

TOP OF SKYWAY

FILING 8

MEMORANDUM

also see egress easement
filing #3 for Tyco

TO: Dennis Lesko and Joel Ernster
FROM: Tom James
DATE: January 17, 2000
RE: Tyco Court

We have discussed the possibility of turning over to the City of Colorado Springs the responsibility for maintenance of that portion of Tyco Court which is now a private street. Legally, this would mean dedicating public right of way for the street and having it accepted by the City as a public street.

During the first week of this month I contacted the City and was informed that Pat Jernigan (who is an engineer in the City's Department of Public Works - a copy of his business card is included as Attachment A), would be able to look into the situation and talk with me about the background of what happened when your street was developed as a private street by the developer (Sellon) and what would be necessary to cause the street to meet the requirements for a public street. I talked by phone with Pat on January 5, 2000 about the reason for my inquiry. He did some research and later that day called back, leaving me a voice mail message with some information. Attachment B is a transcript of his message. I called back and made an appointment to meet with him to go over the information.

I met with Pat on January 13. The following appear to be the relevant issues for consideration and further research:

1. According to Pat, when your area was platted in July 1990 by Sellon as Top of Skyway Filing No. 8, it was platted as a private street and no public right of way was dedicated for a public street. Instead, a private easement was created through the filing for purposes of constructing your street. The result was that each homeowner's property line extends to the middle of your street and the setbacks for purposes of physically locating and constructing your homes are measured from the center line of your street. Therefore, the City's criteria for construction of your street did not apply.

2. For purposes of City street design and planning criteria, your street is subject to the criteria classification which is called "Hillside Residential Lane." Attachment C is a copy of the City Engineering Street Design Review Criteria. Refer to the highlighted column for the relevant design and construction criteria for the necessary right of way (ROW), street width, pavement, grade, curb and sidewalks.

3. According to Pat, your street is 24 feet wide, with no sidewalks. Thus, he indicates that the "private easement" which was platted for your street is 24 feet wide.

4. The required public ROW for your street would be 40 feet, to include the width of the street, necessary curb and a sidewalk on one side of the street.

5. Pat says that since your street is 24 feet wide, it meets the City's criteria.

6. However, he indicates that your street does not have the necessary sidewalk nor required curb construction. Attachment D is a copy of a diagram provided by Pat which indicates the necessary dimensions of the street, sidewalk and curb for the Hillside Residential Lane criteria (note that he did not have an exact copy of this diagram at his disposal when I met with him and so he copied the "Hillside Minor Residential" criteria and hand-wrote the applicable differences).

7. See Attachment E for a copy of the requirements for the necessary curb (with alternative construction of "vertical curbs" or "ramped curbs." While Pat indicates that your street does not have the appropriate curb, I do not know this to be a fact. This matter may need further investigation. He suggested that your street probably needs a "Type 1" (vertical) curb, but he could not give a definitive position on this.

8. Pat also indicates that, according to the City records, the asphalt construction for your street does not meet the applicable criteria. Attachment F describes these criteria. It appears that alternative criteria apply. First, the treated subgrade could be 6 inches and the asphalt could be 2 inches. Alternatively, the full asphalt depth could be 4 inches. Pat indicates that neither requirement was met for your street. Again, I have not independently verified whether he is correct in his conclusions and this issue likely needs further investigation.

9. As for the grade or slope of your street, it was Pat's belief, based on the contour lines reflected on the approved plat in the City's records, that your street does not have a problem in meeting the allowable grade requirements for the Hillside Residential Lane classification.

10. However, a potential problem is the required setback for construction of homes from the edge of the public ROW. As noted above, the width of the necessary ROW would be 40 feet, or a total of 20 feet on each side of the center line of your street. Once this distance is measured, your area is then subject to a setback of 20 feet for construction of improvements (i.e., houses). While Pat could not give me a copy of anything which sets forth this requirement (therefore, this needs verification), it appears that you would need to check whether any of the homes on your street are built at least 40 feet from the center line of the street (i.e., beyond the required 20 feet ROW from the street center line and an additional 20 feet for the required setback.) Pat suggested that we should contact the engineering inspector for the Skyway area to verify the setback issues. This person is Fred Popovich, who, according to Pat, worked on your Filing when it was platted by Sellon. Mr. Popovich's phone number is 385-5077. I have not yet contacted him.

