

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
BRANDON CREEK

This Declaration is made the date hereinafter set forth by Markel Homes, Inc., a Colorado corporation, hereinafter referred to as Declarant.

WITNESSETH

WHEREAS, Declarant is the owner of certain real property situate in the County of Boulder, State of Colorado, more particularly described on Exhibit A attached hereto and by this reference incorporated herein ("Property"); and

WHEREAS, Declarant desires to establish a planned residential community on the Property, with Common Areas, open space areas, and Recreational Facilities owned and maintained by a non-profit corporation for the use and benefit of the Owners of residences within the Project through the granting of certain rights, privileges, and easements; and

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, and conveyed, and the improvements constructed and located thereon are hereby submitted and dedicated to the following terms, uses, limitations, obligations, easements, restrictions, covenants, and conditions, which are for the purpose of promoting and protecting the value and desirability of, and which shall run with, the Property, and shall be a burden and benefit to Declarant, its successors and assigns, and on all parties acquiring or owning any right, title, or interest in the Property and improvements thereon, or any part thereof, their heirs, grantees, personal representatives, executors, administrators, devisees, successors, and assigns.

Security

ARTICLE I.

DEFINITIONS

Section 1. "Assessments" shall mean all of the following: Common Expense Assessments; Insurance Assessments; Individual Assessments; Townhome Assessments; special assessments; and penalty assessments.

Section 2. "Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time to time.

Section 3. "Association" shall mean the Brandon Creek Homeowners and Recreational Association, Inc., a Colorado corporation not-for-profit, its successors and assigns.

Section 4. "Board" or "Board of Directors" shall mean the governing body of the Association.

Section 5. "Boulder" shall mean the County of Boulder, State of Colorado.

Parking info

Maintenance PPS / restrictions
Architectural Review Committee
P25 article IX

p. 8-9

with respect to appearance
of main homes

See p 15 FF for
fees + increases

Liens for nonpayment
of dues - P17

Section 6. "Building" shall mean each structure within the Project which contains one (1) or more single-family residences, including any garages or carports which are appurtenant to such structure.

Section 7. "Bylaws" shall mean the bylaws of the Association, as the same may be amended from time to time.

Section 8. "Common Area" shall mean that portion of the Property (including the improvements thereto) owned, operated, and maintained by the Association for the common use and enjoyment of all Owners (subject to Section 5 of Article III of this Declaration), which Common Area shall include, but not be limited to, common walkways, open space areas, community parking areas, private drives, and Recreational Facilities. Common Area shall not include the Lots or the Buildings.

Section 9. "Common Expenses" shall mean (i) expenses of administration, operation, management, maintenance, repair, and replacement of the Common Area; (ii) expenses declared Common Expenses by the Association; (iii) all sums lawfully assessed against the Lots and Condominium Units by the Board of Directors of the Association; and (iv) expenses agreed upon as Common Expenses by the Association.

Section 10. "Condominium Association" shall mean any association established under a Condominium Declaration to govern a condominium project.

Section 11. "Condominium Declaration" shall mean each declaration of covenants, conditions, and restrictions which establishes Condominium Units within any real property annexed to the Project pursuant to Article XIII hereof, and all amendments and supplements thereto.

Section 12. "Condominium Units" shall mean each condominium unit within the Project which has been created pursuant to a Condominium Declaration.

Section 13. "Declarant" shall mean Markel Homes, Inc., a Colorado corporation, and such successors and assigns as may be designated hereafter as "Declarant" by written notice duly executed and recorded by Declarant.

Section 14. "Declaration" shall mean this document, together with all exhibits attached hereto, and all amendments and supplements hereto.

Section 15. "Detached Home" shall mean each single-family residence located within a Lot which does not share a common party wall, floor, or ceiling with any other single-family residence or Building.

Section 16. "First Mortgage" shall mean a Mortgage which has first and paramount priority under applicable law.

Section 17. "First Mortgagee" shall mean a Mortgagee which takes, owns, or holds a First Mortgage.

Section 18. "Guest" shall mean any agent, employee, guest, family member, tenant, licensee, or invitee of an Owner or tenant, and any person claiming by, through, or under such Owner or Owner's tenant.

Section 19. "Individual Assessment" shall mean the assessment levied against particular Lots or Condominium Units to cover the Association's costs of providing services which benefit only a limited number of Lots or Condominium Units.

Section 20. "Insurance Assessment" shall mean the assessment levied against each Lot and Condominium Unit to cover the Association's cost of obtaining and maintaining insurance policies covering the Project, as more particularly described in Article VI Section 2 hereof.

Section 21. "Living Unit" shall mean each Detached Home, Townhome, and Condominium Unit.

Section 22. "Lots" shall mean those parcels within the Property which are designed to contain a Detached Home or a Townhome and are designated on the Plat as "Lots", and all improvements now or hereafter constructed thereon.

Section 23. "Managing Agent" shall mean the person employed by the Board to perform the management and operational functions of the Project on behalf of the Association.

Section 24. "Member" shall mean every person or entity who is a record owner of a fee or undivided interest in any Lot or Condominium Unit, including Declarant and contract sellers, but not including contract purchasers.

Section 25. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging a Lot or Condominium Unit as security for the payment of a debt or obligation.

Section 26. "Mortgagee" shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns, holds or receives a Mortgage.

Section 27. "Plat" shall mean any recorded plat for any portion of the Property, and all supplements, amendments, or modifications thereto. Declarant reserves the right to amend the Plat, at any time and from time to time, until seven (7) years from the date of the conveyance of the first Lot or Condominium Unit by Declarant, to conform the Plat according to the actual location of any of the constructed improvements and to establish, vacate, or relocate easements and on-site parking areas.

Section 28. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot or Condominium Unit, including Declarant and contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.

Section 29. "Project" shall mean all of the Property, including real property and improvements annexed thereto pursuant to Article XIII hereof, and all improvements thereon, together with all rights, duties, easements, and appurtenances belonging thereto submitted by this Declaration and all amendments and supplements hereto.

Section 30. "Property" shall mean that certain real property described in Exhibit A, all improvements and structures thereon, and such additional real property as may hereafter be brought within the jurisdiction of the Association through any amendments or supplements to this Declaration.

Section 31. "Recreational Facilities" shall mean the swimming pool, poolhouse, tennis courts, and related recreational facilities and equipment which are or will be located within the Project and are or will be owned and operated by the Association for the use and benefit of the Members, and any additional recreational facilities that may be added to the Project in the future.

Section 32. "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to this Declaration and the Bylaws, as the same may be amended from time to time.

Section 33. "Townhome" shall mean each of the single-family living units located within a Lot and Building and designed to be occupied for single-family residential purposes, which living unit shall share a common party wall with at least one other single-family living unit which is located on an adjacent Lot.

Section 34. "Townhome Assessments" shall mean the assessments levied against Lots containing Townhomes to cover the additional costs of the Association in providing certain services which benefit only the Townhomes.

ARTICLE II.

DEVELOPMENT OF BRANDON CREEK

Declarant desires to develop the Property as a planned residential community offering certain recreational and other amenities to the residents of the Property and their Guests. Declarant anticipates that the development will ultimately consist of a mix of housing types, including single-family Detached Homes, Townhomes, and Condominium Units, and such recreational facilities as a swimming pool, poolhouse, tennis courts, and open space and park areas. Declarant reserves the right to modify its development plan at any time or from time to time, subject to the requirements of the City of Boulder and to the provisions of this Declaration.

ARTICLE III.

PROPERTY RIGHTS AND LIMITATIONS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and Condominium Unit, subject to the following provisions:

(A) the right of the Association to suspend the voting rights and rights to the use of the Recreational Facilities by an Owner and his Guests for any period during which any assessment against his Lot or Condominium remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Declaration, the Articles, Bylaws, or Rules and Regulations of the Association; and

(B) the right of the Association to dedicate or transfer easements and rights-of-way over, under, and across all or any part of the Common Area to any public

agency, authority, or utility for gas, water, electric, telephone, cable television, or other utility services provided to the Project.

Section 2. Delegation of Use. Any Owner may delegate his rights of use and enjoyment in and to the Common Area, Recreational Facilities, and related facilities to the members of his family or Guests.

Section 3. Ownership - Title to Lot or Condominium Unit. A Lot or Condominium Unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

Section 4. Title to Common Area. Declarant hereby covenants that it will convey fee simple title to the Common Area described in Exhibit B hereto to the Association free and clear of all liens and encumbrances except those restrictions, reservations, easements and rights-of-way of record, prior to the conveyance of the first Lot or Condominium Unit within the Project to an Owner other than Declarant. Upon each annexation of additional property pursuant to Article XIII hereof, Declarant covenants that it will convey fee simple title to the Common Area within such annexed property to the Association, free and clear of all liens and encumbrances except those restrictions, reservations, easements and rights-of-way apparent and of record, prior to the conveyance of the first Lot or Condominium Unit within such annexed property to an Owner other than Declarant.

