

Continental View Estates  
Covenants, Conditions, and Restrictions  
1981

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

CONTINENTAL VIEW ESTATES

LOUISVILLE, COLORADO

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by W.J.S. CORPORATION, a Colorado corporation, of Boulder, Colorado, hereinafter referred to as "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following property, situate in the County of Boulder, State of Colorado, more particularly described 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 CONTINENTAL VIEW ESTATES HOMEOWNERS' ASSOCIATION.

Section 2. "BOARD OF DIRECTORS" or "BOARD" shall mean and refer to the Board of Directors of this Association, duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as 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 Continental View Estates, Louisville, Colorado, together with all facilities and improvements thereon, including recreational facilities. See Schedule B, attached hereto and incorporated herein by this reference as if set out herein verbatim.

Section 5. "DECLARANT" shall mean W.J.S. CORPORATION, a Colorado corporation, its assigns and transferees.

Section 6. "DECLARATION" shall mean this Declaration of Covenants, Conditions, and Restrictions of Continental View Estates, 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.

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 "Continental View Estates."

Section 15. "RECREATIONAL FACILITIES" shall mean those amenities installed by and at the expense of the Declarant; more particularly, a tennis court, shelter house, and barbeque pit.

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.

ARTICLE II  
SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT

Section 1. PROPERTY SUBJECT TO DECLARATION:

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

Section 2. CONVEYANCES SUBJECT TO DECLARATION:

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

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

Each Member shall own his Lot 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 district or other 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, including those recreational facilities located thereon by members and other persons entitled to such use.
- (c) The rights reserved in this Declaration to Declarant, Members, other persons, and the Association.

Section 2. TITLE TO COMMON AREAS:

The Declarant may retain the legal title to the Common Areas until such time as in the opinion of the Declarant, it has completed improvements thereon and the Association is able to maintain the same, but, notwithstanding any provisions herein, the Declarant hereby covenants, for itself, its successors, and assigns, that it shall convey the Common Areas to the Association, free and clear of all encumbrances and liens, not later than December 31, 1983.

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.
- (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:

There shall be two classes of voting membership:

- (a) Class A Members shall be all those Members other than the Declarant. Class A Members will be entitled to one vote for each Lot in which they hold the interest required for membership by Section 4. If more than one person holds such interest or interests, all such persons shall be Members. The vote for such Lot which is held by more than one Member may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interests shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any such Lot. When Class B Membership has been converted to Class A Membership, all directors of the Association shall be elected by the Class A Members.
- (b) The Class B Member shall be the Declarant, its successors,, assigns, and transferees. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest for Membership in Section 4.

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

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

Section 6. INDEMNIFICATION:

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

Section 7. PROFESSIONAL MANAGEMENT:

Any agreement for professional management of the Properties or any other contracts providing for services 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  
ASSESSMENTS

Section 1. ASSESSMENTS:

Each Member of the Association, except those exempt under Section 6 of this Article, by acceptance of a deed to their Lot, agrees to pay the Association certain assessments to be fixed, established, and collected from time to time as herein provided. Such assessments, together with interest and the costs of collection in the event of delinquency in payment as allowed in ARTICLE V, Section 5, paragraph (a) shall be the personal obligation of the person who was the Member, or of the persons jointly and severally who were the Members at the time when the assessment was made.

Section 2. PURPOSE OF ASSESSMENTS:

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Properties and the Members of the Association, which include, but are not limited to, the following: the expense of repair and maintenance of the Common Areas, to provide casualty and public liability insurance for the Common Areas, including the recreational facilities located thereon, and for any other purpose reasonable, necessary, or incident to such purposes. Such assessment shall include the establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including, but not limited to, an adequate reserve fund for the maintenance, replacement, or repair of those elements of the Common Areas which must be repaired on a periodic basis.

In the event repairs are required resulting from negligent acts of a Member, the Member's family, guests, employees, invitees, or lessees, the Association shall be reimbursed forthwith by such Member therefor. Upon due notice to the responsible Member and failure of such Member to make such reimbursement to the Association within thirty (30) days, then the cost of the repairs shall be chargeable to such Member by Individual Assessment in accordance with ARTICLE V, Section 3, Paragraph (b) against such Member.

Section 3. BASIS OF ASSESSMENTS:

- (a) Common Areas Expense. The expense of the maintenance, repair, replacement, and operation of the common areas, all of which expense shall take into account any sinking fund established for future expected expenditures shall be paid by the Members in the proportion which the number of Lots 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, Section 5 and Section 12; ARTICLE IX, 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.