11. Depending on what is independently verified from what has been indicated by Mr. Jernigan, if it is necessary to take action to meet the requirements which are not now met for a public street, the process would likely include the following:

(I) Engage an engineer who can inspect the construction of your street and the various measurement of width of the ROW and the street, asphalt and subgrade construction, curb construction, sidewalk construction and setbacks. A boring of the street asphalt and subgrade may be necessary.

(ii) Apply to the City to re-plat Filing No. 8 to create the necessary public ROW and setbacks.

(iii) Undertake the necessary re-design of the street.

It is likely that one of the City planners would be able to assist with determining the necessary application and processing requirements.

I hope this information is helpful. I would be willing to assist you with obtaining additional information if you desire to proceed further.



CITY OF COLORADO SPRINGS

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Public Works/City Engineering

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Wednesday, January 5, 2000 at 11:13 a.m.

Duration 3 minutes 27 seconds

VOICE MAIL MESSAGE

Hi Tom, this is Pat Journigan with City Engineering. I just did some research on Tyco Court and I've got your answer for you and I probably can save you a trip in here. Tyco Court was platted as a public right of way and Skyway Northwest 3--Filing No. 3--which is just north of Top of Skyway Filing No. 8. There was no right of way platted whatsoever on Top of Skyway Filing No. 8--there is only an access easement and so the extension of Tyco Court into Top of Skyway Filing No. 8 is only an access easement. Therefore, as it currently exists, it cannot be accepted as the City right of way--as a public right of way. What you would need to do you would probably--not probably--you would have to replat the area involved and what you'd have to do is actually dedicate right of way for that street--probably a 50-foot right of way so all the properties that it currently runs through the lots run through as a easement right now--would have to give up right of way--it would have to give up public right of way--and the street would have to be reconstructed to city standards. Right now it is too narrow--it has substandard curves--and it would also have to have an engineer's report showing an asphalt base and that is almost certainly not up to city standards either. So you would have to replat it to a city minimum right of way. You might be able to get the hillside 40-foot right of way because it is only accessing a few lots but that would be up to--it would have to be reviewed. It would have to be at least 40 and probably 50-foot right of way and then the street would have to be rebuilt. You know the asphalt base and the curb and gutter. It would have to be reviewed by engineering, it would have to be reviewed by planning, it would have to be reviewed by the fire department for safety--the whole review process it would have to go through--that would be what you'd have to go through to get that a public right of way. So that I think that would probably answer the questions that you had. Anyway, if you have any other questions, please feel free to call me back 385-5098 and, if you still would like to come in and look at the files and that, you're welcome to, but you'll pretty much just find out what I just told you. You can even look at the county assessor's map and you can see that there's no right of way privacy there what is there was not right of way platted at Top of Skyway Filing No. 8. Anyways, I hope that helps. Thanks, have a good day.

Skyway Area

section of to into

CITY ENGINEERING
STREET DESIGN REVIEW CRITERIA
 (February, 1999)