Section 5. Use of Common Area. Subject to Section 9 of Article X hereof, each Owner has a non-exclusive right in common with the other Owners to use the Common Area in accordance with the purposes for which it is intended; provided, however, that use of certain private drives and islands that serve only a portion of the Lots or Condominium Units in the Project shall be limited to the Owners of those Lots and Condominium Units, and their Guests. The Association may adopt Rules and Regulations governing the use of the Common Area, provided that such Rules and Regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument or conveyance or assignment, agrees to be bound by any such Rules and Regulations.

Section 6. Dedication of Common Areas. Declarant, in recording this Declaration, hereby dedicates the Common Area for use by the Owners for recreation, access, parking and other related activities, subject to the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations of the Association.

Section 7. Use and Occupancy of Lots and Condominium Units. Each Lot and Condominium Unit shall be occupied and used only as and for a single-family residential dwelling for the Owner, his family, tenants, or Guests; provided, however, Declarant and its employees, representatives, agents, and contractors may maintain and operate business and sales offices, construction facilities and yards, model homes, and other facilities on the Project during the period of sales of Lots or Condominium Units. Notwithstanding the above, the Association may use any Lot or Condominium Unit which it owns or leases as a business office and/or residence for any on-site resident manager or custodian.

Section 8. Easements For Encroachments. In the event that any portion of the Common Area encroaches upon any Lot or Building, or in the event that any portion of a Lot improvement or Building overhangs or encroaches upon any other Lot or upon any portion of the Common Area, or in the event any encroachment shall occur in the future as a result of: (i) settling or shifting of any improvements; or (ii) improvement, alteration, or repair to the Common Area; or (iii) repair or restoration of the Lot improvements or a Building after damage by fire or other casualty, or condemnation or eminent domain proceedings, a valid easement shall exist for the encroachment and for the maintenance of the same as long as the improvements stand. In the event that any one or more of the Lots or Buildings or improvements comprising a part of the Common Area are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or on the Lots or Buildings for purposes of marketability of title or other purposes.

Section 9. Common Area Easements. The easements over and across the Common Area and shall be those shown, or provided for, upon the recorded Plat(s), and such other easements as may be established pursuant to the provisions of this Declaration. There is hereby created a blanket easement upon, across, over, and under the Common Area for installing, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electricity, and cable television facilities, if any. By virtue of this easement, it shall be expressly permissible for the utility companies or governmental entities supplying such utility service to erect and maintain the necessary equipment on the Common Area and to affix, repair, and maintain water and sewer pipes, gas, electric, and telephone wires, circuits, conduits, and meters. In addition, the Association, its Board, agents, Managing Agent, and employees shall have an unrestricted, irrevocable easement to traverse, cross, and utilize any portion of the Common Area which may be necessary in order to perform any of its functions as described in this Declaration.

Section 10. Parking. All Owners shall have a co-equal right to use any community parking areas within the Common Area for Guests and any additional Owners' parking; provided, that the community parking areas serving the Common Area Recreational Facilities shall only be used in connection with the use of such Recreational Facilities. All community parking spaces shall be under the control of the Association, and the use thereof shall be subject to the Rules and Regulations.

Each parking area shall be used only for the parking of licensed motor vehicles owned and operated by an Owner or his Guests; provided, however, Declarant, its Guests, employees, and contractors may use parking spaces not within a Lot owned by an Owner other than Declarant for the parking of any vehicles used by Declarant, its Guests, employees, and contractors. Notwithstanding the above, the Association may assign any parking space within the Common Area for any on-site resident manager or custodian. No parking space shall be used for commercial purposes other than for the temporary parking of vehicles used in connection

with the repair of, or the making of improvements or deliveries, to, any Lot, Condominium Unit, or the Common Area, nor for the repair of motor vehicles other than for the incidental repairs [for a period of no longer than seventy-two (72) hours] of the motor vehicles owned and operated by the Owner or his Guests. The Association shall have the authority to adopt Rules and Regulations for the use of parking spaces for such commercial purposes or incidental repairs to motor vehicles. Under no circumstances shall a parking space be used for the extended storage of inoperative vehicles or the rebuilding of a motor vehicle without the prior written consent of the Board or the Managing Agent. No parking spaces shall be leased to Owners or the Association.

No parking shall be permitted within the Project except within a garage or carport unless specifically designated for parking by the Association. No Owner may make use of a parking space if such use in any way obstructs or interferes with either the private streets or drives within the Project or any other Owner's parking rights or if such use creates a safety hazard. Without limiting the generality of the powers of the Association with respect to parking, the Association is hereby specifically authorized to have any vehicle parked in an area not designated for parking immediately removed at the expense of the Owners of the Lot or Condominium Unit who either own such vehicle or whose Guests own such vehicle. The expenses incurred by the Association in accomplishing such removal (and storage, if necessary) shall become a portion of the Common Expenses levied against such Owners and their Lot or Condominium Unit.

Section 11. Mechanic's Lien Rights and Indemnification. After completion of construction of the Lot improvements and Condominium Units by Declarant, no labor performed or materials furnished and incorporated within a Lot or Condominium Unit or in a common wall with the consent of or at the request of the Owner thereof or his agent, or his contractor or sub-contractor, shall be the basis for the filing of a lien against any other Lot or Condominium Unit where the Owner of such Lot or Condominium Unit has not expressly consented to or requested the same. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against such other Owner's Lot or Condominium Unit for construction performed, or for labor, materials, services, or products incorporated in the Owner's Lot or Condominium Unit at such Owner's express or implied request. The provisions herein contained are subject to the rights of the Association as set forth in this Declaration. Notwithstanding the foregoing, any First Mortgagee of a Lot or Condominium Unit who shall become the Owner of such Lot or Condominium Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any Owners of the abutting Lots or Condominium Units against liability for claims arising prior to the date such First Mortgagee becomes an Owner, but shall be under such obligation for any claims thereafter.

Section 12. Unlawful Activity Prohibited. No unlawful use shall be made of the Project, or any other property in which the Association owns an interest, nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed.

ARTICLE IV.

ADMINISTRATION AND MANAGEMENT OF THE PROJECT

Section 1. Association as Administrator. The administration of the Project shall be governed by this Declaration, the Articles, Bylaws, and Rules and Regulations of the Association. Each Owner of a Lot or Condominium Unit shall become a Member of the Association upon conveyance to him of his interest in a Lot or Condominium Unit and shall remain a Member for the period of his ownership. The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer, and regulate the Project and to perform all of the duties required of it. Except as otherwise provided in this Declaration, the Articles, or Bylaws, all powers and duties of the Association shall be exercised by and through the Board of Directors.

Section 2. Appointment of Board. The power of designation and appointment of the Board for the period ending five (5) years after the date of the first conveyance of a Lot or Condominium Unit by Declarant to an Owner other than Declarant shall be exercised by Declarant, unless Declarant sooner relinquishes its rights of designation and appointment by means of an instrument recorded in the real property records of Boulder.

Section 3. Reservation for Access - Maintenance, Repair, and Emergencies. The Association shall have the irrevocable right to have access to each Lot or Condominium Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any portion of the Common Area, or at any time for making emergency repairs therein necessary to prevent damage to the Common Area or to another Lot or Condominium Unit. Damage to any part of a Lot or Condominium Unit resulting from the maintenance, repair, emergency repair, or replacement of any portion of the Common Area, or as a result of emergency repairs to another Lot or Condominium Unit, at the instance of the Association, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance, or order of a governmental authority. The damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expense of repairing such damage.

Section 4. Maintenance and Service Responsibility.

(A) Owner:

(1) Each Owner shall maintain and keep in repair the yard, courtyard (if any), landscaped area, deck, patio, and balcony within, adjoining, or appurtenant to his Lot or Condominium Unit such that a clean, orderly, attractive, and sanitary condition consistent with the architectural control standards of the Project is at all times maintained. No Owner shall do an act, or fail to do an act, nor any work, that will impair the structural soundness of any other Lot, Building, or Condominium Unit improvements,

*add
amendment
recording
of exterior appurtenances
& lots.*

or impair any easement or hereditament which may affect the Common Area or any other Lot, Detached Home, Building, or Condominium Unit. All exterior maintenance permitted by the Board to be performed by, ~~or on behalf of~~ an Owner shall be in accordance with the architectural control and appearance standards of the Project. Each Owner of a Lot shall be responsible for snow removal from all portions of his Lot and his garage and carport area, if any.

(2) Each Owner shall maintain and keep in repair the Building and all other improvements within his Lot and each Condominium Association shall maintain and keep in repair the Condominium Building(s) and other improvements for which it has assumed responsibility as provided in the Condominium Declaration governing such Condominium Association. In addition to the obligations contained in subparagraph (A) of this Section 4, each Owner shall maintain and keep in repair the interior of his Living Unit and the interior of any garage or carport area within or appurtenant to such Living Unit, including the fixtures, doors, windows, and utilities therein, to the extent such maintenance and repair shall be necessary in order to maintain the appearance of the Project and to avoid damaging other Lots, Buildings, Condominium Units, or the Common Area.

*subject
vehicle
assessments.*

(3) In the event an Owner fails to keep such areas maintained in accordance with such standards, the Association shall have the right, but not the duty, to perform such maintenance on behalf of the Owner of such Lot or Condominium Unit and on his account, and the cost thereof shall be an additional Assessment secured by the lien for Assessments against such Lot or Condominium Unit and its Owner, due and payable upon presentation by the Association of written statements therefor, provided, however, that the Assessment lien for such additional sum shall always be subordinate to the lien of any First Mortgagee or the lien of any executory land sales contract wherein the Administrator of Veteran Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or not.