- (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 4. SPECIAL ASSESSEMENTS:

In addition to the assessments authorized above, the Board may levy special assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected repairs or replacement or capital improvements, including the necessary fixtures and personal property related thereto. No special assessment shall be made for any construction, reconstruction, repair or replacement of any capital improvement, which is required to be constructed, reconstructed, repaired or replaced, by the Declarant, pursuant to any subdivision agreement, planned unit development, subdivision, or PUD process of Continental View Estates, which is required by the City of Louisville, Colorado. Such documents are of record with the City of Louisville, Colorado, and in some cases, of record with the Clerk and Recorder of Boulder County, Colorado. If any such total assessment exceeds \$50 per Lot per year, the same must have the assent of the majority vote of each class of membership of the Association at which a quorum is in attendance, (as more fully defined by the Association's Bylaws), at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent to each Membership of record not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION:

- (a) All assessments shall be due and payable on the first day of the period fixed for payment of the assessment and shall become delinquent unless paid thirty (30) days thereafter. All unpaid assessments shall be subject to a late charge for non-payment as may be determined from time to time by the Board. If such assessments are not paid within thirty (30) days of the due date, they shall bear interest from the date of delinquency at the rate of twelve percent (12%) 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, such transfer of title shall extinguish the lien for all unpaid assessments made by the Board becoming due before the date of transfer of title. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a Common Area Expense collectible from all the Members as such, without prejudice to the right of the Association to recover such amount from the delinquent Member.

Section 6. EXEMPT PROPERTY:

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

- (a) All Lots owned by the Declarant; provided, however, the Declarant shall be obligated until his Class B Membership is terminated pursuant to Article IV, Section 5, hereof, to contribute monthly to the Association such amounts, if any, as will offset any deficits of the Association excluding from such contributions, however, any deficits resulting from any special assessments or any deficits arising from establishing and maintaining any reserve or sinking fund.
- (b) All properties dedicated to and accepted by a local public authority; and,
- (c) All Common Areas.

ARTICLE VI  
USE AND OTHER RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE:

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

Section 2. BUILDING LOCATIONS AND HEIGHT RESTRICTIONS:

No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines as dictated by appropriate zoning and building setbacks of the recorded plat and appropriate building regulations of the City of Louisville, 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 one year from commencement.

Section 5. TRASH:

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

Section 6. DAMAGE OR DESTRUCTION:

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

Section 7. NUISANCES:

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

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

Section 8. TEMPORARY USE BY THE DECLARANT:

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

Section 9. UTILITIES:

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

Section 10. SIGNS:

No sign or advertising of any character except for those of the Declarant and its sales' agents shall be erected, placed, permitted, or maintained on any Lot except

for a "For Sale" or "For Rent" sign not exceeding the size permitted in residential areas in the City of Louisville, Colorado.

Section 11. FENCES AND MAILBOXES:

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

Section 12. ANIMALS WITHIN THE PROPERTIES:

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

Dogs, cats, and other household animals shall not litter the Common Areas. It shall be the duty of the Association to keep the Common Areas free from litter caused 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 3, 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 13. MINERAL EXPLORATION:

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

Section 14. PARKING:

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

Section 15. RULES:

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

ARTICLE VII  
ARCHITECTURAL CONTROL

Section 1. RESTRICTIONS:

Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, which shall include the painting 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 the conversion of Class B Membership to Class A Membership as provided for in ARTICLE IV, Section 5. Said members need not be Owners. Thereafter, Committee Members shall be appointed by the Board of Directors and must be Owners. One Committee Member shall serve for one year; one Committee Member shall serve for two years; and one Committee Member shall serve for three years; and the Board of Directors shall appoint Committee Members to replace those whose terms expire. Members of such Architectural Control Committee shall not be entitled to any compensation for services performed.

#### Section 3. LANDSCAPING:

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

#### Section 4. FENCES:

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

#### Section 5. EXTERIOR PAINTING:

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

#### Section 6. WAIVER:

The Committee may, at its discretion, waive any provision of ARTICLE VII of these Protective Covenants in the event there is a practical difficulty or unnecessary hardship; subject to the provisions of ARTICLE XII, Section 5, Paragraph (f).

### ARTICLE VIII 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 not conveyed for the sole use of constructing improvements, utilities, and other matters including the right to erect temporary buildings. This reservation shall terminate upon conveyance of the last Lot platted in the Properties. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office or model home for demonstration purposes.

Section 3. EASEMENTS FOR ENCROACHMENT:

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

Section 4. 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 IX  
MAINTENANCE

Section 1. MAINTENANCE OF THE COMMON AREAS:

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

Section 2. EXTERIOR MAINTENANCE:

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

The cost of such restoration, repair, or maintenance shall be chargeable to such Owner by Individual Assessment in accordance with ARTICLE V, Section 3, 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 contractors) for providing maintenance as described in this ARTICLE IX.

ARTICLE X  
INSURANCE

Section 1. INSURANCE REQUIREMENTS GENERALLY:

The Board of Directors shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado and having a Best's Insurance Report rating of Class VI or higher.

