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STATE OF COLORADO

FILM 1284

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF CENTENNIAL TRAILSA PLANNED UNIT DEVELOPMENT SUBDIVISION  
LOCATED IN THE N.E. 1/4 OF SECTION 33, TOWNSHIP 1,  
NORTH, RANGE 70 WEST OF THE 6TH P.M., CITY OF BOULDER,  
COUNTY OF BOULDER, STATE OF COLORADO.

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THIS DECLARATION, made this 20<sup>th</sup> day of December, 1983,  
by TERRY L. CORZINE, INC., a Colorado corporation, hereinafter  
referred to as "Declarant."

## WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with common facilities for the benefit of the said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and facilities; and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Colorado, as a non-profit corporation, CENTENNIAL TRAILS HOMEOWNERS ASSOCIATION for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which shall be covenants running with the land described herein and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I  
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

1.1 AGENCIES shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other government or quasi-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.

1.2 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 hereof.

1.3 ASSOCIATION shall mean and refer to the Centennial Trails Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

1.4 BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided.

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

1.6 COMMON AREA shall mean that portion of The Properties including all improvements thereon, owned by the Association for the common use and enjoyment of the Owners more specifically described as Outlots A, B, D, E, F, G, H, I, J and K of The Properties.

1.7 DECLARANT shall mean and refer to Terry Corzine, Inc., a Colorado corporation, its heirs, successors or assigns.

1.8 DECLARATION shall mean this Declaration of Covenants, Conditions and Restrictions of Centennial Trails Subdivision, as may be amended from time to time.

1.9 FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns or receives a permanent mortgage or permanent deed of trust, which mortgage or deed of trust is of record and is a first and prior lien encumbering any Lot within The Properties, and shall mean the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is

seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

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

1.11 LIVING UNIT shall mean and refer to any portion or all of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family and the lot on which it is constructed.

1.12 LOT shall mean and refer to any plot of land shown upon any recorded subdivision map or Plat of The Properties with the exception of common areas as heretofore defined. Lot shall include a Living Unit constructed thereon as the term Living Unit is defined.

1.13 MEMBER shall mean and refer to all those owners who are members of the Association.

1.14 OWNER shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon The Properties including Declarant or a Seller under a Land Installment Contract of any Lot but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.15 PLAT shall mean and refer to the Plat of Centennial Trails Subdivision recorded in the records of the Clerk and Recorder of Boulder County, Colorado, and any amended, supplemental or additional plats or filings thereof designating lots or parts of lots.

1.16 THE PROPERTIES or THE PROPERTY shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 The Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Boulder, State of Colorado, and is more particularly described as follows:

Lots 1 through 42, together with Outlots A, B, D, E, F, G, H, I, J, and K, Centennial Trails Subdivision, a subdivision in the City of Boulder, according to the recorded plat thereof on file in the office of the Clerk and Recorder of Boulder County, Colorado.

2.2 Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the property together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the property except as hereinafter provided.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

3.2 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.

3.3 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

3.4 Membership. Every person or entity who is a record Owner of a fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, including contract sellers; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person hold interest in any Lot, all such persons shall be Members.

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

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

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

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

(a) when seventy-five percent (75%) of the Lots have been conveyed to Purchasers other than Declarant, or

(b) five (5) years following the recording of this Declaration, whichever shall first occur.

3.6 Indemnification. 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 proceedings to which they may be a party, or in which they may become involved, by reason of being or having acted as such upon behalf of the Association. The amount of the indemnification shall be limited to the extent covered by Directors and Officers Errors and Omissions Liability Insurance Policies, obtained in advance by the Association, and only to the extent payable from such policy. The indemnification shall not apply if the person is legally adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the indemnification shall apply only when the Board approves such settlement. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

The words "director" and "officer" shall not include any officer, director, agent, or employee of the Declarant or any

managing agent, or any officer, director, employee or agent of any managing agent heretofore or hereafter employed by the Association.

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

3.8 Rights of Association/Transfer of Functions. With respect to the Association Property, the Association shall have the right to contract with any person for the performance of various duties and functions, but such assignment shall not relieve the Board from any responsibility thereof.