(B) Association:

*Maintain
Common Area*

(1) The Association shall have the duty of maintaining and repairing all of the Common Area within the Project, together with other Association property, and the cost of said maintenance and repair shall be a Common Expense of all of the Owners. The Association shall not need the prior approval of its Members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; provided, however, there shall be no additions, alterations, or improvements of or to the Common Area requiring an expenditure in excess One Thousand Five Hundred Dollars (\$1,500.00) per expenditure nor in excess of Three Thousand Dollars (\$3,000.00) in the aggregate in any one calendar year without the prior approval of the Owners representing a majority of the Lots and Condominium Units. Such limitation shall not be applicable to the replacement, repair, maintenance, or obsolescence of all or any portion of the Common Area.

Without limiting the generality of the foregoing, the Association shall perform those obligations of the "Grantor" set forth in paragraphs 8, 14, 23, and 24 of that instrument recorded in the real estate records of Boulder on September 29, 1982 on Film 1223, as Reception

No. 513569. The Association shall be responsible for the performance of such obligations with respect to any such portion of Common Area only after the same has been conveyed to the Association as provided herein. The Association shall hold harmless the Owners from any liability of the Owners under any provision of a subdivision agreement between the Declarant and the City of Boulder which imposes liability upon the Owners for maintenance of the Common Area or for any portion of taxes or assessments against the Common Area, and the Association shall perform the obligations of the Owners under Sections 2 and 4, and the fifth sentence of Section 3 (as to operation and maintenance), of that certain Ditch Easement Agreement recorded in the real estate records of Boulder on August 27, 1985 on Film 1369, at Reception No. 708988, with respect to those portions of the Common Area that are covered by such subdivision agreement or Ditch Easement Agreement, provided that the Association shall be responsible to hold harmless the Owners and to perform such obligations with respect to any such portion of the Common Area only after such portion has been conveyed to the Association as provided herein. The conveyance of Common Area to the Association shall not relieve the Declarant from the responsibility to pay taxes or assessments or to perform any obligation that should have been paid or performed by the Declarant prior to such conveyance, and the Declarant shall promptly after demand reimburse the Association for the cost of payment of any such tax or assessment or performance of any such obligation by the Association.

The Association shall provide such services in such a manner so as to ensure that the Project will at all times present an attractive and well-maintained appearance. The nature and frequency with which such services shall be provided shall be at the sole discretion of the Association.

(2) Except to the extent such services are the obligation of any Condominium Association, the Association shall provide to the Owners the following additional services which shall be paid from the Assessments (except as otherwise provided herein), to wit:

- (a) maintenance, repair, and restoration of the Common Area;
- (b) administration and management of the Project;
- (c) private street lighting, [?] if any, and private street maintenance; *Cul de sac* [?]
- (d) maintaining insurance coverages required by this Declaration;
- (e) the removal of snow from all private streets, walks, and parking areas located within the Common Area;
- (f) maintenance, repair, and restoration of sanitary sewer, water, electric, gas, and telephone lines and facilities located within the Common Area, except to the extent such facilities are to be maintained by the respective utility provider;
- (g) maintenance and repair of any detention ponds now or hereafter constructed on the Common Area;

(h) enforcement of the covenants, conditions, and restrictions set forth in this Declaration, the Articles, Bylaws, and Rules and Regulations of the Association, and enforcement of all obligations owed to the Association by the Owners; and

(i) performing all other acts required by this Declaration, the Articles, and Bylaws.

*30 days notice for services **

Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a Managing Agent, contractors, and employees, to perform such services, provided, however, that any such contracts shall not be for a term in excess of one (1) year, and shall provide that the same may be terminated on thirty (30) days written notice, with or without cause, at any time by either party and without payment of any termination fee.

enforced through the association

(C) In the event that an Owner shall suffer or permit any portion of his Lot or Condominium Unit which is required to be maintained by such Owner to fall into disrepair so as to create, in the opinion of the Association, a dangerous, unsafe, unsightly, or unattractive condition, the Association, upon thirty (30) days' prior written notice to such Owner, or without notice in case of emergency, shall have the right, but not the duty, to enter such Owner's Lot or Condominium Unit and correct such condition, and such Owner shall promptly reimburse the Association for any and all costs incurred by the Association in so doing. Such costs shall be a separate assessment and shall create a lien enforceable in the same manner as provided in this Declaration for liens for the non-payment of Assessments. In the event any portion of a Lot, Building, or other area which is required to be maintained by the Association falls into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Owner of such Lot or Condominium Unit shall promptly notify the Association of the need for maintenance and repair.

All new permits within area

(D) No Owner shall be permitted to alter or renovate the exterior of any Building without the prior written consent of the Architectural Control Committee. Unless such prior written consent of the Architectural Control Committee is obtained, no Owner shall be permitted to alter or renovate the interior of any multi-family Building or Condominium Unit if such alteration or renovation would weaken or impair the structural strength of the Building, lessen the value of said Building, or change the purpose for which such Building may be used. As used herein, alterations shall include, but shall not be limited to, alterations to the structural, heating and air conditioning, mechanical, electrical, and plumbing systems.

Architectural Control

(E) Any Owner obtaining a building permit enabling said Owner to make any alterations or renovations in accordance with this Paragraph shall, within ten (10) days of the date such building permit is obtained, file a copy of same with the Association and with the Architectural Control Committee. The functions of the Architectural Control Committee are governed by Article IX hereof. *PCS*

(F) The Owner of each Lot shall be responsible for undertaking and paying the cost of maintenance and repair of sanitary sewer, water, electric, gas, and telephone lines lying within his Lot, together with all service user charges imposed for sewer, water, gas, electric, and tele-

phone services. To the extent any utilities are individually metered and billed to each Lot or Condominium Unit, each Owner shall pay directly to the utility provider the amounts owing for service to his Lot or Condominium Unit. With respect to those utility charges billed directly to the Association, each Owner shall pay for such services as a part of the Common Expense Assessment. The Association shall be responsible for undertaking and paying the cost of maintenance and repair of utility lines lying within the Common Area, together with the costs of all utility services provided to the Common Area except to the extent that such lines are to be maintained and repaired by a utility provider responsible therefor.

*Maintenance
neglect of
services*

(G) In the event that the need for maintenance or repair of a Lot, Condominium Unit, Building, or other improvement by the Association is caused through the willful or negligent acts of its Owner or such Owner's Guests, the cost of such maintenance shall be added to and become a part of the Assessment to which such Lot or Condominium Unit is subject.

ARTICLE V

MEMBERSHIP AND VOTING CLASSES

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

(A) Class A Members. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot or Condominium Unit owned. When more than one person holds an interest in any Lot or Condominium Unit, all such persons shall be Members. The vote for such Lot or Condominium Unit shall be exercised as the Owners thereof determine, but in no event shall more than one (1) vote be cast with respect to any Lot or Condominium Unit. If co-Owners of a Lot or Condominium Unit cannot agree as to the manner in which their vote should be cast when called upon to vote, then they will be treated as having abstained. Fractional votes may not be cast.

(B) Class B Members. The Class B Member shall be Declarant and shall be entitled to three (3) votes for each Lot and Condominium Unit it owns. With respect only to the Lots and Condominium Units then declared, the Class B membership shall cease and be converted to a Class A membership on the happening of any of the following events, whichever occurs first:

(1) One hundred twenty (120) days following the date upon which seventy-five percent (75%) of the Lots and Condominium Units in the Project, as enlarged from time to time, have been conveyed by Declarant; or

(2) Five (5) years from the date of the first conveyance by Declarant of a Lot or Condominium Unit to an Owner other than Declarant; or

(3) Recording of an instrument of relinquishment of Class B membership by Declarant in the records of the Clerk and Recorder of Boulder.

Notwithstanding anything herein to the contrary, upon each annexation of additional property by Declarant as provided in Article XIII hereof, Declarant shall be entitled

to cast three (3) votes for each Lot and Condominium Unit it owns in the Project until the earlier of one hundred twenty (120) days following the date upon which seventy-five percent (75%) of all Lots and Condominium Units then declared under this Declaration and all supplements hereto have been conveyed by Declarant to Owners other than Declarant or five (5) years following the date of the first conveyance by Declarant of a Lot or Condominium Unit to an Owner other than Declarant, unless Declarant has relinquished such right as provided in Subparagraph (B)(3) above.

ARTICLE VI

ASSESSMENTS

Assess

Section 1. Allocation of Assessments for Resident Members. All Owners, including Declarant and including any purchaser under an executory land sales contract wherein the Administrator of Veterans Affairs is identified as the seller, shall be obligated to pay the estimated Assessments imposed by the Association to meet the Common Expenses, reserves, and insurance costs of the Association. The Assessments (except Individual Assessments, penalty assessments, and Townhome Assessments) shall be divided among all of the Lots and Condominium Units equally. Notwithstanding the foregoing, the Common Expense Assessment and Insurance Assessment on each Lot and Condominium Unit owned by Declarant, until such time as any Lot or Condominium Unit owned by Declarant is leased, rented, or occupied, whichever occurs first, shall be fixed at twenty-five percent (25%) of the Assessments as are applicable to any other Lot or Condominium Unit owned by other Owners, provided that following such leasing, renting, or occupancy of a Lot or Condominium Unit owned by Declarant, with respect to such Lot or Condominium Unit, Declarant shall be subject to the same Assessments as are applicable to similar Lots or Condominium Units owned by other Owners. In addition, Declarant agrees to pay to the Association until such time as its Class B membership is converted to Class A membership as provided in Article V (Voting Classes) a sum equal to the difference between the operating and insurance expenses of the Association, exclusive of reserves, and the amount of funds payable by the other Owners to the Association.

