

February 18, 2007

Dear members of the Park East Square community:

The following document is my best attempt to create a complete, searchable, and printable version of the “Declaration of Covenants, Conditions, Restrictions, and Easements” of the Park East Square Homeowners Association. I have integrated the following three documents:

The original “Declaration of Covenants, Conditions, Restrictions, and Easements.” This document was recorded in the real property records of Boulder County, Colorado, on December 31, 1975 on Film 875 as Reception No. 125648.

The first amendment (hereafter, Am. I): “Amendment and Ratification of Declaration of Covenants, Conditions, Restrictions, and Easements.” This document was recorded in the real property records of Boulder County, Colorado, on March 26, 1975 on Film 882 as Reception No. 132916.

The second amendment (hereafter, Am. II): “Second Amendment to Declaration of Covenants, Conditions, Restrictions, and Easements.” This document was recorded in the real property records of Boulder County, Colorado, on April 7, 1975 on Film 883 as Reception No. 133908.

I have noted amendments in the flow of the text.

As this is not a legally recorded document, it is in no way intended to be an official copy or version of the PESHHA Covenants.

W. Bertrand (Randy) Doriese
for the PESHHA Board

PARK EAST SQUARE

DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS

THIS DECLARATION is made this 27th day of December, 1974, by SINGER HOUSING COMPANY, a Delaware corporation, Suite 602, Colorado Building, 1919 14th Street, Boulder, Colorado 80302 hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the City of Boulder, County of Boulder, State of Colorado, which is more particularly described as follows:

Lots 1 through 56, and lot 221, a part of PARK EAST SQUARE, a subdivision of the city of Boulder, County of Boulder, State of Colorado, according to the plat thereof recorded in the records of Boulder County, Colorado, on Film 847 as reception No. 095985.

Such real property is hereinafter referred to as the "Property."

NOW THEREFORE, Declarant hereby declares that the Property shall be owned, held, used, occupied, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on and inure to the benefit of each and every party having at any time any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Park East Square Homeowners Association, Inc., a Colorado corporation not for profit, its successors and assigns. "Board of Directors" shall mean the Board of Directors of the Association.

Section 2. *(Ed. note: Sec. 2 replaced by Am. I)* "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as defined herein, and shall include contract sellers and exclude contract purchasers, except in the case where the contract purchasers of record occupy the Lot, in which case "Owner" shall include the contract purchasers and exclude the contract sellers; provided that, as to any Lot as to which the Veterans Administration is the contract seller, Owner shall include and mean the Veterans Administration or any successor to or assignee of the interest of the Veterans Administration as contract seller, and not the contract purchaser.

Section 3. "Property" shall mean and refer to the real property described above and (from and after the date that any such additional property is made subject hereto) additional real

property from time to time made subject to this Declaration by recording an annexation statement (the "Annexation Statement") in the manner provided in Section 4 of Article X hereof.

Section 4. "Common Area" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to an Owner other than Declarant is all of Lot 221 Park East Square, a subdivision of the City of Boulder, County of Boulder, Colorado, (according to the plat thereof recorded in the records of Boulder County, Colorado, on Film 847 as reception No. 095985), subject to the public sidewalk easement and public rights-of-way as shown on the plat of Park East Square and subject to easements and restrictions of record, provided for on the plat of Park East Square, and provided for herein. In the event that additional real property is made subject hereto in the manner provided in Section 4 of Article X hereof, "Common Area" shall (from and after the date such additional property is made subject hereto) include any parts thereof designated as "Common Area" in the Annexation Statement making such additional property subject hereto. "Common Area" shall also include the part of any Lot subject to an encroachment easement for use as Common Area, as provided in Section 5 of Article IX hereof.

Section 5. "Lot" shall mean and refer to each of Lots 1 through 56, Park East Square, a subdivision of the City of Boulder, County of Boulder, Colorado, according to the plat thereof recorded in the records of Boulder County, Colorado, on Film 847 as Reception No. 095985. In the event additional property is made subject hereto in the manner provided in Section 4 of Article X hereof, "Lot" shall also mean (from and after the date such additional property is made subject hereto) such additional parcels, plots, and lots designated as "Lots" in the Annexation Statement making such additional property subject hereto.

Section 6. "Declarant" shall mean and refer to Singer Housing Company or such entities or persons to which Singer Housing Company may assign all or part of its rights and powers as Declarant hereunder, if such assignee shall have acquired more than one undeveloped Lot from Singer Housing Company for the purpose of development.