#### ARTICLE IV

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES AND LEASE RESTRICTIONS

4.1 Members' Easements of Enjoyment. Subject to the provisions of paragraph 4.3 below, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every living unit. Members may assign their easement and right of enjoyment with respect to any living unit to a tenant occupying that living unit. However, no right or easement of enjoyment shall arise in any parcel of the common areas until that parcel has been conveyed to the Association and the deed conveying same has been recorded on the records of the Clerk and Recorder of Boulder County.

4.2 Title to Common Areas. 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 liens and encumbrances, not later than at the time of the closing of the sale of the Lot within The Properties.

4.3 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common areas and in aid thereof to mortgage said properties; provided that any such mortgage shall require the same vote and quorum of members of the Association as are required for the levying of special assessments under Article 5.4, and the vote of not less than the first mortgagees of 75% of the lots. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the

Association and all rights of the members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles, Bylaws and Rules, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the common areas; and

(e) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless members entitled to cast two-thirds (2/3) of the votes of each class of membership and not less than first mortgagees of seventy-five percent (75%) of each living unit within the properties agree to such dedication, sale or transfer, purpose or condition, and an instrument reflecting such agreement is recorded with the Clerk and Recorder of Boulder County, Colorado, and written notice of the proposed agreement and action thereunder is required to be sent to every member at least ninety (90) days in advance of any action taken.

4.4 Lease of a Dwelling Unit. Any owner shall have the right to lease his living unit upon such terms and conditions as the owner may deem advisable, subject to the following:

(a) Any such Lease shall be in writing and shall provide that the Lease is subject to the terms of this Declaration, Bylaws of the Association and Rules adopted by the Association.

(b) No living unit may be leased for a period of less than thirty (30) days.

(c) Only an entire living unit may be leased and only for single family residential use.

(d) Such lease shall state that the failure of the leasee to comply with the terms of the Declarations, Bylaws of the Association or Rules shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them; provided however, that the provision of this paragraph shall not apply to a first mortgagee who comes into possession of a living unit through foreclosure or a deed in lieu of foreclosure.

## ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. Each owner, including Declarant, of any Lot situated on the Property, hereinbefore described, or subsequently annexed hereto, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges; and

(b) Special assessments for capital improvements. Such assessments shall be fixed, established, and collected from time to time, as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection, including reasonable attorneys' fees, as hereinafter provided, shall be a charge on his Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

5.2 Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the properties and in particular for the improvement and maintenance of the facilities devoted to this purpose and related to the use and enjoyment of the common areas situated upon the property, including, but not limited to, the payment of taxes and all types of insurance and premiums deemed necessary by the Board of Directors, and repairs, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and further including, but not limited to, the following: the construction, planting, repair, fertilization, application of herbicides and pesticides to, and cutting and trimming, irrigation and care of all manner of landscaping and irrigation systems, either on common areas; construction, repair and maintenance of sidewalks and street islands, driveways and parking areas (Outlot K); spraying of insecticides; construction, maintenance, repair and rebuilding of all manner of drainage facilities; providing adequate insurance of all types, and in such amounts deemed necessary by the Board of Directors with respect to common areas, buildings, private and public ways; legal and accounting fees and costs associated with activities of the Association; creation of reasonable and adequate reserves for working capital or anticipated replacement or repair of property or other major expenditures including the common areas; and all things necessary or incidental thereto. Such assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of the common areas and dwelling unit exteriors which the



association has an on going duty to replace, repair and/or maintain on a permanent basis.

5.3 Maximum Annual Assessments. Until the year beginning January 1, 1985, the maximum annual assessment which may be assessed by the Board of Directors shall be fifteen (\$ 15.00 ) per Lot per year.

(a) From and after January 1, 1985 the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1985 the maximum annual assessment may be increased in an amount in excess of ten percent (10%) by vote of two-thirds (2/3) 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 of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year, which may be a lesser amount than the maximum.