Section 2. Due Date. Annual Common Expense Assessments and Insurance Assessments shall be payable in monthly installments and shall be due in advance on the first day of each calendar month. If any such monthly installment shall not be paid within ten (10) days after it shall become due and payable, the Board may assess a "late charge" thereon in an amount not exceeding Ten and No/100ths Dollars (\$10.00) per month to cover the extra cost and expenses involved in handling such delinquent Assessments. The Association shall cause to be prepared and delivered or mailed to each Member at least once each year a payment statement setting forth the estimated Common Expense Assessments and/or Insurance Assessments, as appropriate, for the ensuing year.

Section 3. Prorations. In the event membership in the Association commences on a day other than the first day of the Assessment period, the Assessments for that period will be prorated.

Section 4. Commencement/Amount of Common Expense and Insurance Assessments. Common Expense Assessments and Insurance Assessments shall commence as to all Lots and

Condominium Units on the first day of the month following the conveyance of the first Lot or Condominium Unit by Declarant. Common Expense Assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall determine, at least thirty (30) days in advance of each year, as necessary to provide for the payment of all estimated expenses relating to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration, and improvement of the Common Area, the Project, and personal property owned by the Association. Said sum may include, but shall not be limited to, expenses for management; maintenance and operation of the Recreation Facilities; landscaping and care of Common Area grounds; Common Area lighting and heating; Common Area repairs and renovations; wages; trash collection, water, sewer, gas, electric, and other utility charges relating to the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Board under or by reason of this Declaration and the Articles of Incorporation and Bylaws of the Association; the creation of reasonable contingency reserves, working capital, and/or sinking funds; and any and all other costs and expenses relating to the Common Area and/or the Project. Written notice of the annual assessments shall be sent to every Owner subject thereto. The Common Expense Assessment shall not include the expense of procuring and maintaining the insurance policies required to be maintained by the Association pursuant to Article VII hereof, which expense shall be assessed as provided in Section 8 of this Article.

Section 5. No Waiver. The omission or failure to fix any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Members from their obligations to pay the same.

Section 6. Reserve Fund. The Association shall be obligated to establish a reserve fund for the maintenance, repair, and replacement of those Common Areas and Recreational Facilities that must be replaced periodically and such reserve fund shall be funded through the monthly payments of the Common Expense Assessments and not by extraordinary special assessments.

Section 7. Maximum Common Expense Assessment.

(A) Until January 1 of the year immediately following the conveyance of the first Lot or Condominium Unit by Declarant, the maximum annual Common Expense Assessment shall be \$276.00 per Lot or Condominium Unit

(B) ~~The maximum Common Expense Assessment may be increased by the Board prior to the end of each calendar year to be effective January 1 of each succeeding year without a vote of the membership by that amount which is equal to the greater of (i) five percent (5%) of the maximum Common Expense Assessment for the current year or (ii) the percentage increase in the Revised Consumer Price Index - All Items applicable to the Denver metropolitan area during the twelve (12) month period ending in October of the current year, multiplied by the most recent Common Expense Assessment levied during the current year. In the event such Index should no longer be published, the Board shall select another index generally recognized as being authoritative. If the Board shall elect not to increase the maximum assessment in any year to the permitted maximum amount, the Board will have~~

HO fees

*no interest in
8 yrs
@ 5% = \$1.75
roughly 1.75 x 8 = 12.00*

waived its right to such an increase, and shall not be entitled to the cumulative permitted increase in maximum assessments for subsequent years.

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The maximum Common Expense assessment may be increased above that amount which can be set by the Board without a vote of the membership, by a vote of sixty-seven percent (67%) of each class of Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

Section 8. Insurance Assessment. The Board of Directors shall determine, levy, and assess against each Lot and each Condominium Unit the Association's cost of obtaining and maintaining insurance policies covering the Project as required or permitted under Article VII hereof. The Insurance Assessment shall not be subject to the provisions of Section 7 of this Article, and the maximum Insurance Assessment against each Lot and each Condominium Unit in each year shall be that amount which, when combined with the Insurance Assessments on all other Lots and Condominium Units, is equal to the total actual insurance costs incurred by the Association.

*unbudgeted repairs * see p. 22*

Section 9. Special Assessment. In addition to the assessments authorized above, the Association may at any time and from time to time determine, levy, and assess in any assessment year, which determination, levy, and assessment may be made by the Board with the consent of two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy, a special assessment applicable to that particular Assessment year for the purpose of defraying, in whole or in part, payments for any deficit remaining from a previous period and the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, or maintenance of the Common Area and Recreational Facilities, specifically including any fixtures and personal property relating thereto; provided, however, such consent shall not be required if such acts are otherwise covered by Article VIII of this Declaration. The amounts determined, levied, and assessed pursuant hereto shall be assessed to each Lot and Condominium Unit equally, and shall be due and payable as set forth in the Notice of Assessment promulgated by the Board. Until such time as Declarant's Class B membership has been converted to Class A membership as provided in Article V (Membership and Voting Classes), special assessments for capital improvements will also require the prior written consent of the Veterans Administration or Federal Housing Administration of the U.S. Department of Housing and Urban Development if such agencies or entities have insured, guaranteed, or own any Mortgages encumbering any Lots or Condominium Units located within the Project.

Section 10. Notice and Quorum for Actions Under Sections 7 and 9. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7 or 9 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called for such purpose, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 11. Individual Assessments. The Board shall levy against particular Lots or Condominium Units Individual Assessments to cover the Association's cost of providing services which benefit only those particular Lots or Condominium Units. By way of example only, the Board may levy Individual Assessments against the Lots or Condominium Units which are located on a private road within the Project to cover the costs of repair, maintenance, and replacement of that private road. Individual Assessments shall be levied in addition to all other Assessments levied by the Association and shall not be subject to the provisions of Section 7 of this Article.

Section 12. Joint Liability. All Owners of a particular Lot or Condominium Unit shall be jointly and severally liable to the Association for the payment of all Assessments attributable to such Lot or Condominium Unit, including without limitation the annual assessment for Common Expense Assessments, Insurance Assessments, and special assessments assessed against their particular Lot or Condominium Unit.

Section 13. Penalty Assessments. In addition to the assessments authorized by this Article, the Association may levy penalty assessments which will include penalties or fines imposed against individual Owners for violations of the provisions of this Declaration or the Articles, Bylaws, or Rules and Regulations of the Association. Any such penalty assessments will be levied only after compliance with the Notice and Hearing procedures set out in the Bylaws. Any penalty assessment not paid within thirty (30) days of the date on which it is due will bear interest at the rate of eighteen percent (18%) per annum commencing retroactively on the date the Assessment was due and continuing until the Assessment, together with any accrued interest thereon, is paid in full. All penalty assessments shall be enforced and collected in the same manner as all other Assessments required to be paid by such Owner(s).

Section 14. Assessment Reserves and Working Capital Account. At the time of the first conveyance of each Lot or Condominium Unit from Declarant to an Owner other than Declarant, the acquiring Owner shall pay to the Association an amount equal to two (2) months of the then current Common Expense Assessment to be used by the Association as working capital, which payment shall not be considered to be an advance payment of Common Expense Assessments. Notwithstanding the foregoing, within sixty (60) days following the date of the first conveyance of a Lot or Condominium Unit described on Exhibit A hereto by Declarant to an Owner other than Declarant, Declarant shall pay to the Association as a working capital deposit an amount equal to two (2) months of the then current assessment for Common Expenses for each Lot or Condominium Unit, described in Exhibit A which is then owned by Declarant. Similarly, within sixty (60) days following the date of the first conveyance of a Lot or Condominium Unit described in any supplement to this Declaration provided for in Article XIII hereof, Declarant shall pay to the Association as a working capital deposit an amount equal to two (2) months of the then current assessment for Common Expenses for each Lot or Condominium Unit described in such supplement to this Declaration then owned by Declarant. In no event shall Declarant be required to make more than one (1) working capital deposit with the Association with respect to any particular Lot or Condominium Unit owned by Declarant. The subsequent grantees of any Lot or Condominium Unit with

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respect to which a working capital deposit has been made shall be obligated to pay and maintain on deposit with the Association a working capital deposit equal to two (2) months of the current Common Expense Assessment, computed as of the date such grantees become record Owners of such Lot or Condominium Unit. At the time of each conveyance of such Lot or Condominium Unit the working capital funds on deposit with the Association shall remain with the Association, but the transferring Owner (including Declarant, if applicable) shall receive a credit from the acquiring Owner in the then current amount of the working capital on deposit with the Association with respect to such Lot or Condominium Unit, and the acquiring Owner shall be deemed to have made a working capital deposit equal to such credit.