Section 7. *(Ed. note: Sec. 7 added by Am. II)* "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.

ARTICLE II COMMON AREA

Section 1. Owners' Easements of Enjoyment. The Owners of each Lot shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to their Lot. Such easement shall be subject to:

(a) the right of the Association to establish rules and regulations for the use of the Common Area and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to the prior or exclusive use of any part of the Common Area as provided herein or for any purpose provided herein;

(c) the right of the Association to suspend any Owner's right to use of the recreational facilities contained in the Common Area, and to suspend the voting rights of any Owner as a member of the Association, for any period during which any assessment, or any part thereof, against such Owner's Lot remains unpaid and for any period (not to exceed 60 days) for any infraction of the rules and regulations relating to the use of the Common Area established by the Association;

(d) *(Ed. note: subparagraph (d) replaced by Am. II)* 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;

(e) the right of individual Owners to the exclusive use of patio areas and other areas as provided herein; and

(f) the right of Owners to use the Common Area for access to their Lots, as provided herein.

The right to use of the Common Area provided to the Owners herein shall be in common with other Owners and their delegates as provided in Section 2 hereof.

Section 2. Delegation of Use. The right of any Owner to the enjoyment of the Common Area and facilities thereon shall automatically be delegated to and may be used only by the persons using the Lot owned by such Owner as their permanent residence and their guests as invitees.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. The Owners of each Lot shall be members of the Association.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners (not including, however, Declarant during the period when Declarant is a Class B member as provided below) and shall be entitled to a total of one vote for each Lot. When more than one person is an Owner of any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as such Owners determine among themselves; provided that any such Owner who is present, either in person or by proxy, whenever any vote is taken shall be entitled to cast the vote for such Lot, so long as there is no objection thereto by any other Owner of such Lot who is present, either in person or by proxy, and, if the Owners present are not able to determine among themselves how such vote is to be cast, no vote shall be cast for such Lot, although the vote of such Lot shall be considered for purposes of determining whether a quorum is present; and provided further that in no event shall more than one vote be cast with respect to any Lot.

Class B. Declarant shall be the Class B member and shall be entitled to five votes for each Lot owned; provided that Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or
- (b) On January 1, 1980.

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 1. Association Assessments; Liens Therefor; Personal Obligation to Pay.

The Association shall have the power to levy:

- (1) Annual assessments and
- (2) Special assessments

against the Lots in the manner provided herein for the purposes provided herein. Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed thereto or other conveyance thereof, whether or not it shall be expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay to the Association all assessments made against such Lot in the manner provided herein. Such assessments payable as to each Lot, together with interest thereon as provided herein and all costs of collecting the same, including reasonable attorney's fees, shall be a lien against such Lot, until paid, and shall be the personal obligation, jointly and severally, or each person who was an Owner of such Lot at the time when the assessment became payable. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. Such assessments shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property, for the improvement and maintenance of the Common Area and Lots, and improvements thereon and appurtenances thereto, as provided herein, for any other purpose provided herein, and for any other purpose reasonable necessary or incidental to any such purpose.

Section 3. Annual Assessments. *(Ed. note: Sec. 3 replaced by Am. I, and again by Am. II)* 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.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any year, one or more special assessments per Lot (applicable to that year only) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall be approved 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. Such assessments shall be payable

as determined by the Association and, except as provided above as to Lots owned by Declarant, shall be in the same amount as to each Lot.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting of members of the Association called for the purpose of increasing the maximum annual assessment or approving any special assessment shall be mailed by regular mail, addressed to "All Members of Park East Square Homeowners Association" at the address of each Lot, or delivered so addressed to each Lot, not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called as to any such assessment, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at such meeting, additional meetings may be called subject to the same notice requirement. The required quorum at any such additional meeting shall be one-half of the required quorum at the immediately preceding meeting. No such subsequent meeting shall be held more than 60 days following the immediately preceding meeting. The notice for any such meeting shall specify the place, date, and hour of the meeting and that the meeting will consider assessments made by the Association.

