



Table of Contents

DECLARATION

Conditions, Covenants, Restrictions, Easements and Charges
Affecting the Real Property known as

TOP OF SKYWAY FILING NO. 14

Section Page

ARTICLE I COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER AND QUALITY OF THE SUBDIVISION

101-109	Single Family Residential Restrictions.....	2
110	Easements.....	3
112-123	Density, Setback and Quality Standards.....	3
124-138	Living Environment Standards.....	4

ARTICLE II POWERS AND RESPONSIBILITIES OF THE DECLARANT

201	Architectural Control by the Declarant	6
202	Variances	6
203	Declarant's Successors and Assigns	7
204	Officers and Agents Excused from Liability	7
205	Declarant Can Remedy Violations	7
206	Homeowners' Association.....	7

ARTICLE III GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

301	Definitions	8
302	Captions	8
303	Covenants Run With the Land.....	8
304	Covenants are Cumulative	8
305	These Covenants May Not be Waived	8
306	Right to Enforce the Covenants	8
307	Duration of Restrictions	9
308	Amendment and Termination.....	9
309	Property Rights Remain	9
310	Severability	9
311	Action in Writing	9
312	Notices	9
313	Interpretation of Covenants	9



DECLARATION
of
Conditions, Covenants, Restrictions, Easements and Charges
Affecting the Real Property known as
TOP OF SKYWAY FILING NO. 14

THIS DECLARATION made by J. Thomas Stoen, hereinafter called Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of a residential area of the County of El Paso, to-wit: all the Lots in Top of Skyway Filing No. 14 (hereinafter the "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance of certain Subdivision amenities and for the convenience of its residents and to this end desires to subject the Subdivision to the conditions, 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 known as Top of Skyway Filing No. 14 is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens ("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. Except as provided for in Section 108, 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 or commercial use or activity which violates any applicable law or zoning ordinance 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 more than one dwelling may be erected on any Lot. 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. All accessory buildings and structures must be compatible and in harmony with the dwelling on the Lot.

Section 103. Except as permitted in Section 108, temporary living or camping quarters or other temporary structures shall not be permitted on any Lot at any time. Tents and treehouses shall not be permitted on any Lot without the permission of Declarant and in any event shall not be visible from any street or adjoining property and shall not be used for habitation.

Section 104. All construction shall be new. Declarant may in limited cases permit use of used materials such as antique items. 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 108.

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 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. Trees, scrub oak and other natural vegetation shall be protected during construction. Declarant may require that the area to be graded or otherwise disturbed be enclosed by fencing prior to the start of construction, and all construction, material storage, parking and all other activities be restricted to such fenced area. No other Lot or adjoining property may be used or disturbed without the prior written consent of Declarant.

Section 107. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. 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 result in 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 may forthwith be removed by Declarant at the cost of the owner.

J. Patrick Kelly El Paso County
11/04/1998 08:55
Doc \$0.00 Page

098160440

Section 108. Temporary structures for use in connection with construction within the Subdivision or in connection with sales of new homes or Lots may be erected or maintained in the Subdivision by Declarant and those authorized by Declarant. Model homes may be used and exhibited by Declarant and those authorized by Declarant. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary buildings shall be promptly removed when no longer used for the designed purposes.

Section 109. When construction commences on Lot, a trash container area will be provided, properly used and maintained. During the progress of construction, the owner of a Lot shall ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. No construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly cleaned up by the Owner of the Lot which generated such trash.

Section 110. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible, and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the five foot (5') strips along and adjoining the side boundary lines of each Lot and each of the seven foot (7') strips along and adjoining the rear boundary lines of each Lot, for use of all or part of such areas or lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

Section 111. All utilities, including electrical, telephone and cable television service, except lighting standards and customary service devices for access, control, or use of utilities, shall be installed underground.

Section 112. The structures on each Lot or building site shall include an attached two-car minimum 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, brick paver or concrete paving unless otherwise approved by Declarant.

Section 113. Except with Declarant's approval no building, porch, eave, overhang, projection or other part of a building shall be located within twenty (20) feet of a front Lot line; or within twenty (20) feet of a rear lot line; or within ten (10) feet of a side Lot line, or, where the side Lot adjoins a public street, within twenty (20) feet of such side Lot line adjoining a public street. 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 on a Lot which is closer to an adjoining street than the dwelling or any other building situate on the Lot.

Section 114. All construction must also conform to the building codes, zoning codes and subdivision regulations of the City of Colorado Springs, Colorado, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

Section 115. No dwelling shall be erected which has a living area of less than three thousand (3,000) gross square feet, as measured from the outsides of the exterior walls.

Section 116. No dwelling or other structure shall exceed thirty-five (35) feet in height from the lowest elevation of the natural grade along the perimeter of the structure. In granting or withholding such permission Declarant shall give primary consideration to the protection of views from adjoining Lots.

Section 117. 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. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time.