(d) Nothing herein shall prevent the Board of Directors from collecting the annual assessment on a monthly basis, but the Board of Directors must collect the annual assessments at least semi-annually. The omission or failure of the Board of Directors to fix the assessment for any period shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by paragraph 5.3 hereof, the Association may levy a special assessment, applicable to such years as are described in the resolution authorizing the assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that a resolution establishing any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

All or any part of the proceeds of any special assessment made as above provided, for the entire period over which the assessment is to be levied or any part thereof, may be assigned to a lender as security for repayment of a loan or loans made to pay, in whole or in part, the expenditure for which the special assessment was authorized. The rights granted to the lender under such assignment may include the right to require the Association to collect the

special assessment, and the right of the lender directly to enforce any right of the Association to collect the special assessment. Any such assignment of the proceeds of any special assessment shall require approval by vote in the same manner as the special assessment itself.

5.5 Uniform Manner of Assessment. All Assessments must be assessed in a Uniform Manner upon all lots which are subject to such assessment, subject to the provisions of Paragraph 5.11 hereof.

5.6 Quorum for any Action Authorized Under Paragraph 5.4. The quorum required for any action authorized by Section 4 hereof shall be as follows:

At the first meeting called, as provided in Section 4 hereof, the presence at the meeting 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 forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section IV, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.7 Date of Commencement of Assessments. Due Date. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following conveyance of the common area to the Association. The first full annual assessment shall be made before the balance of the calendar year and shall become due and payable on the day fixed for commencement by the Board of Directors of the Association. The assessments for any year, after the first year, shall become due and payable on the date fixed by the Board of Directors. However, nothing herein shall prevent the Board of Directors from making one-twelfth (1/12) of each annual assessment due on a day each month fixed by the Board of Directors and the Board of Directors must collect the annual assessments at least semi-annually.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Paragraph 5.3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is added to the properties already subject to assessment, at a time other than the beginning of any assessment period.

The due date for any special assessment under Paragraph 5.4 hereof shall be fixed in the resolution authorizing such assessment.

5.8 Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount

of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment or any mortgagee or potential mortgagee or purchaser of property subject to assessment a certification in writing signed by an officer of the Association, setting forth whether said assessment has been paid and the amount of any unpaid assessments. As to any mortgagee or purchaser who had disbursed funds in reliance thereon, such certificate shall be conclusive against the Association as to items set forth therein.

5.9 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If an assessment is not paid within thirty (30) days of the date when due as specified in paragraph 5.8 or as set by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property subject to the assessment, which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The assessment shall be a lien against the real property which comprises the Lot or Living Unit assessed, and all appurtenances thereto and fixtures thereon. The real property comprising a Lot or Living Unit shall include fee ownership in any lot occupied by a single-family dwelling, together with the dwelling and all fixtures and appurtenances. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may assess a \$15 late charge. The Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property subject thereto; and there shall be added to the amount of such assessment interest as above provided plus all costs of collection, including the Association's reasonable attorneys' fees incurred in connection with the default and collection of amounts due. If the Association elects to file a lien, the Association may file with the Clerk and Recorder of the County wherein the property is situate, a Statement of Lien with respect to the property, setting forth the name of the owner, the legal description of the property, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the

President or a Vice President of the Association, and which shall be served upon the owner of the property by certified mail to the address of the property or at such other address as the Association may have in its records for the owner of the property. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorneys' fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Living Unit.

5.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to issue of a deed to such property pursuant to a decree of foreclosure, or a public trustee's deed pursuant to foreclosure through the public trustee, or a deed issued in any other proceeding in lieu of foreclosure. Such deed shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The Homestead Act shall be subordinate to the lien for any assessment.

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

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

5.12 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all common properties as defined in Paragraph 1.6, hereof; all properties exempted from

taxation by the laws of the State of Colorado, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

5.13 Examination of Books and Records. A First Mortgagee shall have the right to examine the books and records of the Association.

5.14 Notice to Mortgagee. Upon request of a First Mortgagee of any living unit, the Association shall report to such First Mortgagee any unpaid assessments or other default under the terms of this Declaration which are not cured within thirty (30) days of such default.