Section 6. Date of Commencement of Annual Assessments. No annual assessment provided for herein and no payment thereof shall be due prior to the first day of the month following the conveyance of the Common Area described in Section 4 of Article I hereof to the Association. The Board of Directors shall fix the amount of the annual assessment per Lot at least thirty days in advance of each calendar year (except for the calendar year in which assessments commence); provided that, the annual assessment for any year in which no assessment is set within such time period shall be the same as the annual assessment for the preceding year. Written notice of the annual assessment and of each special assessment shall be mailed by regular mail, addressed to "Owner" at the address of each Lot, or delivered so addressed to each Lot at least ten days before such assessment becomes payable. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments due on a specified Lot have been paid, and, if any assessment shall not have been paid, the amount and due date thereof. Such certificate, properly executed, shall be binding upon the Association as of the date of its issuance.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. *(Ed. note: Sec. 7 replaced by Am. I)* Any assessment or installment thereof which is not paid within thirty days after it becomes due shall, without further notice, be delinquent and shall bear interest from the date of delinquency at the rate of six percent per annum. The Association may bring an action against the Owners personally obligated to pay the delinquent assessments or installments thereof for the recovery thereof. In addition, or alternatively, the Association may record with the Clerk and Recorder of Boulder County, Colorado a Statement of Lien with respect to the Lot as to which the assessment is payable. The Association may foreclose the Statement of Lien in the manner provided for the foreclosure of mortgages under Colorado law. In either a personal or foreclosure action, the Association shall be entitled to recover, in addition to the unpaid assessment with interest thereon as provided herein, all costs of collecting said unpaid assessment and foreclosing said lien, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of

the Common Area or abandonment of his Lot. Notwithstanding any other provision of this Declaration to the contrary, the Veterans Administration shall not be personally or otherwise liable for the assessments accruing as to any Lot as to which it is the Owner in accordance with Section 2 of Article I, during the period during which the Veterans Administration is a contract seller as to such Lot (nor shall any successor to or assignee of the interest of the Veterans Administration under any such contract of sale be personally or otherwise liable for the assessments accruing as to any Lot during the period that it is successor to the interest of the Veterans Administration as contract seller under a contract of sale pertaining to such Lot) but the contract purchasers under such contract of sale shall be personally liable for such assessments during such period.

Section 8. Subordination of the Lien to Mortgages and Certain other Interests. (*Ed. note: Sec. 8 replaced by Am. I*) The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage on any Lot and, in the event that the Veterans Administration shall be a contract seller under a contract of sale relating to any Lot, shall also be subordinate to the interest of the Veterans Administration under said contract of sale, and to the interest of any successor or assign of the interest of the Veterans Administration thereunder. Sale or transfer of any Lot shall not affect such assessment lien; provided that, the sale or transfer of any Lot pursuant to the foreclosure of any Mortgage or any transfer or proceeding in lieu thereof, shall extinguish the lien for such assessment as to all assessments which became due prior to such sale or transfer, but shall not relieve any Owner or other person of any personal liability therefor created herein; and further provided that the termination (whether by court proceeding, deed, or otherwise) of the interest of the contract purchasers in any Lot under any Contract of sale pursuant to which the Veterans Administration is contract seller, by the Veterans Administration or by any successor to or assignee of the interest of the Veterans Administration as contract seller under such contract of sale, shall extinguish the lien of such assessments as to all assessments which became due prior to such termination, but shall not relieve any contract purchaser of any personal liability therefor created herein. No sale or transfer shall relieve any Lot or the Owners thereof from liability for any assessments thereafter becoming due or from the lien for any such assessment.

ARTICLE V ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property (except for any such improvement erected by Declarant during the period of its development, construction, and sale of a housing project on the Property), nor shall any exterior addition to or change or alteration in any building, fence, wall, or other structure be made until the plans and specifications therefor, showing the nature, kind, shape, design, height, materials, location, and color of the same shall have been submitted to and approved in writing, as to the harmony thereof with surrounding structures and topography and as to compliance with the provisions hereof, by the Board of Directors, or by an architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such plans and specifications within thirty days after

they have been submitted to it, such approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI PARTY WALLS

Section 1. Party Wall Easements. Mutual reciprocal easements are hereby established, declared, and granted for all party walls between improvements constructed or to be constructed on Lots, which reciprocal easements shall be for mutual support and shall be governed by this Declaration and more particularly by this Article.

Section 2. General Rules of Law to Apply. Each wall which is built (as a part of the original construction on the Property by Declarant, as subsequent restoration of such original construction or with the consent of the Owners of both Lots) on the boundary line between Lots (such boundary being deemed, for this purpose only, to have been adjusted to reflect encroachments provided for in Section 5 or Article IX hereof) shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of Colorado law regarding party walls shall apply thereto.