Section 118. 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 is not desirable and 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 or complement the color of the building. White or off-white windows are not permitted.
- c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.
- d) Exposed concrete shall be stuccoed, painted or textured in a manner approved by Declarant.
- e) Earth tone colors are encouraged. Colors that are not compatible with the surrounding areas may be rejected. White or off-white colors are not permitted.
- f) 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 discouraged and will require specific permission of Declarant. Red roofing materials are not permitted.

Declarant shall have the right and authority to establish and amend specific building standards from time to time.

Section 119. Fencing shall be limited to privacy areas and animal control areas adjoining the primary dwelling. Fencing along Lot lines is not permitted. Fencing of front yards is not permitted. Fencing of a yard adjacent to a street is not permitted without the permission of 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 120. 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 desired. No lot may have more than 2000 square feet of turf grass area requiring irrigation, nor more than 3000 square feet of total landscaped area requiring irrigation, including turf grass areas. Instead, xeriscape landscaping practices are encouraged, including the use of native trees, shrubs and grasses which require little if any irrigation, so as to reduce the total irrigation needs of the landscape as much as practical. 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 121. No aerial, satellite dish or antenna greater than eighteen inches (18") in diameter 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. The placement of dishes and antennae of eighteen inches (18") or less in diameter will require specific approval of Declarant.

Section 122. 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 gutters, downspouts, roofs, paving, lawn, shrubs, trees, other landscape material, fences, signage, mail boxes and outdoor lighting.

Section 123. Any dwelling or building that is destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be restored or rebuilt; all debris must be removed and the Lot promptly restored to a sightly condition. Rebuilding or restoration shall be completed with reasonable promptness and in any event within three (3) months.

Section 124. 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 125. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 126. All maintenance equipment, including yard and garden 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 127. No outdoor clothes poles, clothes lines or other facilities for drying or airing of clothing or household goods are permitted.

Section 128. 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 129. 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 shall be permitted on any Lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any property.

Section 130. 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 any Lot, 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.

Section 131. 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 132. All 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 unsightly or 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. 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 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.

Section 133. 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.

Section 134. No animals except an aggregate of three (3) domesticated dogs or cats and except domesticated birds and fish and other small domestic 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.

Section 135. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, or truck shall be parked overnight on any street or within any Lot except in a completely enclosed structure, or in a fully screened manner approved by Declarant so as not to be visible from any neighboring property or street. No vehicles shall be parked overnight on any streets in the Subdivision. Commercial vehicle does not include a private passenger vehicle commonly described as a pickup.

Section 136. No stripped down, wrecked, unlicensed, inoperable or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any Lot in such manner as to be visible from any neighboring property or street.

Section 137. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or devise 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.

Section 138. The only signs permitted on any Lot or structure shall be:

1. One sign of customary size for offering of the signed property for sale or for rent;
2. One sign of customary size for identification of the occupant and address of any dwelling;
3. Such multiple signs for sale, administration and directional purposes during development;
4. Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
5. 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.

ARTICLE II
RESERVED RIGHTS OF THE DECLARANT

Section 201. Architectural Control by the Declarant. 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, basketball goal, grading of site, site lighting, and location, size and type of any landscape material including grass, ground cover, ornamental rock, shrubs and trees.

a. 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 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 a residential area from considerate neighbors.

b. 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.

c. A written statement of the approval or disapproval or other action by Declarant, signed 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 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.

d. In discharging its rights and obligations hereunder, the Declarant makes no representations or warranties to the Owner or any other person or entity concerning the construction of the structures on the Lot, and the Declarant shall have no liability or responsibility for defective construction or other similar matters.

Section 202. Variances. Declarant shall have authority to grant for a Lot or building site a variance from the terms of one or more of the Sections of Article I of these Covenants subject to terms and conditions established by Declarant that 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 those Sections will result in unnecessary hardship. Following an application for a variance:

a) Declarant shall call a meeting of Owners of those Lots in the Subdivision that Declarant determines, in the sole and absolute discretion of Declarant, will be affected by the variance, if granted. The meeting will be held at Declarant's principal office or at such other place designated by Declarant. Notice of the meeting shall be given to the applicable Owners at least ten (10) days in advance, at which meeting the owners shall have opportunity to appear and express their views. The opinions and views of the owners who attend the meeting shall be advisory only and shall not be binding upon Declarant.

b) Whether or not anyone appears at the meeting in support of or in opposition to the application for 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.

Section 203. Declarant's Successors and Assigns.

- 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 responsibilities, functions, rights, and powers under Articles I and II of these Covenants 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) After the Declarant has transferred its rights, powers and responsibilities pursuant to Section 203(a), 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 or more of its members any or all of the functions and powers of the committee and until each delegation is revoked or modified the action of the member to whom such delegation 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 203(b).
- 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 Control Committees of other single-family residential subdivisions in the same general area that contain Lots of substantially similar size, character and values 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.

