

## AMENDMENTS TO COVENANTS

### FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DARTMOUTH HEIGHTS FILING NO. 1

This First Amendment to the Declaration of Covenants, Conditions and Restrictions of Dartmouth Heights, Filing No. 1 is dated as of November 14, 1989:

#### RECITALS

- A. Celebrity Homes, Inc., a Delaware corporation, as owner of the subject property and Declarant, filed a document entitled "Declaration of Covenants, Conditions and Restrictions dated December 10, 1981, recorded March 12, 1981 under Reception No. 015808, Book 2337, page 590 of the real property records of the City and County of Denver, Colorado (the "Declaration"). By the Declaration, certain real property, legally described as: Dartmouth Heights, Filing No.1, was subject to the terms, conditions, restrictions and covenants set forth in that Declaration.
- B. Celebrity Homes, Inc. did, by change of name, become Celebrity Development Corporation on December 23, 1981, and is hereinafter referred to as Declarant in the place and stead of Celebrity Homes, Inc.
- C. In accordance with Section 2 of Article III of the Declaration, all members of the Association, including Celebrity Development Corporation, are class A members of the Association entitled to one vote for each Lot owned.
- D. Section 3 of Article VIII of the Declaration permits the amendment of the Declaration by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.
- E. The requisite percentage of lot owners are desirous of amending the Declaration as hereinafter set forth.

#### NOW, THEREFORE, the following amendments are hereby adopted:

1. **Article I, Section 4** is hereby amended to delete the following language:  
"The Common Area" to be owned by this Association is described as follows:  
  
"Outlot A, Dartmouth Heights, Filing No.1, together with all perimeter landscaped areas and islands as shown on the Plat."
2. **Article III, Section 2** of the Declaration is hereby amended, modified and revised in its entirety, and as so amended, modified and revised reads as follows:  
  
Section 2. The Association shall have one class of voting membership whose members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
3. **ARTICLE V** of the Declaration is hereby modified and revised in its entirety, and as so modified and revised reads as follows:

## **ARTICLE V - ARCHITECTURAL CONTROL**

### Section 1. Architectural Advisory Committee.

The Association shall maintain, as a standing committee, the Architectural Advisory Committee (hereinafter referred to as "Committee"). The purpose of the Committee shall be to carry out its duties and obligations imposed under the terms of the Declaration and to carry out the purposes and intent of the Declaration, as amended. The Committee shall have jurisdiction over all of the real property subject to the terms of the Declaration, as amended.

### Section 2. Composition of Architectural Advisory Committee.

The Committee shall consist of three or more persons, one of whom shall be a chairperson elected by the Board, with the remainder of the Committee members being appointed by the Association's Board of Directors.

### Section 3. Purpose.

- a. The Committee shall regulate the external design, appearance and location of the improvements and alterations to improvements located upon the real property subject to the jurisdiction of the Committee in such a manner as (i) to promote those qualities in the community which bring value to the real property and (ii) to foster the attractiveness and functional utility of the community as a place to live, including a harmonious relationship among structures and vegetation. In fulfilling this purpose, the Committee shall review, study and either approve or reject plans for proposed landscaping or other alterations to the Properties, all in compliance with the Declaration, as amended, and Architectural Advisory Committee rules and regulations as may from time to time be adopted.
- b. The Committee shall also be empowered to require completion of landscaping for any Lot sold by Declarant to an intended resident within a reasonable period, not to exceed nine (9) months following completion of a home on that Lot. The Committee may approve an extension not to exceed nine (9) months if landscaping for the front yard on the Lot has been completed in the initial nine (9) months.
- c. The provisions of this section shall not be applicable to Declarant.

### Section 4. Requirement.

No building, landscaping, awnings, patio covers, fence, wall, residence, structure or projection from any of the foregoing (whether of a temporary or a permanent nature and whether or not affixed to the ground) shall be commenced, erected, improved or altered, nor shall any change of exterior color be made or other work which in any way alters the exterior appearance of any Lot or improvement be done, without the prior written approval of the Committee. Notwithstanding the foregoing provision, the Architectural Advisory Committee may adopt rules and regulations exempting certain landscaping, change in exterior color or other alterations from this approval requirement. To obtain such approval, the Owner shall be required to submit written plans and specifications showing the nature, kind, shape, height, materials, color and location of the proposed improvement or alteration, together with such other information as may be requested by the Committee under the terms of the Declaration, as amended, and thereafter, to complete said improvement or alteration in accordance with the approved plans and specifications in a good and workmanlike manner. Approval by the Committee shall be based upon the following factors:

- a. Compliance with the terms and conditions set forth in the Declaration, as amended I and with the terms and conditions set forth in any Architectural Advisory Committee rules and regulations;
- b. Inclusion of any such information in the plans and specifications as may have been reasonably requested by the Committee;
- c. The compatibility and harmony of the proposed improvement or alteration in relation to, and its effect upon, surrounding structures, uses, vegetation, real property which is visible from the Lot upon which the proposed improvement or alteration is contemplated to be made I and the overall community design of the real property subject to the Declaration, as amended:
- d. The exterior design, appearance and materials contemplated for any proposed improvement or alteration;
- e. The color scheme, finish, proportions, style of architecture, location, height, bulk or appropriateness of any proposed improvement or alteration,
- f. Conformity of the plans and specifications to the purposes and general plan and intent of the limitations and restrictions imposed by the Declaration, as amended, and the Architectural Advisory Committee rules and regulations.

In any case where the Committee disapproves any plans and specifications submitted pursuant to this Section 4, or approves the same only as modified or upon specified conditions, such disapproval or qualified approval shall be given within thirty (30) days of the receipt of the plans and specifications by the Committee and shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

#### Section 5. Limitation of Liability.

The Committee shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Association's Board of Directors, the Committee, nor any individual member of the Board of Directors or the Committee shall be liable to any person or entity for any official act of the Committee or the Board of Directors in connection with submitted plans and specifications, except to the extent that the Committee, the Board of Directors, or any individual member of the Committee or the Board of Directors acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission of the City and County of Denver, Colorado. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, the Board of Directors nor any individual member of the Committee or the Board of Directors shall be responsible or liable to any Owner, developer or contractor with respect to a loss, liability, claim or expense which may arise by reason of such approval or the construction of the proposed improvement or alteration. Neither the Board of Directors of the Association, the Committee, or any individual member or agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Declaration, as amended, and any Architectural Advisory Committee rules and regulations, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee, the Board of Directors, and the individual members thereof shall be defended and indemnified by the Association in any such suit or proceeding provided, however, that the Association shall not be obligated to indemnify any member of the Committee or the Board of Directors in the event such member of the Committee or the Board of Directors shall be adjudged to be liable for negligence or misconduct in the performance of his duty as a member of the Committee or the Board of Directors unless and only to the extent that the Court

in which such action or suit may be brought shall determine upon application that, despite the adjudication or liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such Court shall deem proper.

Section 6. Appeal of Architectural Advisory Committee Decision.

Any applicant may appeal an adverse Committee decision within thirty (30) days of its receipt to the Association's Board of Directors, who within thirty (30) days thereafter, may reverse or modify such decision by a majority vote of all of the then members of the Board of Directors of the Association.

Section 7. Application to Declarant.

The provisions of this Article V shall not be applicable to the Declarant nor to any successor in interest to the Declarant except an owner as defined in Section 2, Article I of the Declaration. The Declarant agrees that it shall endeavor to cause any successor not controlled by Declarant to adhere to the design and material guidelines used by Declarant in developing the Properties.

4. **ARTICLE VI - USE RESTRICTIONS** is hereby amended, modified and revised as follows:

**Subparagraph (h) of Article VI** is hereby amended in its entirety to read as follows:

(h) Every principal residence constructed shall have not less than 2000 square feet of floor area devoted to living purposes, or if more than one story is constructed, then the main floor shall have not less than 1,400 square feet of floor area devoted to living space exclusive of roofed or unroofed porches, terraces, basements and garages. In the event a principal residence which has a smaller number of square feet of floor area and which was in existence prior to the effective date of this Amendment is partially or totally destroyed by fire, wind, earthquake or other natural cause, it may be rebuilt with not less than the number of square feet of floor area it originally had. Each principal residence shall have a garage of sufficient size to house not less than two cars. Further, each such residence shall provide a paved driveway suitable for off-street parking for at least two cars, excluding the space in the garage. No other off-street parking shall be constructed or permitted without the written permission of the Board of Directors.

No recreational vehicles, motor homes, motor coaches, campers, trailers, boats, boat trailers, pickup or utility trucks with a capacity of more than three-quarter ton, or similar vehicles, may be parked in the street and the parking of such vehicle off-street shall be in a manner reasonably shielding it from the view from the street and neighboring lots consistent with the planting and fencing regulations. There shall be no off-street parking except for cars in the driveway, which connects the street and main garage door without the written permission of the Board of Directors.