Section 3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Lots abutting on the lot line on which the wall is erected in proportion to their respective existing uses of the wall. Such proportionate uses shall be determined based on the length of such wall which is then used to enclose the structure erected on each such Lot.

Section 4. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the Owners of either Lot on which such wall is erected may restore it, and the Owners of the other Lot on which such wall is erected shall contribute to the cost of restoration thereof in proportion to their respective uses thereof, determined based on proportionate lengths in the manner provided in Section 3, as of a date immediately prior to such damage or destruction. Nothing herein shall be construed as relieving any party of liability for negligent or intentional acts resulting in damage or destruction to any such wall.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of repairing damages caused thereby and furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot, and shall pass to such Owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the dispute shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect.

ARTICLE VII
CERTAIN RIGHTS AND
OBLIGATIONS OF THE ASSOCIATION
(Ed. note: Art. VII replaced by Am. II)

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).

ARTICLE VIII
USE RESTRICTIONS

The use of the Property shall be subject to the following restrictions (in addition to those elsewhere set forth in this Declaration):

(a) No use shall be made of the Common Area or the Lots which will in any manner violate the statutes, ordinances, rules or regulations of any governmental authority having jurisdiction over the Property.

(b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access too any part of the Common Area to any Owner.

(c) The use of the Common Area and facilities located thereon, shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

(d) No use (except temporary use for emergency purposes) shall ever be made of the Common Area or recreational facilities located thereon which will deny ingress and egress to those Owners having access to Lots owned by them only over the Common Area.

(e) The Property is hereby restricted to residential use and recreational use in connection therewith. No building erected on any single Lot may be used for any purpose other than for occupancy as a single-family dwelling. No Lot shall be divided or subdivided. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any portion of the Property at any time either temporarily or permanently.

(f) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept so long as they are confined, kept on leashes, or otherwise controlled so as not to be offensive or annoying to persons occupying other Lots or using the Common Area. No animals of any kind may be kept, bred, or maintained for any commercial purpose.

(g) No signs (except one "For Rent" or "For Sale" sign with a surface area not exceeding five square feet on any Lot which is for sale or rent), billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Property. The Property shall not be used in any way or for any purpose which may endanger the health or unreasonably disturb any Owner of any Lot or any resident thereof. No business activities of any Kind whatever shall be conducted on any portion of the Property. No provision of this subparagraph (g) shall apply to the Association acting in furtherance of its powers and purposes as stated in this Declaration.

(h) Nothing shall be placed or stored on the Property, except in storage areas as shown on the Easement Location Map, except inside the buildings erected by Declarant on the Lots, and except within the patio areas in locations screened by adequate planting or fencing from the view of neighboring Lots and Common Area. No trash, junk, used wood, equipment (other than barbecuing and other household equipment) or

hazardous or unsightly materials or things shall be placed or stored in the patio areas. All rubbish, trash, and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

(i) Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges, walls, balconies, or additions shall be erected or maintained upon the Property, except such are are (sic) installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors or their designated representatives.

(j) No exterior television or radio antennas of any sort shall be placed, allowed, or maintained upon any portion of the Property or upon any structure situated thereon, except as may be approved, in writing, by the Board of Directors.

(k) Other than those erected by the Declarant, no dividing walls of a temporary or permanent nature shall be erected within interior parking areas now or hereafter located on the Property, nor shall such interior parking areas be used at any time for storage.

(l) The Association shall have the power to establish reasonable rules and regulations relating to the use of the Common Area, and the use thereof by the Owners of the Lots and all other person shall be subject to and shall comply with such rules and regulations.

(m) No stripped-down, wrecked, junked, or otherwise inoperable motor vehicle and no other unsightly or hazardous vehicle or thing shall be parked or left on the Property.

(n) No flammable or noxious substance shall be stored in any of the storage areas referred to in Section 3(b) of Article IX, or otherwise on the Property. Use of the storage areas referred to in Section 3(b) of Article IX shall be subject to rules and regulations adopted by the Association from time to time.

(o) No residence having less than 750 square feet or having an initial construction cost of less than \$15,000 shall be erected on any Lot.

(p) *(Ed. note: subparagraph (p) added by Am. II)* 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.