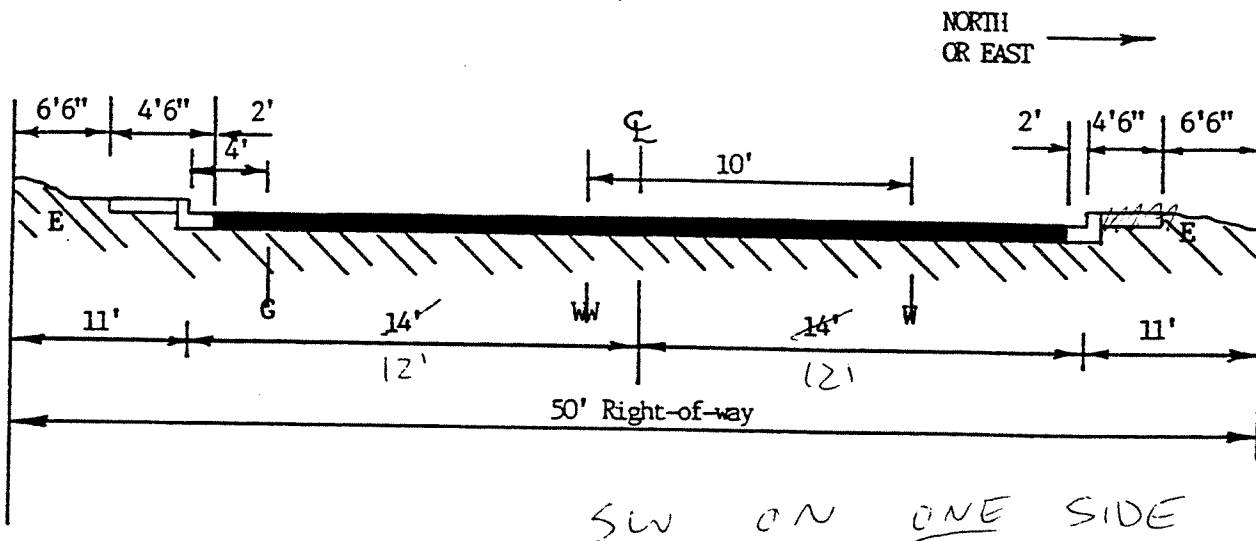
	MAJOR ARTERIALS	MINOR ARTERIALS	MAJOR COLLECTOR	MINOR COLLECTOR	INDUSTRIAL COMMERCIAL	RESIDENTIAL	HILLSIDE MINOR RESIDENTIAL	HILLSIDE RESIDENTIAL LANE	HILLSIDE ACCESS PLACE
Row, width	140' - 160'	80' - 96'	66'	60'	65'	50' 1	50' 1	40' 1	40' 1
Design speed f/c - f/c	45	40	35	30	30	25.7 - 30	25.7	25.7	25.7
Pavement Width	83' - 120'	60' - 72'	44' 2	36' 3 40' 4	44'	34'	28'	24'	20'
Lot Restrictions	None	None	None	None	None	None	None	20 or less	5 or less
Design ADT	15,000 - 50,000	10,000 - 25,000	3,500 - 10,000	1,500 - 3,500	7,500 - 10,000	750 - 1,500	200	200	50
Design ESAL	1,450,000 *	730,000 *	219,000 *	87,600	51,100	51,100	14,600	14,600	14,600
Sidewalk Placement	5' wide Detached	5' wide Detached	5' wide Detached	5' wide Detached	5' wide Detached	4' wide Detached	4' wide Detached	Attached, one side only 4' w	Attached, one side only 4' w
Allowable Grades	0.5% - 4%	0.5% - 4%	0.5% - 8%	0.5% - 10%	0.5% - 8%	0.5% - 10%	0.5% - 10%	0.5% - 10% 5	0.5% - 10% 6
Min. Horizontal Radii	700' - 930'	700'	450'	300'	450'	200'	150'	100'	100'
Min. Vertical Alignment	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3	Refer to Standard Design No. 3
Intersection Grade Allowable Curb Type	0.5% - 2% Type 1	0.5% - 4% Type 1	0.5% - 4% Type 1	0.5% - 4% Type 1	0.5% - 4% Type 1	0.5% - 4% Type 1 or 2	0.5% - 6% Type 1 or 2	0.5% - 6% Type 1 or 2	0.5% - 6% Type 1 or 2

- 1 - 5' Public Improvement Easement is required, both sides.
- 2 - 54' at intersection with arterial.
- 3 - No parking, no backing, or maneuvering/without bikes.
- 4 - 44' at intersection with arterial.
- 5 - Attached allowed with vertical curb and for cul-de-sacs with less than 20 lots.
- 6 - 10 percent - 12 maximum percent allowed for distances of no more than 250'.
- 7 - Requires posting by Traffic Division with notation on plan.
- 8 - Requires traffic study, values are for planning purposes only.

nor more than ten percent (10%). The Director of Public Works may increase the grade for short distances, if in his opinion such an increase is necessary to preserve the natural terrain of the area being subdivided. Grades of 12% may be considered for unique short distance.

B. Alignment

1. Horizontal - 150 foot radius at centerline
2. Vertical - A minimum length equivalent to "K" value times the algebraic difference in the rate of grade.



Adjustments in the factor for these conditions can only be made on the basis of judgement.

Theoretically, conditions could require the use of different factors for various portions of a project; however, the design will normally be based on the highest regional factor that prevails for a substantial portion of the project. In extreme cases, two or more regional factors may be used.

3.5 Minimum Pavement Section

This paragraph provides the minimum acceptable pavement sections for public streets in the City. These pavement thicknesses may be used for preliminary planning purposes. Table 4 lists these minimum thicknesses for each roadway classification.

3.6 Flexible Pavement Strength Coefficients

Table 5 contains the standard design strength coefficients for various pavement materials. Nonstandard design coefficients may be used only if approved in advance by the City. In addition, design values must be verified by predesign mix test data and supported by construction tests.