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

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

#### Section 2. CASUALTY INSURANCE:

The Board of Directors shall obtain and maintain at all times insurance coverage providing all risk coverage or the nearest equivalent available for 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.

#### Section 3. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

The Board of Directors shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Common Area, 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 4. WORKMEN'S COMPENSTION AND EMPLOYER'S LIABILITY INSURANCE:

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

#### Section 5. FIDELITY INSURANCE:

The Board of Directors shall also mintain 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 6. 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 7. OTHER INSURANCE:

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

Section 8. PAYMENT OF INSURANCE PREMIUMS:

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 3, Paragraph (a).

Section 9. REBUILDING OF DAMAGED COMMON AREAS:

Any portion of the Common Areas damaged or destroyed shall be repaired, replaced, or restored promptly by the Board of Directors unless a "Declaration Not To Rebuild" signed by Members holding seventy-five percent (75%) or more of the total votes hereunder and by one hundred percent (100%) of the First Mortgagees is recorded in the Office of the County Clerk and Recorder, Boulder, Colorado, indicating their intention not to rebuild.

The cost of repair, replacement or restoration of the Common Areas in excess of insurance proceeds received and reserves shall be assessed as a Common Area Expense in accordance with ARTICLE V, Section 3, Paragraph (a) and not as a Special Assessment and such assessment shall be exempt from any special voting requirement of the Membership.

If the entire damaged Common Area is not repaired, replaced or restored, (a) the insurance proceeds shall be used to restore the damaged Common Area to a condition compatible with the remainder of the Common Areas, and (b) the remainder of the proceeds shall be allocated to all Members in the same proportion as Common Area Expenses are assessed. Any proceeds hereunder shall be paid to the Members and their respective First Mortgagee by checks made payable jointly to such Member and his respective First Mortgagee.

ARTICLE XI  
CONDEMNATION PROCEDURE

Section 1. CONDEMNATION OF COMMON AREA:

In the event of a proceeding in condemnation or partial condemnation of any Common Area by any governmental authority authorized so to do, then the proceeds from such condemnation attributable to the Common Areas shall be distributed to all Members in the same proportion as Common Area Expenses are assessed in accordance with ARTICLE V, Section 3, Paragraph (a) hereof.

Section 2. CONDEMNATION OF DWELLING UNITS:

If a Dwelling Unit is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Member. The proceeds so payable shall be

paid by joint check to the Member and his respective First Mortgagee. The entity performing the condemnation shall not be prejudiced to the right of such Members 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 XII  
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:

A First Mortgagee shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice.

Section 5. RESTRICTIONS:

The prior written approval of all First Mortgagees will be required for any of the following:

- (a) The failure to maintain fire and extended coverage on insurable Common Areas 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.)
- (b) The use of hazard insurance proceeds for losses to any part of the Common Areas for other than repair, replacement, or reconstruction of such improvements.
- (c) An amendment to the Declaration which (i) changes the manner in which assessments are assessed against Members, or (ii) amends this Section or any other provision which specifically grants rights to First Mortgagees hereunder.
- (d) The abandonment, partition, subdivision, sale, or transfer or the encumbrance of the Common Areas.
- (e) The abandonment of the planned unit development or the removal of any part or all of the Properties from the provisions of this Declaration.
- (f) The waiver or abandonment of the scheme of Architectural Control or the enforcement thereof.

Section 6. PROTECTION:

No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid, or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach, or failure to comply. However, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

ARTICLE XIII  
DURATION AND AMENDMENTS

Section 1. DURATION:

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

Section 2. AMENDMENTS:

Except in cases of amendments that may be executed by the Declarant pursuant to ARTICLE XIII, Section 3, and except as restricted by ARTICLE XII, Section 5, hereof, this Declaration shall not be amended or revoked until a certificate setting forth the amendment approved and signed by Members holding seventy-five percent (75%) or more of the total votes hereunder 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:

As long as the Declarant has the right to appoint the Board of Directors of the Association in accordance with ARTICLE IV, Section 5, hereof, the Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration (i) to

comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing 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 Member. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute, and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Dwelling Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Dwelling Unit. Any such amendment must have the unanimous approval of all of the First Mortgagees.

#### ARTICLE XIV GENERAL PROVISIONS

##### Section 1. ENFORCEMENT:

The failure of any Member to comply with the provisions of the Declaration, Bylaws, and any Articles of Incorporation of the Association will give rise to a cause of action in the Association by its Board of Directors and in any aggrieved Member for the recovery of damages or injunctive relief, or both.

##### Section 2. INVALIDITY:

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

##### Section 3. CLAIMS:

No claim or cause of action shall accrue in favor of any person for the failure of the Association or Declarant to enforce any provision hereof. This Section may be 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 5. NOTICES:

Each Member shall register his mailing address with the Association. Any notice required to be sent to any Member under the provision of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

##### 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:

