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PARK EAST SQUARE

SECOND AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS

THIS SECOND AMENDMENT is made this 3rd day of April, 1975, by SINGER HOUSING COMPANY, a Delaware corporation, Suite 602, Colorado Building, 1919 14th Street, Boulder, Colorado, 80202, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions, Restrictions, and Easements for Park East Square was recorded in the real property records of Boulder County, Colorado, on December 31, 1974, on Film 875 as Reception No. 125648 and an Amendment and Ratification thereof was recorded in the real property records of Boulder County, Colorado on MARCH 26, 1975, on Film 882 as Reception No. 132916 (which Declaration, as so amended and ratified is hereinafter called the "Declaration"); and

WHEREAS, Declarant is the owner of the Property, as defined in the Declaration, and all of the real property described in Exhibit A thereto,

NOW, THEREFORE, Declarant does hereby amend the Declaration as follows:

1. Article I is hereby amended by the addition of the following Section 7:

Section 7. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar security instrument encumbering any Lot. "First Mortgage" shall mean and refer to the Mortgage which is the first and most senior of all Mortgages encumbering any Lot. "Mortgagee" shall mean and refer to any person or entity who is a mortgagee, beneficiary, or similar secured party under a Mortgage, and "First Mortgagee" shall mean and refer to the Mortgagee under a First Mortgage; provided, however, that no person or entity shall be deemed a Mortgagee or First Mortgagee hereunder until written notice of the Mortgage or First Mortgage under which such person or entity claims to be a Mortgagee or First Mortgagee, including a reference to the Film and Reception Number of the recording of such

Mortgage or First Mortgage in the real property records of Boulder County, Colorado, has been received by the Association. In the event that the Veterans Administration shall be a contract seller under a contract of sale relating to any Lot, the term First Mortgagee shall also refer to and mean the Veterans Administration under such contract of sale, and any successor to or assignee of the interest of the Veterans Administration thereunder; provided that no such entity shall be deemed a First Mortgagee hereunder until written notice of its interest as contract seller has been received by the Association.

2. Subparagraph (d) of Section 1 of Article II is hereby amended to read as follows:

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for any purpose provided herein and to mortgage any part or all of the Common Area; provided that no such dedication, transfer, or mortgage shall be effective unless an instrument, signed by the Owners of two-thirds of the Lots owned by each class of Owners, agreeing to such dedication, transfer, or mortgage, has first been recorded in the real property records of Boulder County, Colorado; and provided further that no mortgage, transfer, sale, release, hypothecation, encumbrance, or other alienation of the Common Area or any part thereof (except for dedications and transfers to any public agency, authority, or utility for municipal purposes or for the purposes of providing a benefit or service to the Property or any part thereof) shall be made without the written consent of all First Mortgagees;

3. Section 3 of Article IV is hereby amended to read as follows:

Section 3. Annual Assessments. The Association may levy against each Lot each year an annual assessment, the proceeds of which are to be used to defray recurring expenses of the Association and to raise funds required by the Association for all purposes for which assessments may be made hereunder. The Board of Directors may fix the annual assessment per Lot so long as it does not exceed the maximum annual assessment provided for herein. The maximum annual assessment per Lot for the first calendar year during which an assessment is made shall be \$540. The maximum annual assessment against any Lot for any calendar year thereafter shall be one hundred five percent of the maximum annual assessment for the preceding calendar year, whether or not such maximum annual amount was assessed in such preceding calendar year. The maximum annual assessment for any year provided for herein may be increased above that provided herein by the vote of two-thirds of the votes of each class of members voting in person or by proxy at a meeting duly called for such purpose. The annual assessments per Lot provided herein shall be payable in twelve equal monthly installments (each equal to one-twelfth of the annual assessment per Lot for such

year) payable on the first day of each calendar month. The amount of the annual assessment made against each Lot shall be the same, except that, as to any Lot owned by Declarant during any period when it is not occupied as a residence, (a) the assessment against such Lot shall be 10% of the standard per Lot assessment if a Certificate of Occupancy has not been issued as to such Lot and (b) the assessment against such Lot shall be 25% of the standard per Lot assessment if a Certificate of Occupancy has been issued as to such Lot; provided that, if for any calendar year in which assessments which are lower than the standard per Lot assessments are made against Lots owned by Declarant the total assessments and other income of the Association for such calendar year fail adequately to meet the expenses of the Association for that year so that the Association would have to borrow money or levy additional or special assessments in order to meet Association expenses for such year, Declarant shall be liable for and shall pay to the Association that part of the difference between (1) assessments Declarant actually paid for such year for Lots owned by Declarant during such year and (2) the total assessments Declarant would have paid if assessments would have been made against the Lots owned by Declarant at the standard per Lot assessment, which is required to enable the Association to meet its expenses for such year without borrowing money or making additional or special assessments. The status of any Lot for purposes of payment of the annual assessment per Lot shall be determined on the first day of each calendar month.

4. Article VII is hereby amended to read as follows:

ARTICLE VII
CERTAIN RIGHTS AND
OBLIGATIONS OF THE ASSOCIATION
Section 1. Maintenance.