3.7 Portland Cement Concrete Working Stress (f_r)

The working stress (75% of flexural strength) to be used in the design shall be that provided by third-point beam loading and shall have a minimum 28-day strength value of 600 psi, unless a higher value can be justified by actual tests of materials to be used.

TABLE 4

RECOMMENDED MINIMUM PAVEMENT SECTIONS				
Classification	Composite Section		Full Depth Asphalt (Inches)	Portland Cement Concrete (Inches)
	Asphalt Inches	Treated Subgrade or Base (Inches)		
Residential	2.0	6.0	4.0	5.0
Minor Residential Collector	2.0	6.0	4.0	5.0
Major Residential Collector	2.5	6.0	4.5	5.0
Minor Arterial	3.0	6.0	5.0	6.0
Major Arterial	3.5	6.0	5.5	6.0

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EL PASO COUNTY CLERK & RECORDER

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 Affecting the Real Property known as
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DECLARATION
OF
Conditions, Covenants, Restrictions, Easements and Charges
Affecting the Real Property known as
TOP OF SKYWAY FILING NO. 8
THIS DECLARATION made by J. Thomas Stoen, Owner,
herein after called Declarant.
WITNESSETH:

WHEREAS, Declarant is the owner of a residential area of the City of Colorado Springs, to-wit: all the Lots in Top of Skyway Filing No. 8 (hereinafter the "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance and for the convenience of its residents and to this end desires to subject the Subdivision to the Covenants, Restrictions, Easements, Charges and Liens hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant declares that the real property Top of Skyway Filing No. 8 is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Restrictions, Easements, Charges and Liens (sometimes herein referred to as "Covenants") hereinafter set forth.

ARTICLE I

Covenants to Preserve the Residential
Character of the Subdivision

Single Family Residential Restrictions.

Section 101. All lots and building sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any lot or building site.

Section 102. No structure shall be erected within the Subdivision except single-family dwellings and those accessory buildings and accessory structures which have been approved by Declarant. No structure other than a dwelling, no accessory building other than a guest house or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other structure may be placed on any building site before completion of the dwelling upon such building site except with written permission of Declarant.

Section 103. No tent, treehouse, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lot at any time except with permission of Declarant or except as provided in Section 108.

Section 104. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a lot or building site except as expressly provided for in Section 10B.

Section 105. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvement, unless enclosed in a service yard or within a building so as not to be visible from any neighboring property or adjacent streets.

Section 106. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 107. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would in result great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without written permission of Declarant, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and forthwith removed by Declarant at the cost of the owner.

Section 108. Temporary buildings for use in connection with construction within the Subdivision or in connection with sales of new homes or lots may be erected or maintained and model homes may be used and exhibited by Declarant, by anyone who owns or holds a contract or option to acquire two or more lots in the Subdivision, and with Declarant's permission by any lot owner. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary building shall be promptly removed when no longer used for the designed purposes.

Section 109. No derrick or other structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of said property, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

EASEMENTS.

Section 110. Unless shown greater in width, both sides of all side lot lines are hereby platted with a five (5) foot wide easement for Public Utilities only and both sides of all rear lot lines are hereby platted with a seven (7) foot wide easement for Public Utilities and Drainage only, with the sole responsibility for maintenance being vested in the adjacent property owners.

Section 111. Every owner shall have a non-exclusive right and easement for ingress, egress, and public utilities over that private road identified and known as Tyco Court, in Top of Skyway Filing No. 8 and including all private water facilities, such easement shall be appurtenant to and shall

pass with title to every lot.

The Declarant, for each lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of the Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay a share of the costs of maintenance, repair, upkeep, cleaning and snow removal of Tyco Court in Top of Skyway Filing No. 8 and the utilities located therein. The share for each Owner shall be the percentage that the Owner's Lot bears to the total number of Lots within the Subdivision recorded as Top of Skyway Filing No. 8. The costs of said repairs, upkeep, and maintenance shall be as determined by a majority of the Lot Owners with each lot representing one vote.

Any costs of said repairs and maintenance not paid within thirty (30) days shall bear interest at the rate of two per cent (2%) over the prime rate of the First National Bank of Colorado Springs per annum. The Declarant, the Architectural Control Committee, or a majority of the property owners may bring an action at law against the Owner personally obligated to pay the same or foreclose the same as a lien against said Owner's Lot. In the event a judgement is obtained, said judgement shall include interest as above provided together with reasonable attorney's fees, plus the costs of the action. No owner may waive or otherwise escape liability for said costs provided for herein by non-use of the street or abandonment of his lot.

