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Recorded.....3:42 P.M. On JAN 19 1978

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Reception No. Charlotte Houston, Boulder County Recorder

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF LOTS 1 THROUGH 52 INCLUSIVE AND OUTLOT E  
OF

PALO PARK FILING NO. 3  
A PLANNED UNIT DEVELOPMENT SUBDIVISION SITUATED IN THE  
SE 1/4 OF THE SW 1/4 OF SECTION 17, T1N, R70W OF THE 6TH  
P.M., COUNTY OF BOULDER, STATE OF COLORADO

THIS DECLARATION, made this 19 day of Jan, 1978,  
by PAUL F. HAUPTMAN, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described  
in Article II of this Declaration and desires to create thereon a  
residential community with common facilities for the benefit of the  
said community; and

WHEREAS, Declarant desires to provide for the preservation of  
the values and amenities in said community and for the maintenance  
of said common facilities; and, to this end, desires to subject the  
real property described in Article II to the covenants, restrictions,  
easements, charges and liens hereinafter set forth, each and all of  
which is and are for the benefit of said property and each owner  
thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient  
preservation of the values and amenities in said community, to  
create an agency to which should be delegated and assigned the  
powers of maintaining and administering the community properties  
and facilities and administering and enforcing the covenants and  
restrictions and collecting and disbursing the assessments and  
charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the  
State of Colorado, as a non-profit corporation, PALO PARK FILING  
NO. 3 SINGLE FAMILY HOMEOWNERS ASSOCIATION for the purpose of  
exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that the real property  
described in Article II is and shall be held, transferred, sold,  
conveyed and occupied subject to the covenants, restrictions, ease-  
ments, charges and liens (sometimes referred to as "covenants and  
restrictions") hereinafter set forth, all of which shall be cove-  
nants running with the land described herein and shall be binding

1 19 78

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30-2

on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

##### DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Palo Park Filing No. 3 Single Family Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

(b) "The Properties" or "the property" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration.

(c) "Plat" shall mean and refer to the Plat of Palo Park Filing No. 3, a Planned Unit Development Subdivision situated in the SE 1/4 of the SW 1/4 of Section 17, T1N, R70W of the 6th P.M., County of Boulder, State of Colorado, recorded in the records of the Clerk and Recorder of Boulder County, Colorado, and any amended, supplemental or additional plats or filings thereof designating lots, parts of lots, and units.

(d) "Common Area" shall mean and refer to the area of land shown on the recorded subdivision plat of The Properties designated as Outlot E, as shown on the recorded plat of Palo Park Filing No. 3, a Planned Unit Development Subdivision in Boulder County, Colorado; which area is intended to be devoted to the common use and enjoyment of the owners of The Properties, subject to the terms and conditions hereof. However, no such dedication shall occur as to any parcel of land until that parcel has been conveyed to the Association and the deed conveying same has been recorded in the records of the Clerk and Recorder of Boulder County.

(e) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Areas as heretofore defined.

(f) "Living Unit" shall mean and refer to any portion or all

1 19 78

BU 993

30-3

of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.

(g) "Declarant" shall mean and refer to Paul F. Hauptman, his successors or assigns.

(h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

(i) "Mortgage" shall include a deed of trust or other form of hypothecation.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties including Declarant but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgage unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Boulder, Colorado, and is more particularly described as follows:

Lots 1 through 52 inclusive and Outlot E of Palo Park Piling No. 3, a planned unit development subdivision situated in the SE 1/4 of the SW 1/4 of Section 17, Township 1 North, Range 70 West of the 6th, P.M.;

all of which real property shall hereinafter be referred to as "The Property" or "the Properties".

Section 2. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and re-

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restrictions established by this Declaration with the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

#### ARTICLE III

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any land or living unit which is or may be subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

Class A. Class A members shall be all those owners of a fee or undivided fee interest in a Living Unit as defined in Section 1. Class A members shall be entitled to one vote for each living unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any living unit, all such persons shall be members, and the vote for such living unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such living unit.

Class B. Class B members shall be those owners who own land or lots on which no Living Unit exists, and which has not been used as the land (lot) assigned to any Living Unit (or group of Living Units) under a building permit issued by the applicable authorities and which is not exempt from assessment under the terms of Article V, Section 12. By way of explanation, it is stated that Class B members are intended to be those owners who own land within the Property on which no Living Unit exists but on which Living Units might at some time be erected.

Each Class B member shall be entitled to three votes for

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FILE 993

30-5

then-applicable County of Boulder, Colorado, zoning, subdivision and Planned Unit Development regulations and permits (assuming existing site plan requirements, building permit requirements and the like were met).

Class B membership shall cease and become converted to Class A membership on the happening of the sooner of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) On January 1, 1983.

After the happening of the sooner of the above two events, any member who would have been a Class B member but for the foregoing termination of Class B membership shall have one vote for each Living Unit which could be constructed on his land under then-applicable County of Boulder zoning, subdivision and Planned Unit Development regulations and permits (assuming existing site plan requirements were met).