The Association shall maintain and manage the Common Area and other Property lying outside the exterior walls of buildings located on Lots, including but not limited to the landscaping, outside parking areas, private drives, and recreational facilities, excepting, however, the areas subject to patio easements appurtenant to Lots.

The Association shall maintain the exterior of the building erected on each Lot, including painting, repairing, replacing, and caring for roofs, gutters, downspouts, exterior building surfaces, and the exterior of other improvements; provided that such exterior maintenance shall not include maintenance, repair, or replacement of fences not installed or erected by Declarant, glass or screened surfaces, or patio planting; and further provided that such obligation shall apply only to such maintenance required by ordinary wear and tear and shall not apply to maintenance, repair, or restoration occasioned by damage or destruction caused by fire, accident, willful destruction, or other casualty.

The Association shall maintain, repair, and restore (and shall carry insurance for the restoration of) the interior parking areas, entry hall to interior parking areas, storage areas, and trash room area in or appurtenant to each Lot, as shown on the Easement Location Map referred to in Article IX hereof, including but not limited to, cleaning, painting, repairing, restoring, and replacing all interior areas, all foundations, the flooring, all supporting members thereof (including members supporting the structure over such areas), and all wall structures (except for walls located on adjoining Lots). The Association shall maintain and repair all utility service lines serving more than one Lot. The Association may also perform such other services including (by way of example and not exclusion) snow removal and restoration and replacement of other areas, for the benefit of the Property or of Owners and Lots as the Board of Directors may reasonably deem necessary or advisable.

Nothing herein shall be construed as waiving any right of the Association to recover or damage or expense incurred by the Association as the result of the willful or negligent act of any Owner, his family, guests, or invitees, or any other person.

Section 2. Labor and Services. The Association may engage such employees to perform such duties for the Association as the Association shall determine and may engage a professional management firm (either bonded or unbonded) to manage the affairs of the Association; provided that any agreement entered into by the Association pursuant to which the Association engages a management firm or other entity to manage the affairs of the Association shall have a term not exceeding one year and shall be terminable for cause at any time by the Association on not more than thirty days' notice; and provided further that, if the Association engages a professional management firm to manage the affairs of the Association, it shall not put into effect any decision to terminate management of its affairs by a professional management firm (so as to assume self-management) without giving thirty days' prior written notice to all First Mortgagees (provided that this Section shall not be construed as requiring notice to First Mortgagees prior to the discharge or replacement of any given professional management firm).

5. Article VIII is amended by the addition of the following new subparagraph (p):

(p) Each Owner shall maintain, repair, and restore all improvements on his Lot (to the extent that such improvements are not required to be maintained, repaired, and restored by the Association pursuant to Section 1 of Article VII hereof) so that the exterior maintenance and appearance of the improvements on such Lot are consistent with the level and quality of the exterior maintenance and appearance of the improvements on the other Lots on the Property; provided that nothing contained herein shall be construed as requiring any Owner to rebuild any improvement which has been substantially destroyed and is not occupied.

If any Owner shall fail to so maintain, repair, or restore, the Association may do so, may charge the Owner the cost thereof, and shall have a lien on such Owner's Lot for such cost, enforceable, and subject to the same prior liens, as provided as to liens for assessments in Article IV hereof.

6. The first paragraph of Section 5 of Article IX is hereby amended to read as follows:

Section 5. Encroachment Easements. If any building erected by Declarant on any Lot shall encroach on any other Lot or on the Common Area, as a result of the construction, reconstruction, repair, shifting, settlement, or movement of such building, there shall be an exclusive easement, appurtenant to the Lot on which such building is primarily erected, for such encroachment and for the maintenance, repair, and, in the event of destruction, reconstruction of such building.

7. Subparagraphs (1) and (2) of Section 2 of Article X are hereby amended to read as follows:

(1) No amendment of this Declaration shall be effective until recorded in the real property records of Boulder County, Colorado;

(2) Except with the written consent of the Owners of the Lots affected by such amendment or termination, no amendment of this Declaration shall be effective to terminate or amend any easement or type of easement provided for herein, unless such amendment is applicable to all Lots affected by such easement or type of easement; and

8. Section 2 of Article X is hereby amended by the addition of the following subparagraph (3):

(3) No amendment of this Declaration and no termination or abandonment of this Declaration shall be made without the written consent of all First Mortgagees.

9. Section 7 of Article X is hereby amended to read as follows:

Section 7. Annexation. In addition to annexation as permitted by Section 4 of this Article X, additional Lots and Common Area may be annexed to the Property with the written consent of all First Mortgagees and of two-thirds of each class of Members of the Homeowners' Association.

10. Article X is hereby amended by the addition of the following Section 8:

Section 8. Leasing. No Lot or improvement thereon shall be leased or rented, except in accordance with the following provisions:

- (a) Each lease shall be in writing; and
- (b) Each lease shall provide that it is subject in all respects to the provisions of this Declaration and of the Articles of Incorporation and Bylaws of the Association and that any failure of the lessee to comply in all respects with the provisions of the same shall be a default under the lease.

11. The Declaration shall be amended by the addition of the following two Articles:

ARTICLE XI

CONDEMNATION AND DESTRUCTION

Section 1. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any part thereof or interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereon), as reasonably determined by the Association, in excess of \$10,000 the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgages and to Declarant. The Association shall have full power and authority to defend in said proceeding; provided that the Association shall not enter into any settlement or other non-adversary disposition of said proceeding pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished without giving all First Mortgagees and Declarant at least fifteen days' prior written notice thereof.

Section 2. Destruction. In the event of any casualty or occurrence which causes damage or destruction to the Common Area or any part thereof or any improvement thereon in excess of \$10,000, as reasonably determined by the Association, the Association shall give all First Mortgagees and Declarant prompt written notice thereof. The Association shall have full power and authority to adjust any such loss with the insurance carrier and to bring suit or negotiate for reimbursement of such loss; provided that no non-adversary adjustment or settlement of any such loss shall be made by the Association without giving all First Mortgagees and Declarant at least fifteen days' prior written notice thereof.

Section 3. Disposition of Proceeds. Any funds received by the Association as a result of any condemnation or destruction shall be applied to the replacement or restoration, to the extent that such replacement or restoration is reasonably possible, of any part of the Common Area condemned, damaged, or destroyed; provided that with the consent of all First Mortgagees and, until December 27, 1980, Declarant, the Association may determine not to so replace or restore. Any funds not used for such replacement or restoration (because replacement or restoration is not reasonably possible, because First Mortgagees and Declarant have consented to a

determination not to replace or restore, or because the proceeds exceed those necessary for replacement or restoration) shall be held by the Association and applied to Association purposes or distributed by the Association to the Owners of the Lots; provided that no such distribution shall occur prior to either December 28, 1980, or the annexation to the Property, pursuant to Section 4 of Article X, of all the real property described in Exhibit A attached hereto and by this reference made part hereof, whichever occurs first. Any such Distribution shall be made to the Owners pro rata, based on the number of Lots owned by each Owner. All distributions shall be made payable jointly to the Owner of each Lot and the First Mortgagee thereof.

ARTICLE XII INSURANCE

Section 1. Insurance Requirements Generally.

The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado with a rating in Best's Insurance Reports (or any comparable publication) of at least BBB+ (or any comparable rating).

To the extent possible, the casualty and liability insurance shall:

(a) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, and agents;

(b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and

(c) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 10 days' prior written notice to the Association.

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of any Mortgages sold to or through Federal National Mortgage Association. The cost and expense of all insurance obtained by the Association, shall be paid for out of Association funds collected by assessments and otherwise as elsewhere provided in this Declaration.

Section 2. Casualty Insurance. The Association shall obtain and maintain casualty insurance covering buildings and improvements on the Common Area and covering any improvements located on any Lot which the Association is required to repair and restore pursuant to the third paragraph of Section 1 of Article VII for loss or damage by fire and such other hazards as are covered under standard extended coverage policies, including vandalism, malicious mischief, sprinkler leakage, debris removal, windstorm and water damage, and

such other risks as are usually covered with respect to projects of similar construction and location, for the full insurable replacement cost thereof except land, foundation, excavation and other items normally excluded from coverage. Such policy shall include the following endorsements or equivalent substitute endorsements:

- (a) Agreed Amount Endorsement.
- (b) Demolition Endorsement.

Section 3. Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage liability and owned, non-owned, and hired automobile personal and property damage liability insurance covering liabilities of the Association, its officers, directors, employees and agents, arising in connection with ownership, operation, maintenance, occupancy or use of the Common Area (including water drainage liability) and any other area the Association is required to restore, repair, or maintain pursuant to Section 1 of Article VII, with limits of not less than \$1,000,000 for each person with respect to personal liability and property damage liability.

Section 4. Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 5. Insurance by Owners. Each Owner shall be responsible for obtaining property, hazard and liability insurance for such Owner's Lot and all improvements thereon, (except the parts thereof, if any, the Association is required to insure pursuant to Section 2 of this Article XII), and, except as provided in said Section 2, the Association shall not be responsible for providing any such insurance. Nothing herein shall be construed as requiring any Owner to obtain any insurance whatsoever as to his own Lot.

Section 6. Fidelity Insurance. The Association shall also maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as an obligee, (ii) be written in an amount equal to at least 150% of the estimated annual operating expenses of the association, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and (iv) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 15 days' written notice to the Servicer of any Mortgages sold to or through Federal National Mortgage Association.

Section 7. Other Insurance. The Association may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate.

As so amended, the Declaration shall remain in full force and effect and is hereby ratified and approved.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has hereunto set its hand and seal on the date first set forth above.

SINGER HOUSING COMPANY

By W.H. Francis, Jr.
Vice President

STATE OF COLORADO)
)
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 3rd day of APRIL, 1975, by W. H. Francis, Jr., as Vice President of SINGER HOUSING COMPANY, a Delaware Corporation.

Witness my hand and official seal.

My commission expires APRIL 19, 1975.
Eugene Simmons
Notary Public