Section 112. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

Section 113. All utilities except lighting standards and customary service devices for access, control, or use of utilities shall be installed underground.

Density, Set Back and Quality Standards.

Section 114. No more than one dwelling shall be erected or maintained within any building site, to-wit: a lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved by Declarant and aggregating not less than 20,000 square feet.

Section 115. No private passenger motor vehicles owned by, belonging to, used, leased or controlled by an Owner or his tenant shall be parked overnight on any street. The structures on each lot or building site shall include a two-car fully enclosed garage or such equivalent garage arrangements as may be approved by Declarant. The site improvements on each lot or building site shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles. All driveways shall be improved with asphalt or concrete paving unless otherwise approved by Declarant.

Section 116. Except with Declarant's approval no building, porch, eaves, overhang, projection or other part of a building shall be located within twenty (20') feet on Tyco Court, or within five (5) feet of a side lot line, and Lot No. 6 shall have a thirty (30') foot side setback from the Northerly lot line being adjacent to the thirty (30') foot easement recorded in Book 2969 at Page 356, or, where the

side lot adjoins a public street within twenty (20') feet of such side lot line adjoining a public street, or twenty-five (25') feet of rear lot line. Such approval may be given only (a) for fireplace projections integral with the building (b) for eaves and overhangs or (c) for construction which extends less than ten (10') feet into the setback areas adjoining public streets or less than five (5') feet into any other setback area and which Declarant determines to be consistent with or required by the lot terrain or lot shape and consistent with superior design. No fence or hedge more than two (2') feet high shall be installed or maintained at any location or a lot which is closer to an adjoining street than the dwelling or any other building situated on the lot. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Colorado Springs, which regulations may vary from the provisions of this Section and other Sections.

Section 117. No dwelling shall be erected which has an Architectural Floor Area of less than 1,900 square feet. Architectural Floor Area is the sum of the following percentages of gross square foot areas:

Gross square feet on main living level	100%
Gross square feet on finished upper stories above main living level or garden level	75%
Gross square feet on finished garden level with direct walkout access to outside	50%
Gross square feet on finished basement level	25%
Gross square feet of balconies, raised decks, covered patios	25%
Gross square feet of attached garage area in excess of 400 square feet	50%

Gross square feet covers the exterior perimeter of the area being measured.

Section 118. No dwelling or other structure shall exceed thirty-five (35') feet in height.

Section 119. Architectural standards are established to the end that the Subdivision may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, Southwestern and Western styles typical of the Pikes Peak region are desirable. Formal styles such as French Provincial, English Tudor and Colonial will not be approved except in modified forms. All buildings must be designed to fit the natural contours of the lot without excessive grading. All buildings shall be designed and all plans signed by a registered architect or by a qualified designer approved by Declarant.

Section 120. All buildings shall conform to the following material and appearance standards:

- a) Exterior materials shall be natural wood, brick, stone, stucco, or natural material approved by Declarant. Manufactured siding such as masonite will require specific approval by Declarant.
- b) Aluminum or wood windows are permitted. All aluminum windows shall be anodized and painted or coated a color to blend with the color of the building.

- c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.
- d) Exposed concrete shall be stuccoed and painted or textured in a manner approved by Declarant.
- e) All roof areas shall be of wood shakes, wood shingles, tile, slate, copper, or such other material as may be approved by Declarant. Asphalt roofing materials are not permitted.

Section 121. Fencing shall be very limited to privacy areas and animal control areas adjoining the primary dwelling only. Fencing along lot lines is not allowed unless approved by Declarant. All fences and walls shall be designed and constructed as a visual extension of the architecture of the primary dwelling, including both scale and use of materials. The painted, stained or natural coloration of fences shall be consistent with the coloration of the primary dwelling.

Section 122. Within six (6) months after completion of a dwelling or within any extension of that period granted by Declarant, all yards and open spaces, ~~except as prevented by~~ subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is intended. No existing trees, surface boulders, or scrub oak shall be removed from any lot unless required by construction activity and unless approved by Declarant. The use of gravel, small rocks, and paving as landscape materials is not desirable.

Section 123. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot.

Section 124. No aerial or antenna for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

Section 125. Each Owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutter, downspouts, roofs, paving, lawn, shrubs, trees, other landscape material, fences, signing, mail boxes and outdoor lighting.

Section 126. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris must be removed and the lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months.

Living Environment Standards.

Section 127. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

Section 128. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 129. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 130. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 131. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections.

Section 132. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on on any lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any living unit.

Section 133. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any building site.

Section 134. All such yards and open spaces and the entire area of every lot on which no building has been constructed, shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the opinion of Declarant are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the opinion of Declarant causes undue danger of fire.

Section 135. In order to effect insect, weed and fire control or to remove nuisances, Declarant has the right at its election to enter upon any lot upon which a building has not been constructed and to mow, cut, prune, clear and remove from the premises, brush, weeds or other unsightly growth which in the opinion of Declarant detracts from the overall beauty, setting and safety of the area, and to remove any trash without such entrance and removal being deemed a trespass.

Section 136. When purchaser begins construction on said lot, it is understood that a trash contained area will be provided, properly used and maintained. Should developer

incur any cost of trash pickup due to lack of maintenance of the purchaser the fee for trash pickup will be charged to the purchaser.

Section 137. No material change may be made in the ground level, slope, pitch or drainage patterns of any lot as fixed by the original finish grading except after first obtaining the prior consent and approval of Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Special attention should be paid to the revegetation of approved grades and cuts to eliminate erosion.

DESIGNATION AND USE OF THE PRESERVATION AREA/DRAINAGE EASEMENT.

Section 138. Certain areas within lots have been designated as Preservation Area/Drainage Easement. The Preservation Area shall be used by each lot owner only in such a manner as is consistent with the preservation of the natural growth. Preservation Areas/Drainage Easements shall not be subjected to any kind of intensive or destructive use or any activity which might result in permanent damage to the existing natural growth. In amplification and not in limitation of this general restriction, the following specific restrictions are imposed:

- A. No planting or cultivation shall be permitted except planting or cultivation of plants native to the Fikes Peak region.
- B. No alteration of ground conditions and no clearing of living growth shall be permitted except for utilities and drainage structures approved by the Declarant.
- C. No structures or installations of any kind shall be permitted except for approved utility and drainage structures.
- D. No vehicles or conveyances of any type shall be permitted in the Preservation Area except on approved utility easements and drainage structures or except to preserve order or to protect, preserve or maintain the Preservation Area.
- E. No activity tending to produce litter shall be permitted.
- F. The Drainage Easement is for the passage of storm water runoff.

Restriction Requiring Declarant's Authority.

- Section 139.** Except as Declarant may from time to time grant permission, which permission shall be revocable:
- a. No aerial or antenna for transmission of radio or television or other electronic signals may be maintained or erected within the Subdivision. No electronic or radio transmitter of any kind other than garage door opener shall be operated in or on any structure or within any building site.
 - b. No animals except an aggregate of three (3) domesticated dogs or cats and except domesticated birds and fish and other small domesticated animals permanently confined indoors shall be maintained within the Subdivision and then only if kept as

pets. No animal of any kind shall be permitted which in the opinion of Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

c. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, or truck excepting only pickup solely for the private use of the residents of a dwelling shall be parked overnight on any street or within any lot or building site except in a completely enclosed structure, or fully screened in a manner approved by Declarant so as not to be visible at ground level from any neighboring property or street.

d. No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any lot in such a manner as to be visible at ground level from any neighboring property or street.

e. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.

f. The only signs permitted on any lot or structure shall be:

One sign of customary size for offering of the signed property for sale or for rent;

One sign of customary size for identification of the occupant and address of any dwelling;

Such multiple signs for sale, administration and directional purposes during development;

Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and

Such signs as may be required by law.

There shall not be used or displayed on any lot or structure any signs except those mentioned above or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

Architectural Control by the Declarant.

Section 140. No structure shall be commenced, erected, placed, moved onto a lot, permitted to remain on any lot or altered in any way so as to change materially its exterior appearance, except in accordance with plans, specifications and other information submitted to Declarant and approved by Declarant not more than two (2) years before start of the construction, alteration or installation.

Matters which require the approval of Declarant include but are not limited to: the exterior appearance, material, color, height, location of each structure, drive, walk and fence and mailbox, grading of site, site lighting, and location, size and type of any landscape material including grass, ground cover, ornamental rock, shrubs and trees.

Section 141. In granting or withholding approval Declarant shall heed the standards specified in these Covenants and shall also consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relations of the structure to the environment and to surrounding uses, the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in an urban residential area from considerate neighbors.