The foregoing restrictions shall not be applicable, during the period of Declarant's development, construction, and sale of a housing project on the Property, to Declarant's construction and sale of residences on the Lots, nor to Declarant's landscaping and improvement of the Common Area, nor to any signs, advertising, activity, or construction necessary or desirable, in Declarant's reasonable opinion, in connection therewith, nor to restoration activities of the Association, nor to restoration activities referred to in Section 6 of Article IX; provided, however, that neither the

Declarant not the Association nor any other person, by their own or their agents' activities, or the use or location of any one or more of said facilities, shall interfere with any Owner's access to or use, occupancy, or enjoyment of his Lot, the improvements thereon (except pursuant to easements specifically provided for herein), or the appurtenances thereto including the Parking Easement, or with any Owner's access to, use or enjoyment of any recreational facility located on the Common Area.

ARTICLE IX EASEMENTS

Section 1. Platted Easements. The Property shall be subject to easements of record and easements shown or provided for on the recorded plat of Park East Square.

Section 2. Other Easements. In addition to the easements provided for in this Article (including those provided for on the Easement Location Map), and on the recorded plat of Park East Square, the Property shall be subject to the easements provided for elsewhere in this Declaration.

Section 3. Easements Located on Easement Location Map. The Easement Location Map (the "Map") recorded with the Clerk and Recorder of Boulder County, Colorado on Film **Film 875** as Reception No. **125647** shows relative locations of certain easements appurtenant to lots in the example cluster of lots shown thereon, describes and shows the dimensions thereof, (either by measurement or by reference to structural elements), and otherwise defines said easements and the extent thereof. The easements described in this Section 3 are hereby created appurtenant to each Lot in each cluster of four Lots which corresponds to example lot 1, 2, or 3 shown on the Map. Such easements affect the Lot in each such cluster which corresponds to example lot 4 in said Easement Location Map and the Common Area, and are subject to the terms and restrictions set forth herein and in the Map. The easements shown on the map and hereby created are as follows:

- A. Parking Easements.
- B. Storage Easements.
- C. Trash Easements.
- D. Hallway Easements.
- E. Patio Easements.
- F. Access Easements.

The Association shall have the power to establish reasonable rules and regulations relating to sightliness and cleanliness of the easements provided for in this Section 3, and the use thereof by the Owners of the Lots to which such easements are appurtenant and by all other persons shall be subject to and shall comply with such rules and regulations.

Section 4. Utility Easements. Nonexclusive easements for utilities (and the repair and maintenance thereof) across the Common Area as are reasonably necessary to provide utility services are hereby created appurtenant to each Lot; provided that all such utilities shall be underground and shall not affect the appearance or impair the use of the surface of the Common Area, or the support thereof, except during periods of construction, and except for manholes and

cleanouts at normal intervals. A nonexclusive easement for utilities (and the replacement, repair, and maintenance thereof) in the crawl space of each Lot corresponding to example lots 1, 2, and 3 on the Map is hereby created appurtenant to each other Lot in such cluster of Lots and for the use of the Association, for normal utility service. The Association and the Owner of any Lot to which such an easement is appurtenant shall be permitted access to such utilities through the crawl space and through buildings erected on the Lots affected by such easement as is reasonably necessary to repair, maintain, and replace said utilities.

Section 5. Encroachment Easements. *(Ed. note: First paragraph of Sec. 5 replaced by Am. II)* 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.

The Association shall have an exclusive easement, for use as part of the Common Area, over any part of any Lot on which no building or patio has been erected by Declarant; provided that no such easement shall be applicable to any Lot owned by Declarant until a certificate of occupancy has been issued as to the improvement erected or to be erected thereon by Declarant during the period of Declarant's development, construction, and sale of a housing project on the Property. The Association shall have the right and obligation to maintain all property subject to any such easement, and no Owner of any property subject to any such easement shall have the right to use (except as part of the Common Area) or maintain the same.

Section 6. Restoration and Repair Easement. Each Owner and his contractors and agents, and the Association shall have an easement onto adjoining Lots as is reasonably necessary for the restoration and repair of the structure on such Owner's Lot; provided that such Owner shall immediately repair, and be liable for any damage caused by any failure immediately to repair, and damage to such Lot or the improvements or other property thereon resulting from the exercise of this easement.

Section 7. Access Easements. An easement is hereby created appurtenant to each Lot across the Common Area for purposes of access to such Lot; provided that access by vehicle shall be only across drives and ways created for such purpose. Such easement shall be non-exclusive and subject to reasonable rules and regulations established by the Association, so long as such rules and regulations permit continuous use of such easement.