All working capital funds shall be maintained in a segregated account for the use and benefit of the Association. The failure of any Owner to maintain such working capital deposit shall constitute a default by such Owner and the Association shall be entitled to exercise those remedies set forth in Sections 15 and 16 below.

Section 15. Lien for Nonpayment of Assessments.

(A) All sums assessed by the Association but unpaid by the Owner of any Lot or Condominium Unit, including interest thereon at eighteen percent (18%) per annum commencing the first day after the due date [except in the case of special assessments wherein such interest commences thirty (30) days after the due date], shall constitute a lien on such Lot or Condominium Unit superior (prior) to all other liens and encumbrances, except only for all sums unpaid on a First Mortgage of record or on any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns and whether such contract is recorded or not, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the arising of such lien, and except for tax and special assessment liens in favor of a governmental assessing entity. Each Owner hereby agrees that the Association's lien on a Lot or Condominium Unit for assessments shall be superior to any homestead exemption provided by Section 38-41-201, C.R.S. 1973, as amended, or by other state or federal law and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot or Condominium Unit within the Project shall signify such grantee's waiver of such homestead rights with respect to such lien.

Liens

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(B) To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot or Condominium Unit, and a description of the Lot or Condominium Unit. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the records of the Clerk and Recorder of Boulder. Such lien shall attach from the date of the failure of payment of the assessment, and may be enforced by foreclosure by the Association of the defaulting Owner's Lot or Condominium Unit in like manner as Mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the Owners. In any such foreclosure or lawsuit to recover a money judgment, the Owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses, and attorneys' fees for filing the

notice or claim of lien, and all reasonable attorneys' fees in connection with such foreclosure or lawsuit. The Owner shall also be required to pay the Association the assessments for the Lot or Condominium Unit during the period of foreclosure and the Association shall be entitled to a receiver to collect such sums. The Association, on behalf of the Owners, shall have the power to bid on the Lot or Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey such Lot or Condominium Unit.

Section 16. Member's Obligation for Payment of Assessments. All amounts assessed by the Association against each Lot and Condominium Unit, whether as a Common Expense, Insurance, special, or penalty Assessment, including interest thereon at eighteen percent (18%) per annum commencing the first day after the due date [except in the case of special assessments wherein such interest commences thirty (30) days after the due date], shall be the personal and individual debt of each Owner at the time the Assessment is made. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same. No Owner may exempt himself from liability for his contribution toward the expenses of the Association by a waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot or Condominium Unit.

Section 17. Liability for Common Expenses Upon Transfer of Lot or Condominium Unit.

(A) Upon payment of a reasonable fee not to exceed Fifty and No/100ths Dollars (\$50.00), and upon the written request of any Owner, any Mortgagee, or any prospective Mortgagee, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot or Condominium Unit, the amount of the current monthly Assessments and the date that such Assessments become due, any credits for advanced payments or for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within fifteen (15) days, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the interest of the Owner requesting such statement, or to the lien of the Mortgagee or prospective Mortgagee requesting such statement.

(B) The grantee of a Lot or Condominium Unit, including a First Mortgagee who comes into possession of a Lot or Condominium Unit pursuant to the remedies provided in its Mortgage or becomes an Owner of a Lot or Condominium Unit pursuant to foreclosure of its Mortgage or by the taking of a deed in lieu thereof, and any purchaser at a foreclosure sale, shall not be liable with the grantor for unpaid Assessments against the latter for the grantor's proportionate share of expenses up to the time of the grant or conveyance of a Lot or Condominium Unit, unless the grantee expressly assumes such liability. Any such express assumption shall be without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon payment of a reasonable fee not to exceed Fifty and No/100ths Dollars (\$50.00) and upon written request, any prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments, if any, with respect to the subject Lot or Condominium Unit, the amount of the current monthly Assessments and the date that

such Assessments become due, any credits for advanced payments or for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within fifteen (15) days of such request, then a grantee shall not be liable for, nor shall the Lot or Condominium Unit conveyed be subject to, a lien for any unpaid Assessments against the subject Lot or Condominium Unit which become due prior to the date of making such request.

(C) Notwithstanding any terms and conditions of this Declaration, the sale or transfer of any Lot or Condominium Unit shall not affect the lien for said Assessments, except that the sale or transfer of a Lot or Condominium Unit pursuant to foreclosure of a First Mortgage or any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, or any proceeding in lieu thereof, including a deed in lieu of foreclosure, cancellation, or forfeiture of any such executory land sales contract, shall extinguish the lien of Assessments which became due prior to any such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of any such executory land sales contract. Further, no First Mortgagee shall be liable for any unpaid Assessments accruing prior to the time such Mortgagee becomes the Owner of any Lot or Condominium Unit or takes possession of a Lot or Condominium Unit pursuant to the remedies provided in its Mortgage, whichever event is later. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of any such executory land sales contract, shall relieve any Owner from liability for any Assessments thereafter becoming due, nor from the lien thereof.

ARTICLE VII.

INSURANCE

Section 1. Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire or other casualty for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried as provided in this Declaration. Premiums for all insurance carried by the Association shall be assessed against each Lot and Condominium Unit in the form of an Insurance Assessment.

Section 2. Insurance Coverages and Policy Limits.

(A) Pursuant to Section 1 above, the Board shall obtain and maintain at all times, to the extent obtainable, policies insuring the Common Area and other insurable

Association property, involving standard premium rates established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of at least Class X-B, or BBB+, whichever is greater, covering at least the risks set forth below. The Board shall not obtain any policy where: (i) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor, Mortgagee or Mortgagee's designee, or become a lien against the mortgaged property superior to a First Mortgage; or (ii) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds. The specific types of coverages to be obtained and risks to be covered pursuant to Section 1 above are as follows, to wit:

(1) Fire insurance with extended coverage and all risk endorsements including sprinkler leakage (if appropriate), debris removal, cost of demolition, windstorm and water damage, vandalism and malicious mischief, and, if applicable, construction code, boiler explosion, and machinery and such other endorsements as the Board may deem appropriate. The casualty insurance shall insure the Common Area improvements and all other insurable property owned by the Association in an amount equal to the full, current replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Lot or Condominium Unit, which clause shall provide that the loss, if any, thereunder, shall be payable to the Association, for the use and benefit of First Mortgagees as their interest may appear. The hazard insurance policy shall further contain an Agreed Amount Endorsement or its equivalent, and, if appropriate, an Increased Cost of Construction Endorsement or its equivalent.

(2) Comprehensive public liability and property damage insurance covering the Common Area in such limits as the Board may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence, covering all claims for bodily injury and/or property damage. Coverage shall include, without limitation, liability for personal injuries, water damage, operations of owned and non-owned automobiles on behalf of the Association, liability for property of others and activities in connection with the ownership, operation, maintenance, and other use of the Project, including such injuries or damages incurred by any persons as a result of usage or trespass onto the area covered by the ditch easements or rights-of-way, or detention ponds, referred to in Section 9 of Article X hereof. The policy shall also contain a "severability of interest" endorsement.

(3) Worker's compensation and employer's liability insurance and all other similar insurance with respect to the employees of the Association in the amounts and in the forms now or hereafter required by law.

(4) Fidelity bond coverage to protect against dishonest acts on the part of the Directors, officers, trustees, managers, and employees of the association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name

the Association as obligee, (ii) be written in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or its Managing Agent, as the case may be, during the term of each such bond. In no event may the aggregate amount of such bond coverage be less than a sum equal to three (3) month's aggregate assessments on all Lots and Condominium Units, plus reserve funds. All such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premium on all bonds required herein, except those maintained by the Managing Agent, shall be paid by the Association as a cost of insurance. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days' prior written notice to the Association and to any First Mortgagee who requests that such notice be given.

(5) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance, and insurance against loss to any personal property of the Association.

(B) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the insured, including First Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance policy or policies shall identify the interest of each Owner (Owner's name and Lot or Condominium Unit designation) and First Mortgagee.

(C) Prior to obtaining any policy of fire insurance or renewal thereof, the Board shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full, insurable, replacement value of the Association's property without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this Article. In no event shall the insurance policy contain a co-insurance clause for less than ninety percent (90%) of the full replacement cost. Determination of maximum replacement value shall be made at least bi-annually by one or more appraisals to be furnished by a person knowledgeable of replacement cost, and each First Mortgagee shall be furnished with a copy thereof within thirty (30) days after receipt of such appraisals. Such amounts of insurance shall be reviewed annually by the Board, and shall be contemporized annually in accordance with their currently determined maximum replacement value.

(D) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Association shall obtain a blanket policy of flood insurance on the Common Area, if within such identified area, in an amount which is the lesser of the maximum amount of insurance available under the Act, the

aggregate unpaid principal balance of the First Mortgages on the Lots and Condominium Units, or the value of the insurable improvements.

(E) Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any additional insurance carried by any Owner.

(F) Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personalty or other property belonging to an Owner, and public liability coverage for each Lot and Condominium Unit, shall be the sole and direct responsibility of the Owner thereof, and neither the Board of Directors, the Association, or the Managing Agent shall have any responsibility therefor.