Section 204. Officers and Agents Excused from Liability. 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.

Section 205. Declarant Can Remedy Violations. Until the time for establishment of the Architectural Control Committee as provided by Section 203(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 violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Committee or Declarant to invoke this Section unless within a period stated in the notice (not less than five (5) calendar days), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Committee or Declarant (whichever gives the notice) may cause the violation 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. Each Owner of a Lot hereby grants a license to the Declarant and the Committee for the purpose of entering on a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Committee or Declarant shall be paid by the Lot Owner and 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 eighteen per cent (18%) per annum and costs of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) 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 costs of collection against the Owner 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 costs of collection and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot owner to enforce these Covenants pursuant to Section 306 or as otherwise may be provided by law or equity; provided, however, that only the Declarant and the Committee shall have the right to proceed under this Section 205. In the event that the Declarant or Committee elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or improvements thereon that is unrelated to the remediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or Committee. In no event shall there be any liability for damage to a structure that is in violation of these Covenants.

Section 206. Homeowners' Association. The Subdivision shall be subject to, and each Owner of a Lot in the Subdivision shall be a member of, the Top of Skyway 10-B Homeowners Association as described in Book 6689 at Page 849 of the records of the El Paso County Clerk and Recorder.

ARTICLE III
GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

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

- a. Accessory Building: Patios, swimming pools, dressing rooms for swimming pools, separate guests house without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence.
- b. Building Site: A Lot as established by the recorded plat.
- c. Cost of Collections: All expenses and charges incurred, including attorney's fees.
- d. These Covenants: This declaration and the provisions contained in it.
- e. Declarant: Sellon Communities, Inc., a Colorado corporation. After a transfer pursuant to Section 203(a), Declarant means the transferee.
- f. Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is not 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.
- g. Lot: Each area designated as a Lot in the recorded plat of the Subdivision.
- h. 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. Other Lot lines are rear Lot lines.
- i. 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.
- j. Recordation. Means recordation in the real property records of the Clerk and Recorder of El Paso County, Colorado.
- k. 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, basketball backboard 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 thing 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.
- l. The Subdivision: The area subdivided as Broadmoor Oaks Subdivision Filing No. 4, according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.
- m. 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.
- n. 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.

Section 302. Captions. 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.

Section 303. Covenants Run with the Land. 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.

Section 304. Covenants are Cumulative. 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.

Section 305. These Covenants May Not be Waived. 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 grounds of waiver, laches or estoppel.

Section 306. Right to Enforce the Covenants. These Covenants are for the benefit of the Owners jointly and severally, and Declarant, and may be enforced by an 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 the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation of the Declarant to do such things.

Section 307. Duration of Restrictions. These Covenants shall remain in force until twenty years after the date of the recordation of these Covenants in the El Paso County Records, and shall be automatically renewed for successive periods of ten (10) years unless before the expiration of the initial twenty (20) years 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 two-thirds (2/3) of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty year term or ten year extension, as applicable.

Section 308. Amendment. From time to time any Section of these Covenants may be amended or deleted, or new Sections 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. During the ten years after the recordation of these Covenants in the El Paso County Records, Declarant reserves the right to amend these Covenants to include adding new Sections to these Covenants.

Section 309. Property Rights Remain. Section 110 concerns property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

Section 310. Severability. If any Section or Sections of these Covenants shall be held invalid or become unenforceable the other Sections of these Covenants shall in no way be affected or impaired but shall remain in full force and effect.

Section 311. Action in Writing. 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.

Section 312. Notices. Any writing described in Section 311, 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 situate 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.

Section 313. Interpretation of Covenants. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised Declarant's discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant has at all times exercised the discretion of the Declarant in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious.

In the event that the powers of the Declarant are transferred to an Architectural Control Committee in accordance with the provisions of Section 203(a) of these Covenants, then the provisions of this section shall be applicable to the Architectural Control Committee to the same extent as this section provides for the Declarant.

J. Patrick Kelly El Paso County
11/04/1998 08:55
Doc \$0.00 Page
Rec \$50.00 9 of 10

098160440

IN WITNESS WHEREOF, J. Thomas Stoen has executed this Declaration this 3rd day of November, 1998.

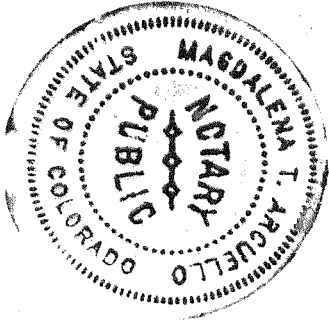
J. Thomas Stoen

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 3rd day of November, 1998 by J. Thomas Stoen.

My commission expires: March 23, 2001

Witness my hand and official seal.



Magdalena T. Arguello
Notary Public

J. Patrick Kelly El Paso County
11/04/1998 08:55 098160440
Doc \$0.00 Page
Rec \$50.00 10 of 10