Section 8. Easements Deemed Appurtenant. The easements and rights created in this Declaration for any Lot (including but not limited to the easement in and right to use the Common Area in common with other Owners, party wall easements, and the easements in Section 3, 4, 5, 6, and 7 of this Article IX, and the right of the Owners of each Lot to be members in the Association) are appurtenant to and part of such Lot, and the ownership thereof may not be separated from the Ownership of such Lot, and all conveyances of and other instruments affecting title to any such Lot shall be deemed to grant and convey such appurtenant easements and rights without reference thereto in such conveyance or other instrument.

Section 9. Additional Easements. Declarant hereby reserves an easement and right-of-way over all Common Area for the use of Declarant and its agents, contractors, subcontractors, and employees, in landscaping constructing improvements on, and installing utilities and related facilities, for access for maintenance and repairs, and for such other use as Declarant may reasonably deem necessary or useful in the construction and sale of improvements on the Property; provided, however, that neither the Declarant nor its agents, contractors, subcontractors, or employees shall interfere with any Owner's access to, use, or enjoyment of his Lot, the improvements thereon (except pursuant to easements specifically provided for herein), or the appurtenances thereto, including the Parking Easement, or with any Owner's access to, use, or enjoyment of any recreational facility located on the Common Area.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant, or any other Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and liens now or hereafter created by this Declaration. Failure of the Association or any Owner to enforce the same shall in no event be deemed a waiver of the right to do so thereafter. It is expressly acknowledged and agreed by all persons hereafter acquiring any interest in any portion of the Property that the Declaration is for the mutual benefit of all Owners of Lots and is necessary for the protection of said Owners.

Section 2. Amendment. The covenants, conditions, restrictions, and easements of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, forever. This Declaration may be amended during the first twenty years hereafter by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided that:

(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

(3) *(Ed. Note: subparagraph (3) added by Am. II)* No amendment of this Declaration and no termination or abandonment of this Declaration shall be made without the written consent of all First Mortgagees.

Section 3. Water and Sewer Assessments. In addition to all assessments herein provided for, the Association may bill each Owner for water and sewer services. Should individual Owners be provided water and/or sewer services through master meters or on a per unit basis, the Association may bill each Owner for such services upon either a flat rate basis or such other basis as the Board of Directors reasonably determines. Funds paid to the Association

by Owners as water and/or sewer assessments shall not be commingled with other Association funds and may not be used for any purpose except the payment of such assessments. No such assessment shall be considered to be all or any part of an annual or special assessment under Article IV hereof. Payment of assessments for water and sewer charges may be enforced by the Homeowners Association and against the defaulting Owner in the same manner as in cases of annual and special assessments.

Section 4. Annexation. Declarant owns additional real property in Park East Square, a Subdivision of the City of Boulder, County of Boulder, Colorado, more particularly described in Exhibit A attached hereto and by this reference made part hereof. Declarant may from time to time within six years after the date hereof annex any or all of such real property to the Property by recording an Annexation Statement; provided that the Veterans Administration determines that the annexation is in accord with the general plan for development of Park East Square heretofore approved by the Veterans Administration. Upon the recording of such Annexation Statement in the public records of Boulder County, Colorado, all of the real property described therein shall be deemed to be part of the Property.

Section 5. VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Veterans Administration:

- (a) Annexation of additional properties.
- (b) Dedication, transfer, sale or mortgage of Common Area,
- (c) Amendment of this Declaration.

Section 6. Severability. Invalidation of any of these covenants, conditions, or restrictions by judgment or court order shall not affect any other provision hereof, and this Declaration shall remain in full force and effect as if such invalidated provision had not been a part hereof.

Section 7. Annexation. *(Ed. note: Sec 7 replaced by Am. II)* 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.

Section 8. Leasing. *(Ed. note: Sec 8 added by Am. II)* 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.

ARTICLE XI
CONDEMNATION AND DESTRUCTION
(Ed. note: Article XI added by Am. II)

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

(Ed. note: Article XII added by Am. II)

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.

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS OF PARK EAST
SQUARE, dated **December 27**, 1974.

(Ed. note: Ex. A replaced by Am. I)

The following real property located in the County of Boulder, State of Colorado:

Lots 57 through 220, and 222 through 226, PARK EAST SQUARE, a subdivision of the City of Boulder, County of Boulder, Colorado, according to the plat recorded in the records of Boulder County, Colorado on Film 847 as Reception No. 095985, subject to easements and restrictions of record and as shown on the plat of Park East Square.