(G) In the event that there shall be any damage or destruction, or loss to the Common Area which exceeds \$10,000.00, then written notice of such damage or loss shall be given by the Association to each First Mortgagee within ten (10) days after the occurrence of such event.

ARTICLE VIII.

DESTRUCTION, OBSOLESCENCE, AND CONDEMNATION

Section 1. Repair and Restoration. In the event of damage or destruction of all or any portion of the Common Area, then such property shall be repaired and restored by the Association except as otherwise provided in Section 2 of this Article. In the event of damage or destruction to any Building or Lot improvements, the Owner(s) of such Building or Lot shall promptly repair and reconstruct such improvements, which repair and reconstruction shall be completed within one (1) year of the date of the damage or destruction. Repair and reconstruction of the improvements as used in this Article means restoring the improvements to substantially the same condition in which they existed prior to the damage, with all Common Area improvements having the same boundaries as before. The proceeds of any insurance collected shall be used for the purpose of repair, restoration, or replacement as is provided hereinafter.

Section 2. Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the Association shall repair and reconstruct the damaged property, unless a "Declaration Not to Rebuild" signed by Owners holding at least seventy-five percent (75%) of the votes in the Association and seventy-five percent (75%) of First Mortgagees is recorded in the real property records of Boulder within one hundred (100) days of the damage or destruction indicating their intention not to rebuild. If such repair and reconstruction is not made by the Association, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of the Owners of seventy-five percent (75%) of the Lots and Condominium Units other than those owned by Declarant, except that the proceeds shall not be distributed to the Owners unless made jointly payable to Owners and the First Mortgagees, if any, of their respec-

tive Lots or Condominium Units. Otherwise, the insurance proceeds shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy, without a vote of the Owners, a Reconstruction Assessment in order to pay the excess cost of such repair and reconstruction not covered by the insurance proceeds. The Reconstruction Assessment as to each Owner and Lot or Condominium Unit shall be assessed against each Lot and Condominium Unit in the same proportions as provided for the Common Expense Assessments. Such Reconstruction Assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The Reconstruction Assessment shall be a debt of each Owner and a lien on his Lot or Condominium Unit and the improvements thereon and may be enforced and collected by foreclosure proceedings in the courts, provided, however, that such lien shall always be junior to the prior recorded lien of the First Mortgagee of such Lot or Condominium Unit.

Section 3. Association Power of Sale. Pursuant to a judicial foreclosure, the Association shall have the absolute right and power to sell the Lot or Condominium Unit of any Owner refusing or failing to pay any such Reconstruction Assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Lot or Condominium Unit of the delinquent Owner shall be sold by the Association pursuant to the provisions of law for sales of real property pursuant to a judicial foreclosure and order of sale. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at a rate of eighteen percent (18%) per annum on the amount of the assessment, and all reasonable attorney's fees and court costs. The proceeds derived from the sale of such Lot or Condominium Unit shall be used and disbursed by the Association in the following order:

- (A) for payment of the lien of any First Mortgagee;
- (B) for payment of taxes and special assessment liens in favor of any assessing entity;
- (C) for payment of unpaid assessments and all costs, expenses, and fees incurred by the Association;
- (D) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (E) the balance remaining, if any, shall be paid to the Owner.

Section 4. Obsolescence. The Owners of eighty percent (80%) or more of the Lots and Condominium Units in this Project may agree that the Common Area is obsolete and adopt a plan for its or their renewal and reconstruction, which plan must have the approval of at least seventy-five percent (75%) of the First Mortgagees of the Lots and Condominium Units as of the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the Association shall

present to the members a notice of a special assessment for approval by the membership in accordance with Article VI. If such assessment is approved, the Association shall make such assessment and proceed to make such renewal and reconstruction in accordance with such approved plan. Disapproval of such special assessment shall not limit the right to resubmit such plan and special assessment, whether revised or not, for such approval of the Members at some future time. The Association shall have the absolute right and power to enforce such special assessment as set forth in Article VI above. Any delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Lot or Condominium Unit shall be used and disbursed by the Association in the following order:

- (A) for payment of the lien of any First Mortgagee;
- (B) for payment of taxes and special assessment liens in favor of any assessing entity;
- (C) for payment of unpaid assessments and all costs, expenses, and fees incurred by the Association;
- (D) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (E) the balance remaining, if any, shall be paid to the Owner.

Section 5. Condemnation. If at any time or times during the continuance of ownership pursuant to this Declaration, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section shall apply:

(A) Proceeds. All compensation, damages, or other proceeds received from an entity having the power of condemnation, pursuant to either a condemnation action or a sale in lieu of condemnation, is hereafter called the "Condemnation Award".

(B) Complete Taking. In the event that the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall be used to replace the Common Area, if practicable. In the event it is not practical to replace the Common Area, in the sole discretion of the Association, then the Condemnation Award shall be apportioned among the Owners on the same basis as set forth in Subsection (C) of this Section 5, provided, however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the principle set forth in Subsection (C) below, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable by check made payable jointly to Owners and their respective First Mortgagees.

(C) Partial Taking. In the event that less than the entire Common Area is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of the Common Area, and improvements thereon, damaged or taken by the condemning public authority, unless a "Declaration Not to Rebuild" signed by the Owners of seventy-five percent (75%) of the votes in the Association and seventy-five percent (75%) of First Mortgagees is recorded in the real property records of Boulder within one hundred (100) days of the date such property was taken or otherwise disposed of indicating their intention not to rebuild and replace. Any surplus of the Condemnation Award or other portion thereof not used for rebuilding and replacement shall be allocated according to the following procedures. The Owners of each Lot or Condominium Unit shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to the taking of or injury to the Common Area shall be apportioned equitably among the Owners according to the loss suffered; (ii) the total amount allocated to severance damages shall be apportioned equitably to those Lots or Condominium Units which were not taken or condemned; and (iii) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided in Section 5(B) of this Article VIII.

(D) Notice. The Association shall notify each First Mortgagee of any Lot or Condominium Unit of the commencement of the condemnation proceedings against the Common Area and shall notify said Mortgagees in the event of the taking of all or any part of the Common Area, if the value of the Common Area taken exceeds \$10,000.00.

ARTICLE IX.

ARCHITECTURAL CONTROL

Section 1. Review of Plans. No building, fence, wall, canopy, awning, landscaping, structure, or improvement shall be commenced, erected, altered, moved, removed, or maintained upon the Property, nor shall any exterior addition to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

Section 2. Architectural Control Committee. The Architectural Control Committee shall be appointed by the Board and shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on

lands within the Property conform to and harmonize with existing surroundings and structures. The Committee shall consist of three (3) persons.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this Article IX will be deemed to have been fully complied with.

Section 4. Majority Vote. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed plans and specifications.

Section 5. Written Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 6. No Liability. The Architectural Control Committee and each member thereof shall not be liable for damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

Section 7. Reservation of Right to Exercise by Declarant. Notwithstanding any other provision expressly or impliedly to the contrary contained in this Declaration, the Articles, and the Bylaws, Declarant reserves the right to exercise the rights, duties, and functions of the Architectural Control Committee until the happening of any of the following events, whichever first occurs: (i) the date upon which all of the Lots and Condominium Units within the Property have been conveyed by Declarant; (ii) Five years from the date upon which the first Lot or Condominium Unit is conveyed by Declarant to an Owner other than Declarant; or (iii) the recording by Declarant in Boulder of an instrument relinquishing such rights.

ARTICLE X.

PROTECTIVE COVENANTS

Section 1. Residential and Recreational Uses. The Project is hereby restricted to residential dwellings for residential and recreational use and uses related to the convenience and enjoyment of such residential and recreational uses. No structures of a temporary character, trailer, boats, campers, camper shells, inoperative motor vehicles, tent, shack, barn or other out building shall be used or permitted to be kept or stored on any portion of the Project at any time either temporarily or permanently.

Section 2. Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors, to maintain during the period of sale of the Lots and Condominium Units, upon such portion of the Project as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction and sale of Lots or Condominium Units including, but without limitation, a

business office, storage area, signs, model dwellings, sales office, parking areas, and lighting, for seven (7) years from the date hereof. During this period of construction, marketing, and sales, Declarant, its agents, employees, and contractors, shall be entitled to perform such acts within the Project as are reasonably required, convenient, or incidental to the construction and sales of dwellings.

Section 3. Pets. No animal, livestock, reptile, or poultry of any kind shall be raised, bred or kept on the Property, except that domesticated dogs, cats, fish, or birds may be kept on the Property subject to all animal ordinances and subject to Rules and Regulations from time to time adopted and amended by the Association, provided that they are not kept for commercial purposes. An Owner is responsible for any damage caused by his animal(s).

Section 4. Refuse. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard allowed or permitted to exist.

Section 5. Use Affecting Insurance Costs. No Owner shall make or permit any use of his Lot or Condominium Unit, or make or permit any use of the Common Area or any other property in which the Association owns an interest, which will increase the cost of insurance on the Common Area or the Lot of any other Owner.