5.15 Payment of Delinquent Taxes and Insurance. The Association agrees that First Mortgagees of the Lots within the project may, at their option, jointly or singularly pay taxes or other charges which are in default and which may or have become a charge against any common area and may pay overdue premiums for hazard insurance or secure new hazard insurance coverage on the lapse of any such policy on the common areas. The Association hereby agrees that in the event any First Mortgagee makes any such payments, the same shall be immediately reimbursed by the Association. Further, the Association agrees that notwithstanding the above, no First Mortgagee shall be obligated to make any of the payments hereinabove set forth, but may do so only upon the exercise of the option granted to them hereby.

5.16 Notice of Meetings. Any First Mortgagee of a Living Unit, upon written request, shall be entitled to written notice of all Association meetings and be permitted to send a representative to such meetings.

5.17 Mortgagee as Proxy. Each Owner shall have the right to irrevocably constitute and appoint the beneficiary of a trust deed his true and lawful attorney to cast his vote in this Association at any and all meetings of the Association and to vest in the beneficiary any and all rights, privileges and powers that he has as a Living Unit Owner under the Certificate of Incorporation and Bylaws of this Association or by virtue of the recorded Declaration of Covenants, Conditions and Restrictions. Such proxy shall become effective upon the filing of notice by the mortgagee with the Secretary of the Association at such time or times as the mortgagee shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the managing agent or the Living Unit Owners to carry out their duties as set forth in the Declaration of Covenants, Conditions and Restrictions. A release of the mortgagee's mortgage shall operate to revoke such proxy. Nothing herein shall be construed to relieve a Living Unit Owner as a mortgagor of his duties and obligations as a Living Unit Owner or to

impose upon the beneficiary of the deed of trust the duties and obligations of a Living Unit Owner.

5.18 Assessment Reserves. The Association shall include in its assessments an amount for maintenance of a reserve fund for reasonable maintenance, replacement and repair of the common areas.

## ARTICLE VI

### INSURANCE

6.1 Insurance on Common Area Property. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Property. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article VI, the Association may also consider in determining the types and amount of insurance it needs to obtain, the then-existing requirements of the Agencies, with respect to their insurance, guaranty, or purchase of first mortgages secured by real property located within The Properties. The insurance carrier shall meet the standards as set by the Agencies.

(a) A policy of property insurance covering all insurable improvements located on the Common Property, if any, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than necessary to comply with any co-insurance percentage stipulation in the insurance policy. Further, said policy shall contain a "Replacement costs Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement" or the equivalent, and/or coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance as maintained by the Association pursuant to this subparagraph (a) shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risk as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Common Property, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Property or such other real property, legal liability arising out of law suits related to employment contracts of the Association, and protection against liability for non-owned and hired automobile; such coverage may also include, if applicable, comprehensive automobile liability insurance, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location, and use.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to 1 and 1/2 times the estimated maximum of funds, including maintenance reserves in the Association at any given time. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) If the Common Property, or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Property or such other real property has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Property or such other real property in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designed flood hazard area; or

(2) one hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

6.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage on a Lot. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees of Lots. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

6.3 Damage to Common Property. In the event of damage to or destruction of all or a portion of the Common Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, then, subject to the provisions of Paragraph 11.1 hereof regarding approval of certain actions by specified percentages of Owners and First Mortgagees, the Association shall levy a special assessment, in the amount of such insufficiency. Such special assessment shall be levied without a vote of the Owners (notwithstanding anything to the contrary in this Declaration) and shall be levied equally against each Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors of the Association,



but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration. If the Owners and First Mortgagees decide not to repair or reconstruct the Common Property or such other real property pursuant to Paragraph 11.1 hereof, the insurance proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any, of their respective Lots.

6.4 Deductibles. No policy of insurance in which the Association or its designee is the beneficiary shall include a deductible clause in an amount greater than \$500.00 or the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any said loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment.

6.5 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interest may appear.

6.6 Association Insurance as Primary Coverage. If at the time of an loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any annual assessment. Any Owner's policy shall also contain waivers of subrogation.

6.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

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ARTICLE VII

CONDEMNATION

7.1 Condemnation of Common Area. In the event of a proceeding in condemnation or partial condemnation of the common area by any governmental authority authorized to do so, then the proceeds from such condemnation attributable to the common area shall be distributed to the Association for repair of the common area after condemnation and the balance remaining shall be distributed to all owners in the same proportion as the annual assessments for common expenses are assessed in accordance with this Declaration; subject to the provisions of Paragraph 7.2 below.

7.2 Lien Holders. When a condemnation occurs to the common areas within the properties and the common areas are subject to an encumbrance, the proceeds payable thereunder shall be distributed by checks made jointly payable to the Association and First Mortgagees. The Association shall not be entitled to priority over First Mortgagees with respect to any such distribution.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.1 Architectural Control. Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, fence, or any structure whatsoever, on any lot or common areas, 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 upon any lot 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, fence plans, elevations, showing all aspects of dwelling and development of lot as an architectural living 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 of 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 thirty (30) days 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 erect the same, 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 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. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Committee by virtue of his membership thereon on discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without the prior written approval of the Committee. 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 will be deemed to be given.

**8.2 Architectural Control Committee.** The Architectural Control Committee shall consist of at least three persons appointed by the Declarant, their successors or assigns. The members of the Architectural Control Committee need not be members of the Association. The Declarant, their successors or assigns, may constitute one member of the Committee. The Declarant, their successors or assigns shall have absolute right to remove and appoint members of the Committee at any time. The members of the Committee shall, as long as the restrictions, covenants, and conditions herein set forth are in force and effect, perform the duties imposed on it as herein set forth. At any time while the restrictions, covenants and conditions herein set forth remain in force and effect, the Declarant, their successors or assigns, may relinquish their powers to determine the number and members of the Committee. Such relinquishment may be accomplished by recording a declaration of such relinquishment in the office of the County Clerk and Recorder of Boulder County, Colorado, and such relinquishment must occur no later than January 1, 1988. From and after such relinquishment the number and members of the Committee shall be determined by the Board of Directors of the Association. Neither the members of the

Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant.

8.3 Landscaping. A Landscaping plan shall be submitted to the committee within sixty (60) days subsequent to the date of occupancy of a Living Unit. Said landscaping plan must be approved by the Architectural Control Committee before commencement of landscaping. Approval or disapproval of such landscaping plans shall be in the same manner as set forth in Section I hereof. An Owner must complete the landscaping plan within one year from the date of closing on the purchase of a Lot on which there is a Dwelling Unit.

8.4 Fences. No fences other than original construction shall be constructed unless approved by the Committee. Any fence approved shall be designed and approved as an integral part of the design of the Living Unit. All fences shall be maintained by the Owner of the Lot and no boundary line fence shall exceed four (4) feet in height. Interior privacy fences shall not exceed six (6) feet in height and shall not encompass a boundary area greater than two hundred (200) square feet of space.

8.5 Exterior Painting. All painting and paint colors shall be approved by the Committee with approval as set forth in Paragraph 8.1 above.

8.6 Plantings, Grass and Foliage. Seventy-five percent (75%) of all Lots exclusive of the Dwelling Units (including patios) and exclusion of driveways, must contain foliage, including grass, shrubs and trees. It is the intent of this provision that no more than twenty-five percent (25%) of a lot excluding the dwelling unit and driveway be landscaped in rock or similar materials.

8.7 Solar Collectors. Solar systems are encouraged in this subdivision. However, all solar collectors must be approved by the Committee. All solar collectors shall be integrated into the design of the Dwelling Unit and be compatible with and similar to the materials used in the dwelling construction. Any solar collector construction must not block the view of any other Dwelling Unit in the subdivision. Approval for a solar collector must be obtained from the Committee before commencement of any construction in accordance with Article VII.

8.8 Delegation/Waiver. The Committee may at its discretion: (a) delegate to the Board of Directors any of its powers granted to it by this Article. Such delegation shall be accomplished by written notice to the Board of Directors indicating what powers and authority are granted to the Board subject to the provisions of Paragraph 11.5 hereof, such delegation shall be effective from the date of its recording; and (b) waive any provision of this Article VIII in the event there is a practical difficulty or unnecessary hardship; subject to the provisions of Paragraph 11.5 hereof.

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ARTICLE XI

LAND USE RESTRICTIONS

9.1 Land Use and Building Type. No structure or structures shall be erected, placed, altered or permitted to remain on any Lot or be occupied or used for any purpose other than single-family dwellings, unless approved by the Architectural Control Committee.

9.2 Dwelling Quality and Size. 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 VIII.

9.3 Building Locations and Height Restrictions. No building, primary or accessory, shall be located on any Lot nearer to the front lot limit or nearer to the side street line than the minimum building setback lines shown on the recorded plat. The Architectural Control Committee shall approve the location and height of any structure placed on a Lot. Such approval must be obtained before commencement of any construction or alterations in accordance with Article VIII.

9.4 Resubdivision of Lots. No Lot or Lots shall be subdivided except for the purpose of combining portions with an adjoining Lot provided that no additional building site is created thereby. Any ownership or single holding by any person or entity comprising the whole of one lot and part or parts of one or more adjoining Lots shall for all purposes of this Declaration be deemed as constituting a single lot.

9.5 Trees. No tree or trees, whether now growing or hereafter grown upon any part of The Properties, shall be cut down without prior written approval of the Architectural Control Committee, provided however, that this restriction shall not apply unless such tree is more than two (2) inches in diameter as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees within The Properties.

9.6 Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon any part of The Properties and no residence placed or erected on any Lot 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 on any Lot 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.

9.7 Nuisances. No boats, trailers, campers, motor homes, wrecked or partially disassembled cars, tractors, equipment, by way of example only, and not by limitation, shall be kept or stored so that they are visible from neighboring Lots or from the street.

9.8 Utilities. All electric, television, radio and telephone line installations and connections from the Owner's property line to the residence shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed.

9.9 Signs. No sign or advertising of any character except for those of the Developer and his 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 by the Committee.

9.10 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on The Properties, except that household pets may be kept thereon if they are not raised, bred, or maintained for any commercial purpose, and do not make objectional noises or otherwise constitute a nuisance or inconvenience to any of the residents of nearby property.

9.11 Pets Within the Common Properties. Dogs, cats and other household animals shall not be allowed to run at large within the common areas, but shall be at all times on a leash or other immediate control of its owner. It shall be the duty of the Association, or its representative, to notify the proper authorities of pets found at large within the properties in violation of municipal ordinances and county resolutions.

9.12 Trash. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building material shall be permitted to remain exposed upon any Lot so that it is visible from any neighboring Lot or from the street except as reasonably necessary during construction.

It shall be the duty of the Association to keep the common areas free from litter caused by and left by pets or people. The owners of pets known to be at large shall be properly assessed by the Association for the cleanup expenses incurred, as a special assessment against the owner of such pets or person causing such litter.

## ARTICLE X

EASEMENTS

10.1 Utility Easement. Easements for public utilities and parking over and across the common areas shall be those shown upon the recorded plat of The Properties and those provided in the plat notes, and such other easements as may be established pursuant to the provisions of this Declaration or as may hereinafter be granted over and across the common areas by the Board of Directors of the Association. Utility easements may also be used for drainage easements.

10.2 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or their agents hereby reserve an easement and right-of-way over all common areas and all Lots not conveyed for the sole use of constructing improvements, utilities and other matters including the right to erect temporary buildings to store any and all materials, so long as this does not unreasonably interfere with owners use and enjoyment of common areas. This reservation shall terminate upon conveyance of the last Lot platted in the properties. Declarant and/or their agents further reserve the right to use any completed structure for the purpose of sales office, construction office or model home for demonstration purposes. This reservation shall cease on December 31, 1988.

## ARTICLE XI

## FIRST MORTGAGEE'S RIGHTS

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

a) Copies of budgets, notices of assessments, or any other notices or statements provided for under this Declaration, by the Association to an owner.

b) Financial statements of the Association which are prepared for the Association and distributed to its Members.

c) Copies of notices of meetings of the membership and the right to be represented at any meetings by a representative.

d) Notice of the decision of the Members to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.

e) Notice of commencement of any condemnation proceedings with respect to any part of the common areas or with respect to

a lot or any portion thereof in which a First Mortgagee has a security interest.

f) Notice of any failure to pay an assessment which is not cured by an Owner of a Dwelling Unit in which a First Mortgagee has a security interest within sixty (60) days given notice by the Association.

11.2 Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefore shall not affect the validity of any action which is related to any of the foregoing.

11.3 Payment of Charges. First Mortgagees, jointly or singularly, may pay taxes and other charges which are in default or which may or have become a charge against the common areas. A First Mortgage making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement is to be reflected in an agreement in favor of all First Mortgagees duly executed by the Association.

11.4 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.

11.5 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; and the use of hazard insurance proceeds received for losses to any part of the common area property for other than repair, replacement or reconstruction of such improvements.

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

(i) An amendment to the Declaration which changes the manner in which assessments are assessed against members or amends this paragraph or any other paragraph which specifically grants rights to First Mortgagees hereunder.



- (ii) The abandonment, partition, subdivision, sale or transfer or encumbrance of the common areas; except that the consent of the First Mortgagees shall not be required for action by the Board of Directors to grant easements for utilities and similar or related purposes;
- (iii) The abandonment of the planned unit development or the removal of any part or all of the properties from the provisions of this Declaration;
- (iv) The waiver or abandonment of the scheme of Architectural Approval or the enforcement thereof.

## ARTICLE XII

### DURATION AND AMENDMENTS

12.1 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.

12.2 Amendments. This Declaration may be amended by an instrument signed by not less than seventy percent (70%) of the lot owners and seventy percent (70%) of the First Mortgagees based on one vote for each mortgage owned. All amendments must be recorded with the Clerk and Recorder of Boulder County, Colorado.

If the properties have been or are to receive Veterans Administration and/or Federal Housing Administration approval as defined by paragraph 1.1 hereof, then until the Class B Membership is converted into Class A Membership in accordance with this Declaration, the following actions will require the prior written approval of the Federal Housing Administration and/or the Veterans Administration: (a) annexation of additional properties; (b) dedication of common areas, and any amendment of this Declaration.

12.3 Annexation. Additional residential property and/or common areas may be annexed to the properties with the consent of two-thirds (2/3) of each class of Members.

## ARTICLE XIII

### GENERAL PROVISIONS

13.1 Enforcement. The failure of any Member to comply with the provisions of this Declaration, the Bylaws, the Articles of Incorporation or the Rules and Regulations of the Association will give rise to a cause of action in the Association by its Board of

Directors and/or in any aggrieved Member for the recovery of damages or injunctive relief and any other recovery available in any proceeding at law or in equity.

13.2 Invalidity. Any portion of this Declaration invalidated in any manner whosoever 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.

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

13.4 Special Amendment. Declarant hereby reserves and is granted the right and power to record special amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association at any time prior to the conveyance of the last Dwelling Unit in the project by Declarant to the first owner thereof (other than Declarant) of five (5) years from the date this Declaration is recorded in the Boulder County, Colorado, land records, whichever occurs first, in order to comply with any requirements of the agencies or to induce any of the agencies to make, purchase, sell, insure, or guarantee First Mortgagees the dwelling units within this regime.

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

13.6 Attorneys' Fees and Costs. If any action is brought in a court of law or placed into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action. Attorneys' fees and costs may be paid by mutual stipulation of the parties in the event that any such action is resolved by stipulation and agreement of the parties.

13.7 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 or the intent of any of its provision.

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13.8 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 20<sup>th</sup> day of December.

ATTEST:

TERRY L. CORZINE, INC.

Laune Corzine  
Secretary

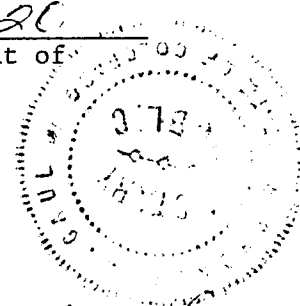
By Terry L Corzine  
President

STATE OF COLORADO     )  
                                  ) ss:  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 20 day of December, 1983, by Terry L. Corzine, President of Terry L. Corzine, Inc.

Witness my hand and official seal.

My Commission Expires: 12-15-85



Linda D. Saul  
Notary Public

Address: 3100 Arapahoe  
Boulder CO 80513