**Subparagraph (o) of Article VI** is hereby amended in its entirety to read as follows:

(o) Drying of clothes, clotheslines, equipment, garbage cans, service yards, or storage piles shall be kept screened by adequate planting or fencing as herein permitted so as to conceal them from view of neighboring lots and street. All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

**Subparagraph (p) of Article VI** is hereby amended in its entirety to read as follow:

(p) The following shall not be permitted without the approval in writing of the Board of Directors of the Association:

1. Exterior television antennas, satellite dishes, radio antennas, solar panels or swamp coolers maintained upon the premises or any portion of the improvements located upon the premises or upon any structure situated upon said real property.
2. Fiberglass or similar materials for any exterior roofing or walls.
3. Exterior colors that are not earth tones. Earth tones are defined as the range of colors on the existing homes in Dartmouth Heights, Filing No. 1 as of the effective date of this First Amendment to the Declaration.

(q) No storage buildings separate from the main structure shall be permitted on any lot.

(r) Each lot and any and all improvements from time to time located on such lot, including landscaping, shall be maintained by the owner thereof in good condition and repair.

(s) No noxious, offensive or dangerous activity shall be carried on upon the Properties, not shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, annoyance or danger to Owners.

(t) All Owners shall mow, cut, prune, clear, and remove from their land any unsightly brush, weeds or other growth and shall remove from their land, any growth infected with noxious insects or contagious plant diseases.

(u) No Owner or resident shall repair, or permit any other person to repair, any car, boat or other vehicle except in an enclosed area which is shielded from the view from the street and neighboring properties. The foregoing shall not apply to minor repair and maintenance procedures which do not exceed 12 hours in duration. In no event shall vehicles which are inoperable or not regularly driven be permitted to park for more than 48 hours in any private driveway or on any adjacent street.

5. **ARTICLE VIII - GENERAL PROVISIONS** is hereby amended, modified and revised as follows:

Section 4. Annexation

(a) Additional residential property and common area may be annexed to the properties with the consent of two-thirds of the members.

(b) Subparagraph (b) of Section 4 is deleted in its entirety.

Article VIII is hereby amended, modified and revised by the addition of the following sections:

Section 6. Rules and Regulations.

The Association, acting through its Board of Directors, may adopt rules and regulations consistent with the expressed or implied purposes of the Declaration, as amended, which govern, but need not necessarily be limited to: use of Lots, Common Areas and any recreational facilities owned by or under the control of the Association; **procedures for the adoption, levy, collection and enforcement of assessments**; general conduct of Owners, members of their immediate family, and their guests and invitees on Common Areas or while using recreational facilities owned or controlled by the Association; **pet control**, noxious, offensive or dangerous activity; nuisances; residential exterior maintenance; services; financial matters; enforcement of the Declaration, as amended, and rules and regulations adopted pursuant thereto; interpretation and clarification of the Declaration, as amended; and rules and regulations adopted pursuant thereto; **building and landscaping control**; and design and construction matters, including Design Guidelines.

Prior to the adoption of any future proposed rules and regulations, or an amendment or repeal of any then existing rules and regulations, the Board of Directors of the Association shall give notice of the proposed action to all Owners and provide to those Owners an opportunity to submit views or otherwise participate informally in conferences relative to the proposed actions. Notice of the proposed actions shall be given by first class mail to the last known address of each known Owner. Any such notice shall state the time, place and nature of the proceedings, which shall be held not less than ten (10) days after mailing, the authority under which the action is proposed, and either the terms or substance of the proposed rules and regulations or a description of the subjects and issues involved. At the time and place specified in the notice, the Association shall hold a public hearing at which it shall afford interested owners an opportunity to submit written data, views, or arguments and to present the same orally unless the Board of Directors shall consider the submissions prior to taking any action. In the event the Board adopts the initial proposal or a proposal substantially similar to the initial proposal, any action taken shall become effective ten (10) days thereafter. In the event of any material revisions made by the Board to the proposed actions subsequent to the giving of notice to all Owners, as a result of Owner comment or otherwise, the proposed actions, as revised, shall become effective ten (10) days after the Board votes to adopt same and gives notice to each Owner of such revisions, in the manner provided above.

#### Section 7. Non-Compliance Assessment.

Should any Owner cause or allow to be caused any violation of the Declaration, as amended, or any rules or regulations adopted under the authority granted under the Declaration, as amended, any allow such violation to continue after written notice to such Owner and the expiration of a reasonable time in which to comply, which time shall be set forth in the written notice, a Non-Compliance Assessment may be levied by the Board against such Owner after notice to such Owner of the proposed imposition of such Non-Compliance Assessment and an opportunity for such Owner to be heard by the Board as to why such Non-Compliance Assessment should not be levied against said Owner. The amount of any such assessment may include: (1) costs incurred by the Association in attempting to secure compliance, including reasonable attorneys fees; and (2) non-compliance penalties in the amount of \$25.00 for such violation upon its first occurrence, \$10.00 per day for each day the violation continues to occur thereafter, \$50.00 for such violation upon subsequent occurrences after abatement of the initial violation, and \$20.00 per day- for each day the subsequent t violation after abatement of the initial violation continues to occur, or such other amount as may from time to time be established by the Board of Directors of the Association through its rules and regulations. The Non-Compliance Assessment shall be a charge on the land of the Owner who has failed to comply with the Declaration, as amended, or rules and regulations adopted pursuant to the Declaration as amended, and the provisions of Article IV, Sections 1, 8 and 9 of the Declaration, as amended, shall be applicable to such Non-Compliance Assessments.