Section 6. Signs and Nuisances. No advertising signs (except one of not more than one (1) square foot "For Rent" or "For Sale" sign per Condominium Unit located within any window, and except one of not more than five (5) square foot "For Rent" or "For Sale" sign per Lot not containing any Condominium Units), billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Project, nor shall the Project be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or Condominium Unit or any resident or Guest thereof. Further, no business activities of any kind whatever shall be conducted on any Lot, Condominium Unit, or in any portion of the Property. Provided further, however, the foregoing covenants shall not apply to the business activities, signs, and billboards, or the maintenance of improvements, if any, of Declarant, its agents, contractors, lenders, and employees during the sales period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 7. Protection of Views. All clotheslines, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened so as to conceal them from the view of neighboring Lots or Condominium Units, streets, drives, walkways, and Common Areas.

Section 8. Landscaping. Except in the individual balcony, deck, and patio areas and on the Lots, no landscaping shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Property, except such as are installed in accordance with the initial construction of the Lot improvements and Buildings or those approved by the Architectural Control Committee. No planting, gardening, or maintaining of any tree, shrub, bush or other plant shall be made or done by any Owner in any patio, deck, or balcony area which will or would affect the view of any other Owner without the prior written approval of the Association.

Section 9. Ditch Easements and Rights of Way and Detention Ponds. The ditch easements and rights of way and detention ponds which exist and which may be construed upon the Property are not available, and shall not be used, for the use and enjoyment of Members or their Guests. Any unauthorized entry upon said ditch easements or rights of way or detention ponds, shall be deemed trespass and neither the Declarant, the Association, the City of Boulder, nor any ditch company or companies having rights to use any such ditch easements or rights of way, or detention ponds, shall be liable for any injuries or damages suffered or incurred by the person or persons making said unauthorized entry upon said ditch easements or rights of way, or detention ponds. Notwithstanding the disclaimer contained herein, the Association shall maintain the public liability insurance required by subsection (A)(2) of Section 2 of Article VII hereof.

ARTICLE XI.

MORTGAGES

Section 1. Mortgaging a Lot - Priority. Any Owner shall have the right from time to time to Mortgage or encumber his interest in a Lot or Condominium Unit by deed of trust, Mortgage, or other security instrument. An Owner may create junior Mortgages on the condition that any such junior Mortgages shall always be subordinate to all terms, conditions, expenses, and other obligations created by this Declaration and the Articles and Bylaws.

Section 2. Payment of Taxes and Charges - Reimbursement. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XII.

MORTGAGEE RIGHTS

Section 1. Conflicts. In the event there is any conflict between this Article and any other provision of this Declaration, the Articles, Bylaws, or Rules and Regulations with respect to the approval of Mortgagees as to those matters set forth in this Article, the provisions of this Article shall govern.

Section 2. Notice. Upon written request to the Association which identifies the name and address of the holder, insurer, or guarantor of a First Mortgage and the Lot or Condominium Unit number or address, the holder, insurer, or guarantor will be entitled to timely written notice of:

- (1) Any proposed amendment of the Declaration, Articles, or Bylaws effecting a change in (i) the boundaries of any Lot or Condominium Unit or the exclusive easement rights appertaining thereto, (ii) the liability for Common Expenses appertaining to any Lot or Condominium Unit, (iii) the number of votes in the Association appertaining to any Lot or Condominium Unit or (iv) the purpose to which any Lot, Condominium Unit, or the Common Area are restricted.

(2) Any proposed termination of the Project;

(3) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot or Condominium Unit on which there is a First Mortgage held, insured, or guaranteed by such First Mortgage holder, insurer, or guarantor, as applicable;

(4) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot or Condominium Unit subject to a First Mortgage held, insured, or guaranteed by such holder, insurer, or guarantor which remains uncured for a period of sixty (60) days, or any other default under the terms of the Declaration, Articles, or Bylaws which remains uncured for a period of sixty (60) days;

(5) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(6) Any proposed action or amendment of the Declaration, Articles, or Bylaws for which the consent of a specified percentage of First Mortgagees is required.

Section 3. Professional Management. If professional management of the Project has been required by a holder, insurer, or guarantor of a First Mortgage in the Project, any decision to thereafter establish self-management by the Association shall require the prior consent of Owners of Lots and Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of First Mortgagees holding First Mortgages on Lots and Condominium Units which have at least fifty-one percent (51%) of the votes of Lots and Condominium Units subject to First Mortgages.

Section 4. Amendments. The following provisions shall apply in every case, except for special amendments pursuant to Article XIV, Section 4 (Special Amendment by Declarant) herein, and except for amendments to the Declaration, Articles, or Bylaws, or for the termination of the Project, made as a result of destruction, damage, or condemnation or owing to a reallocation of interests in the Common Area which might occur pursuant to expansion of the Project pursuant to Article XIII (Reservation to Enlarge and Supplement Project) herein and except for amendments contemplated by Sections 4 and 5 of Article XIII.

(a) The consent of Owners of Lots and Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of First Mortgagees of Lots and Condominium Units which have at least sixty-seven percent (67%) of the votes of Lots and Condominium Units subject to First Mortgages shall be required to terminate this Declaration.

(b) The consent of Owners of Lots and Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of First Mortgagees of Lots and Condominium Units which have at least fifty-one percent (51%) of the votes of Lots and Condominium Units subject to First Mortgages shall be required to add or amend any material provisions of the Declaration, Articles, or Bylaws which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens, or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Areas;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to the use of the Common Areas;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (h) Restoration or repair of the Project after a hazard damage or partial condemnation in a manner other than that specified in this Declaration;
- (i) Convertibility of Lots or Buildings into Common Areas or of Common Areas into Lots or Buildings; and
- (j) Leasing of Lots or Condominium Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his Lot or Condominium Unit, provided, however, that in any event no right of first refusal will be permitted to be added to the Declaration, Articles of Incorporation, or Bylaws;
- (l) Any provisions which are for the express benefit of holders, insurers, or guarantors of First Mortgages on Lots or Condominium Units.

(c) An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. In addition, any First Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request; provided, however, the foregoing shall not apply to additions or amendments changing any of the matters discussed in Sections 3, 4(b) and 4(c) of this Article.

Section 5. Liens. Any lien which the Association may have on any Lot or Condominium Unit in the Project for the payment of Common Expense Assessments, Insurance Assessments, Reconstruction Assessments, and special and penalty assessments attributable to such Lot or Condominium Unit shall be subordinate to prior tax liens and to the lien of any First Mortgage on the Lot or Condominium Unit recorded prior to the date any such Assessments become due.

Section 6. Foreclosure. Each holder of a First Mortgage who acquires title to a Lot or Condominium Unit by virtue of a foreclosure or a deed in lieu thereof, or any

purchaser at a foreclosure sale, shall take the Lot or Condominium Unit free of any claims for unpaid Assessments and charges against the Lot or Condominium Unit which accrue prior to the time such Mortgagee or purchaser acquires title to the Lot or Condominium Unit, except for claims for a pro-rata reallocation of such Assessments or charges to all Lots and Condominium Units including the mortgaged Lot or Condominium Unit.

X Section 7. Inspection of Records and Audits. The Association shall grant to each Owner and each First Mortgagee of a Lot or Condominium Unit the right to examine copies of the current Declaration, Articles, Bylaws, and books and records of the Association at any reasonable time. The Association shall also provide an audited statement for the preceding fiscal year if any First Mortgagee submits a request therefor.

Section 8. Payment of Assessments. Any encumbrancer holding a lien on a Lot or Condominium Unit may, but shall not be required to, pay any unpaid Assessment payable with respect thereto and upon such payment, such encumbrancer shall have a lien on such Lot or Condominium Unit for the amounts paid, of the same rank as the lien of its encumbrance, without the necessity of having to record a notice or claim of such lien.

Section 9. Mechanic's Liens. Any First Mortgagee of a Lot or Condominium Unit who shall become the Owner of such Lot or Condominium Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner against liability for claims for labor or materials provided and incorporated into such Lot or Condominium Unit where such claims arise for such labor performed or materials supplied prior to the date such Mortgagee becomes an Owner of such Lot or Condominium Unit, but shall be under such obligation for any claims thereafter.

Section 10. Notice of Lien. The Association shall send to the First Mortgagee of a Lot or Condominium Unit any notice of lien for unpaid assessments being filed upon such Lot or Condominium Unit by the Association.

Section 11. Breach of Covenant. No breach of any of the covenants, conditions, or restrictions of this Declaration shall defeat or render invalid the lien of a First Mortgage made in good faith and for value.

ARTICLE XIII.

RESERVATION TO ENLARGE AND SUPPLEMENT PROJECT

Section 1. Annexation. Declarant, for itself, its successors and assigns, expressly reserves until seven (7) years from the date of recording of this Declaration, the right to enlarge this Project by annexing additional real property described in Exhibit C attached hereto and by this reference incorporated herein, without the consent of the members of the Association, provided that FHA or VA determine that the annexation is in accordance with the general plan heretofore approved by them. Such additions shall be expressed in and by duly recorded supplements to this Declaration. All additional Common Areas, Lots, and Buildings shall be of comparable quality and compatible in appearance to

those erected upon the Property, and shall be substantially completed prior to annexation. The reference to the Declaration in any instrument shall be deemed to include any supplements to the Declaration without specific reference thereto.