Section 142. All plans, samples and other materials to be submitted to Declarant shall be submitted in duplicate. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan in said minimum scale shall show the location of all buildings, drives, walks, fences and any other structures. Proposed new contours throughout the lot and abutting street elevations on all sides shall also be shown. ~~Structure plans shall show all exterior elevations,~~ and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If requested, a soils report for the building site shall be supplied to Declarant. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the lot not covered by structures. The size and type of all new plant materials shall be indicated.

Section 143. A written statement of the approval or disapproval or other action by Declarant, acknowledged by an officer of Declarant, shall establish the action of Declarant and shall protect any person relying on the statement. If Declarant does not execute and acknowledge such a statement within thirty (30) days after delivery of all the required materials to Declarant's principal office, the material so delivered shall stand approved for the purpose of these covenants. Declarant shall be entitled to retain one copy of all approved plans as part of Declarant's files and records.

ARTICLE II
Powers and Responsibilities of Declarant

Variances.

Section 201. Declarant shall have authority to grant for a lot or building site a variance from the terms of one or more of Sections 107, 116, 117 and 126 subject to terms and conditions fixed by Declarant as will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of all of those Sections will result in unnecessary hardship.

Following an application for a variance:

- a) Declarant shall call a meeting of Owners of lots in the Subdivision, to be held at Declarant's principal office, notice of which meeting shall be given to the Owners at least twenty (20) days in advance, at which meeting all owners shall have the opportunity to appear and express their views.

- b) Whether or not anyone appears at the meeting in support of or in opposition to the application for a variance, Declarant shall within one (1) week after the meeting either grant or deny the variance.
- c) A variance granted hereunder shall run with the lot or building site for which granted.
- d) If a variance is denied another application for a variance for the same lot or building site may not be made for a period of one (1) year.
- e) A variance shall not be granted unless Declarant shall find that all of the following conditions exist:
 - i. The variance will not authorize the operation of a use other than private, single-family residential use;
 - ii. Owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;
 - iii. The variance will not substantially or permanently injure the use of other property in the Subdivision;
 - iv. The variance will not alter the essential character of the subdivision;
 - v. The variance will not weaken the general purposes of these covenants;
 - vi. The variance will be in harmony with the spirit and purpose of these covenants;
 - vii. The circumstances leading the applicant to seek a variance are unique to the lot or building site or its owner and are not applicable generally to lots in the Subdivision or their owners.

Declarant's Successors and Assigns.

Section 202.

- a) Ten years after Declarant first conveys a lot in the Subdivision to a purchaser or at such earlier time as Declarant may choose, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other functions, rights, and powers under Sections 102, 103, 107, 108, 114, 115, 116, 117, 118, 119, 122, 134, 135, 136, 137, 138, 139, 140, 141, 142 and 201 and its responsibilities under Section 143 to an Architectural Control Committee of three (3) members, each of whom shall be an Owner of a Lot in the Subdivision; or the Owner of a lot in such other single-family residential subdivisions in the same general area as are determined by Declarant to contain lots substantially similar in size, character and value to Lots in the Subdivision; or an officer, director or employee of Declarant.
- b) Thereafter any one or more members of the Architectural Control Committee may from time to time be removed and their successor or successors designated by an instrument signed and acknowledged by the Owners of at least 50% of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.
- c) The Architectural Control Committee may delegate to one of its members any or all of the functions and powers of the committee and until such delegation is revoked or modified the action of the member to whom such elevation is made shall

constitute the action of the committee for the purposes of these covenants.

d) The committee may take action without a meeting by a written statement signed by the members of the committee or by their delegate.

e) Vacancies in the Architectural Control Committee may be filled by action of the remaining member or members of the committee, subject always to the power of the Owners to remove and designate members of the Architectural Control Committee pursuant to Section 202.

f) Declarant, or its successor Architectural Control Committee, may, if it determines such action to be in the best interest of the Owners, cause the Architectural Control Committee for the subdivision to be merged with the Architectural Committees of other single-family residential subdivisions in the same general area that contain lots of substantially similar size, character and value as Lots in the Subdivision. Such merger shall be accomplished by filing with the County Clerk and Recorder of El Paso County a written document signed by Declarant, or by the Architectural Control Committee for each subdivision participating in such merger, acknowledging the action and appointing an Architectural Control Committee for the merged group. Thereafter, all functions of the predecessor individual Architectural Control Committees will be performed by the new merged Architectural Control Committee, and the substitution of members provided for in Section 202(b), will require action by 50% of the owners of lots in all of the subdivisions in the merged group.