#### Section 8. Variances.

Recognizing that the Declaration, as amended, cannot address all conceivable situations which may arise, and further, recognizing the need for flexibility in administration of the Declaration, as amended, so as not to create unnecessary hardship, the Association's Board of Directors may, in its sole discretion, and on behalf of all of the Owners of property subject to the Declaration, grant variances, whether permanent or limited in duration, from any of the terms and conditions contained within the Declaration, as amended, and rules and regulations adopted thereunder. Any variances so granted shall be binding upon the Association and all Owners of property subject to the Declaration, as amended. The procedure for application shall be the same as is provided above in Article V, Section 4, except application shall be made to the Association's Board of Directors, rather than to the Architectural Advisory Committee.

In granting variances hereunder, the following shall be applicable:

- a. any variance granted hereunder shall run with the property for which granted;
- b. if a variance is denied, another application for the same or similar variance for the same property may not be made for a period of one year;
- c. a variance shall not be granted unless at least 75% of the members of the Board of Directors of the Association find that all of the following conditions exist:
  - i. owing to unusual circumstances, literal enforcement of the Declaration, as amended, will result in unnecessary hardship;
  - ii. The variance will not substantially or permanently injure the use of other property subject to the Declaration, as amended,
  - iii. the variance will not alter the essential character of the properties subject to the Declaration, as amended;
  - iv. the variance will not weaken the general purposes of the Declaration, as amended;
  - v. the variance will be in harmony with spirit and purpose of the Declaration, as amended; and
  - vi. the circumstances leading the applicant to seek a variance are unique or peculiar to the property or its Owner and are not applicable generally to property subject to the Declaration, as amended.

Section 9. Declaration Deemed to Run with the Land.

The Declaration and the restrictions, covenants and conditions contained in the Declaration and this First Amendment shall be deemed to run with the land and shall inure to and be binding upon all property subject thereto and upon each person or entity who now owns or who hereafter acquires ownership or any right, title or interest in any property which is subject to the Declaration, as amended.

Section 10. Right to Enforce Declaration.

The Declaration, as amended, and the restrictions, covenants and conditions contained therein are for the benefit of the Owners, jointly and severally, and for the benefit of the Association and the Architectural Advisory Committee, and may be enforced by an action for damages, suit for injunction, mandatory or prohibitive or such other appropriate legal remedy as may be available, instituted by any Owners, the Association, the Architectural Advisory Committee, or any combination thereof; provided, however, that prior to the commencement of any enforcement proceedings by any Owner, that Owner shall advise the Association's Board of Directors in writing of the claimed violation, and the Board shall attempt to compel compliance or commence enforcement proceedings in the name of the Association. In the event the Association's Board of Directors fails or refuses to act to remedy the claimed violation within thirty days, then and only then may an Owner, separately, and at his sole cost and expense, attempt to enforce the Declaration, as amended. No action shall be brought or maintained against the Board of Directors, the Association or members thereof in the event the Board elects to take no action with respect to alleged violations of the Declaration, as amended.

Section 11. Violation Deemed Nuisance.

Any act or omission whereby any restriction, condition or covenant of the Declaration, as amended, or any rule or regulation promulgated under the authority granted by the Declaration, as amended, is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association, the Committee, or by any Owner, subject to the provisions of Article VIII, Section 10.

Section 12. Identity of Declarant.

Declarant shall be deemed to mean the Declarant named herein or any entity with which Declarant is associated.

Section 13. Ratification and Confirmation of Original Declaration.

Except as amended hereby, the original Declaration is ratified and confirmed in its entirety.

Section 14. Effective Date.

This First Amendment to Declaration of Covenants, Conditions and Restrictions of Dartmouth Heights Filing No. 1 shall be effective when signed by not less than seventy-five percent (75%) of the Lot Owners and recorded in the real property records of the City and County of Denver, Colorado. It shall not be effective as to anything which was in existence and in conformity with the original Declaration prior to the effective date of this Amendment. Not less than seventy-five percent (75%) of the Lot Owners have signed this instrument by the execution of signature pages thereto and in so doing have authorized Dartmouth Heights Association to execute and record it in the real property records of the City and County of Denver, Colorado on their behalf.