Section 2. Standards, Use. Such supplement(s) to this Declaration shall provide for a division of such annexed real property and improvements into Lots, Buildings, and Common Areas similar in method and form to the division made of the Property and improvements in this Declaration, provided, that Declarant expressly reserves the right to establish and construct Townhomes, Condominium Units, and multi-family Buildings within such annexed Property, subject to the approval rights of the Federal Housing Administration and/or Veterans Administration as described in Article XIV, Section 5 of this Declaration.

Section 3. Assessments. In order that the Common Expense Assessments and Insurance Assessments of this Project, including those properties described in all supplemental declarations hereto, be shared proportionately and equitably by the Owners of the initially submitted Lots and the Owners of all subsequently submitted additional Lots, Townhomes, and Condominium Units, the Common Expenses and Insurance Assessments shall be assessed against all Lots, Townhomes, and Condominium Units equally, and shall commence as to annexed Lots, Townhomes, and Condominium Units on the first month following the sale of the first Lot, Townhome, or Condominium Unit in such annexed property by Declarant.

Section 4. Annexation of Condominium Property.

(A) Declarant, its appointees, successors and assigns, reserves the right to establish a condominium project(s) within any or all of the real property annexed to the Project in accordance within this Article.

(B) In order to establish such condominium ownership, a separate Condominium Declaration(s) shall be recorded in Boulder governing the condominium project(s) in accordance with the laws of the State of Colorado, which Condominium Declaration shall provide, among other things, the following:

(1) A Condominium Association shall be formed to manage and administer the condominium project and to maintain the general and limited common elements associated with such condominium project.

(2) The Condominium Association shall enforce, with respect to the condominium project and condominium owners, the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, and resolutions and decisions of the Board.

(3) The Condominium Association shall levy assessments against each Condominium Unit in amounts which are sufficient to cover the costs of operating the Condominium Association and to cover the amounts of the Assessments due the Association under this Declaration. The Condominium Association shall collect from the Condominium Unit owners and remit to the Association the Assessments applicable to the Condominium Units within its jurisdiction.

(4) Nothing contained in any Condominium Declaration shall modify the obligations created by this Declaration, except as specifically provided herein.

(5) The Condominium Declaration may provide for such other rights and obligations, not inconsistent with this Declaration, as are deemed by Declarant to be appropriate or necessary to the operation and maintenance of the condominium project in a manner which is compatible with the remainder of the Project. Additional provisions governing and affecting only the condominium project shall be permitted so long as other Owners and Mortgagees within the Project are not adversely affected.

Section 5. Annexation of Townhomes.

(A) Declarant, its appointees, successors and assigns, reserves the right to establish Townhomes on any real property annexed to the Project in accordance with this Article.

(B) The creation of such Townhomes shall be accomplished by means of a duly recorded supplement to this Declaration.

(C) The supplement to this Declaration establishing Townhome use and ownership may, at the sole discretion of Declarant, provide for the following:

(1) The Association may be required to repair and maintain all or any portion of the exterior of the Townhome Buildings and the landscaped areas located within the Townhome Lots but outside of the Buildings.

(2) The Association may be required to maintain insurance policies covering the Townhome Buildings and other property to be maintained by the Association.

(3) The Association may be required to perform designated functions in connection with the damage, destruction, or condemnation of any of the Townhomes.

(4) In the event the Association is required to assume additional responsibilities which relate specifically to the Townhomes, the Association shall levy a Townhome Assessment against the Townhome Lots in amounts which are sufficient to cover the additional costs of such services.

(5) The supplement may provide for such other rights and obligations, not inconsistent with this Declaration, as are deemed by Declarant to be appropriate or necessary to the operation and maintenance of the Townhomes in a manner which is compatible with the remainder of the Project. Additional provisions governing and affecting only the Townhomes shall be permitted so long as other Owners and Mortgagees within the Project are not adversely affected.

Section 6. General Terms.

(A) Except as may be otherwise provided by the provisions of such supplement(s) to this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional Lots and Condominium Units submitted to the Project.

(B) Although it is contemplated that additional lands may ultimately be annexed to this Project, Declarant, its appointees, successors and assigns, shall have no affirmative obligation to do so. The rights of Declarant,

its appointees, successors and assigns, as defined in this Declaration, shall apply to all real property which is added to this Project in accordance with these provisions relating to enlargement thereof.

(C) Each Owner shall have the nonexclusive right, together with all other Owners, to use all Common Areas in the Project, and any supplements or additions thereto, and any property owned by the Association for the general use of the Owners, subject to the reasonable Rules and Regulations of the Association. This easement shall be irrevocable and shall be for the purpose of ingress and egress, recreational, and social use and shall apply to all Common Areas and all property hereafter owned by the Association and committed to the Project.

(D) Voting rights shall commence as to each Lot and Condominium Unit upon its annexation to the Project pursuant to this Article XIII.

ARTICLE XIV.

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Subject to the provisions of Articles XII and XIII hereof and other provisions of this Declaration, this Declaration may be amended or revoked during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Each amendment or any revocation to the Declaration must also have the approval of seventy-five percent (75%) of the First Mortgagees (based upon one vote for each First Mortgage owned). Any amendment or revocation must be recorded.

Section 4. Special Amendment by Declarant.

(A) Declarant hereby reserves and is granted the right and power but not the duty to record a special amendment to this Declaration at any time and from time to time during the period in which Declarant is a Class B Member, which amends this Declaration (i) to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans Administration, or any other

governmental agency or any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities, or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee Mortgages covering Lots or Condominium Units, or (iii) to correct technical errors or (iv) to comply with the requirements of the City of Boulder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a special amendment on behalf of each Owner. Each deed, Mortgage, or other evidence of obligation or other instrument affecting a Lot or Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make or consent to a special amendment while Declarant is an Owner. No special amendment made by Declarant shall impair the lien of a First Mortgage upon a Lot or Condominium Unit or any warranties made by an Owner or Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee a Mortgage on such Owner's Lot or Condominium Unit.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties; dedication of Common Area; and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Personal Property for Common Use. The Association may acquire and hold for the benefit of the Owners, real, tangible, and intangible personal property and may dispose of the same by sale or otherwise. Each Owner may use such real and personal property in accordance with the purpose for which it is intended, so long as he does not hinder or encroach upon the lawful rights of the other Owners.

Section 7. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid and addressed in the name of the Owner of such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid to Brandon Creek Homeowners and Recreational Association, Inc., c/o Markel Homes, Inc., 2737 Mapleton Avenue, Boulder, Colorado 80302, until such address is changed by a notice of address change duly recorded in the Office of the Clerk and Recorder, County of Boulder, State of Colorado.

Section 8. Acceptance of Provisions of all Documents. The conveyance or encumbrance of a Lot or Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles and the Bylaws, and Rules and Regulations, and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance. The easements and rights created in this Declaration for the benefit of an Owner shall be appurtenant to the Lot or Condominium Unit of that Owner and all conveyances and other instruments affecting title to a Lot or Condominium Unit shall be deemed to grant and reserve the easements and rights as provided in this Declaration, as though set forth in said

instrument in full, even though no specific reference to such easements or rights appears therein.

Section 9. General.

(A) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such validity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected hereby.

(B) Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

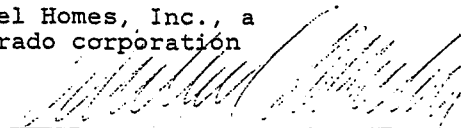
(C) In the event there shall be any conflict between the provisions of this Declaration and any provision of the Articles of Incorporation, any Bylaws, or any Rule or Regulation of the Association, the provisions of this Declaration shall be deemed controlling.

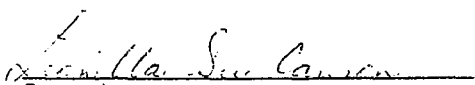
(D) Any institutional holder of a First Mortgage on a Lot or Condominium Unit in the Project will upon request be entitled to: (i) inspect the books and records of the Project during normal business hours; (ii) receive an annual financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend such meetings.

(E) No Owner may lease less than the entire Lot or Condominium Unit. No Lot or Condominium Unit may be leased or rented for less than thirty (30) days. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws, Articles, and Rules and Regulations and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

Section 10. City of Boulder Approval. Notwithstanding anything to the contrary herein or in the Bylaws, Articles, or Rules and Regulations, the Association shall not be dissolved, this Declaration shall not be revoked, nor shall any portion of or any interest in the Common Area be conveyed by the Association, without the prior approval of the City of Boulder. This Section 10 shall not be amended or revoked without the approval of the City of Boulder.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 17TH day of OCTOBER, 1985.

Markel Homes, Inc., a Colorado corporation
By 
Michael Markel, President

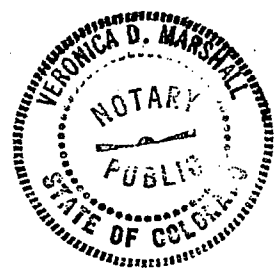
ATTEST:

Cecilia Sue Cannon
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 17th day of OCTOBER, 1985, by Michael Markel as President and Leonilla Sue Carson as Secretary of Markel Homes, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: MARCH 2, 1989



Veronica D. Marshall
Notary Public
642 ANTLER DR. BOULDER
COLO 80302