately hereafter this Declaration shall not be amended or revoked until a certificate setting forth the amendment approved and signed by Owners holding seventy-five percent (75%) or more of the total Lots represented by one vote per Lot, and by seventy-five percent (75%) of the First Mortgagees is recorded in the Office of the County Clerk and Recorder, Boulder, Colorado. No amendment shall affect the rights of the Declarant herein unless approved and consented to by the Declarant in writing.

Section 3. SPECIAL AMENDMENTS:

Until the Declarant transfers the last Lot to an Owner or until December 31, 1985, whichever occurs first, the Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Dwelling Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute, and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Dwelling Unit or any warranties made by an Owner or First Mortgagee in order to

induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Dwelling Unit. Any such amendment must have the unanimous approval of all of the First Mortgagees.

Section 4. CLASS B MEMBERSHIP - VA/FHA APPROVAL:

So long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions, if VA/FHA approval has been obtained.

Section 5. ANNEXATION:

Additional residential property and Common Areas may be annexed to The Properties with the consent of two-thirds (2/3) of each class of members.

ARTICLE XV
GENERAL PROVISIONS

Section 1. ENFORCEMENT:

The failure of any Owner to comply with the provisions of the Declaration will give rise to a cause of action in any aggrieved Owner for the recovery of damages or injunctive relief, or both.

Section 2. INVALIDITY:

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

Section 3. CLAIMS:

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

Section 4. WAIVER:

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

Section 6. ATTORNEYS' FEES AND COSTS:

If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of 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.

Section 7. CAPTIONS:

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

Section 8. 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.

SCHEDULE A.

A Resubdivision of Lot 3, Ferguson's, a Subdivision
in the City of Boulder, County of Boulder, State of Colorado.

APPROVED FOR THE CITY OF BOULDER
BY THE CITY CLERK
ON THIS 15th DAY OF MARCH 1967