Officers and Agents Excused from Liability.

Section 203. Declarant, the officers and directors, members and agents of Declarant, and the members of the Architectural Control Committee shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

Declarant Can Remedy Violations.

Section 204. Until the time for establishment of the Architectural Control Committee as provided by Section 202(a), Declarant may, and after its establishment the Architectural Control Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the lot where a breach occurs or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach, and the intent of the Committee or Declarant to invoke this Section unless with a period stated in the notice, not less than five (5) calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice of the Committee or Declarant (whichever gives the notice) may cause the breach to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the Committee or Declarant shall be paid by the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice

of the amount due, such amount, plus interest at the rate of twelve (12%) per annum and plus cost of collection, shall be a lien on the ownership interest in the lot (including improvements thereon) of each person so notified and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection against the Owner personally obligated to pay and may bring an action to foreclose the lien against the lot and improvements subject to the lien and there shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgement in any such action shall include interest as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The foregoing specified right and remedies shall not limit the right of any lot owner to enforce these covenants as otherwise may be provided by law or equity.

ARTICLE III

General Provisions for Effect of the Covenants

Definitions.

Section 301. The following words and expressions as used in these Covenants have the meaning indicated below unless the context clearly requires another meaning:

Accessory Building: Detached garages, patios, swimming pools, dressing rooms for swimming pools, separate guest house without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence.

Building Site: A lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved by Declarant and aggregating not less than 20,000 square feet.

Cost of Collections: All expenses and charges incurred, including attorney's fees:

These Covenants: This Declaration and the provisions contained in it.

Declarant: J. Thomas Stoen, Owner. After transfer pursuant to Section 202(b), Declarant means the transferee.

Declarant's Principal Office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is no such office, then Declarant's registered office for service of process, and if there is none, then the location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.

Lot: Each area designated as a lot in the recorded plat of the Subdivision.

Lot Lines: Front, side and rear lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time; in the absence of such a definition a front lot line is each boundary line between the lot and any public street which affords the principal access to the lot; a side lot line is any boundary line which meets and forms an angle with the front lot line.

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Other lot lines are rear lot lines.

Owner: Person having fee simple legal title to a lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other things or device which affects or alters the natural flow of surface waters upon or across any lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any lot.

The Subdivision: The area subdivided as Top of Skyway Filing No. 8, according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.

Enumerations Inclusive: A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

Captions.

Section 302. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

Covenants Run with the Land.

Section 303. These Covenants shall run with the land and shall inure to and be binding on each lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any lot in the Subdivision.

Covenants are Cumulative.

Section 304. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

These Covenants may not be Waived.

Section 305. Except as these Covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a

requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the ground of waiver.

Right to Enforce the Covenants.

Section 306. These Covenants are for the benefit of the Owners jointly and severally, and Declarant and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Declarant, the Architectural Control Committee or any combination of them. All costs, including reasonable attorney's fees, incurred by Declarant, or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant or by the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants.

Duration of Restrictions.

Section 307. Except for Sections 111 and 112, all of the provisions of these Covenants, unless sooner terminated as provided in Section 308 or Section 309 shall remain in force until the year 2039 A.D. and shall be automatically renewed for successive periods of ten (10) years unless before the year 2039 or before the end of any ten-year extension there is filed for record with the County Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of at least one-half (1/2) of the lots in the Subdivision.

Amendment, Termination and Extension.

Section 308. From time to time any one Section of these Covenants (except Sections 110, 111 and 112) may be amended or one new Section may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

Section 309. All Sections of these Covenants (except Sections 110, 111 and 112) may be terminated at any time, and from time to time any two or more Sections of these Covenants (except Sections 110, 111 and 112) may be amended or two or more new Sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least three-fourths (3/4) of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

Property Rights Remain.

Section 310. Sections 110, 111 and 112 concern property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

Severability.

Section 311. If any of these Covenants shall be held invalid or become unenforceable the other Covenants shall in

no way be affected or impaired but shall remain in full force and effect.

Action in Writing.

Section 312. Notices, approval, consents, extensions, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action. Permission, consent or approval of Declarant or the Architectural Control Committee under these Covenants is not effective unless in writing.

Notices.

Section 313. Any writing described in Section 312, including but not limited to any communication from Declarant or the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situated on the lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