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Class A member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every living unit. Class A members may assign their easement and right of enjoyment with respect to any living unit to a tenant occupying that living unit. However, no right or easement of enjoyment shall arise in any parcel of the Common Areas until that parcel has been conveyed to the Association and the deed conveying same has been recorded on the records of the Clerk and Recorder of Boulder County.

Section 2. Title to Common Areas. The Declarant may retain the legal title to the Common Area until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the



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EM 993

30-6

Common Area to the Association, free and clear of all liens and encumbrances, not later than thirty (30) days after the sale by Declarant, or its successors or assigns, of the last lot or living unit included in this Declaration. The Association agrees to accept the Common Area as conveyed and to operate, maintain and repair any structures, landscaping, paths, roads and other facilities and amenities thereon, using its powers of assessment granted herein to raise funds with which to do so.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant, its successors and assigns, and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said properties; provided that any such mortgage shall require the same vote and quorum of members of the Association as are required for the levying of special assessments under Article V, Section 4, and the vote of not less than 75% of the first mortgagees. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may

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be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless members entitled to cast three-fourths (3/4) of the votes of each class of membership and not less than seventy-five percent (75%) of the first mortgagees of each unit within the Properties agree to such dedication, sale or transfer, purpose or condition, and an instrument reflecting such agreement is recorded with the Clerk and Recorder of Boulder County, Colorado, and further written notice of the proposed agreement and action thereunder is required to be sent to every member at least ninety (90) days in advance of any action taken.

#### ARTICLE V

##### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each living unit within The Properties, hereby covenants, and each owner of any living unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, which are payable in monthly installments; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments on each living unit, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the real property and interests therein which comprise that living unit and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, utility services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the homes situated

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30-8

upon The Properties, including, but not limited to, the payment of taxes and all types of insurance and premiums deemed necessary by the Board of Directors, and repairs, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and further including, but not limited to, the following: snow removal; the construction, reconstruction, planting, repair, fertilization, application of herbicides and pesticides to, and cutting and trimming, irrigation and care of all manner of landscaping and irrigation systems, either on Common Areas or other properties; maintenance of islands and medians in streets; construction, reconstruction, repair and maintenance of sidewalks, and bike paths; spraying of insecticides; construction, maintenance, repair and rebuilding of all manner of drainage facilities; providing adequate insurance of all types, and in such amounts deemed necessary by the Board of Directors with respect to Common Areas, buildings and public ways; legal and accounting fees and costs associated with activities of the Association; carrying on all manner of recreation programs; operation of a nursery or day care center; creation of reasonable reserves for working capital or anticipated replacement or repair of property or other major expenditures; and all things necessary or incidental thereto.

Expenditures for landscaping may be made within the properties on land other than the Common Area for such purposes as, by way of example, street islands or median strips.

In addition the assessments levied by the Association for any maintenance obligations deemed necessary by the Association for the common benefit of the Owners, or the maintenance of property values or for maintenance obligations incurred by virtue of agreement with or required by County, City or other governmental authorities.

Section 3. Maximum Assessments. Until the year beginning January 1, 1979, the maximum annual assessment shall be \$60.00 per living unit for those living units built or actually constructed on Lots 1 through 52 inclusive.

(a) From and after January 1, 1980, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote



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EH 993  
of the membership.

30-9

(b) From and after January 1, 1980, the maximum annual assessment may be increased above ten percent (10%) by vote of seventy-five percent (75%) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year, which may be a lesser amount than the maximum.

(d) Nothing herein shall prevent the Board of Directors from collecting the annual assessment on a monthly basis.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy a special assessment, applicable to such years as are described in the resolution authorizing the assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that a resolution establishing any such assessment shall have the assent of three-fourths (3/4) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

All or any part of the proceeds of any special assessment made as above provided, for the entire period over which the assessment is to be levied or any part thereof, may be assigned to a lender as security for repayment of a loan or loans made to pay, in whole or in part, the expenditure for which the special assessment was authorized. The rights granted to the lender under such assignment may include the right to require the Association to collect the special assessment, and the right of the lender directly to enforce any right of the Association to collect the special assessment. Any such assignment of the proceeds of any special assessment shall require approval by vote in the same manner as the special assessment itself.

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Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the period therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of three-fourths (3/4) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger of consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof, and provided further that land on which no living unit exists shall not be assessed except in the manner provided for herein.

Section 6. FHLMC Restriction. Unless at least seventy-five percent (75%) of the first mortgagees of the lots within The Properties have given their prior written approval, the Association shall not be entitled to change the method of determining the obligations, assessments, dues or other charges which may be levied against a lot.

Section 7. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting 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 forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required

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30-11

quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments; Due Dates.

The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be made before the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year. However, nothing herein shall prevent the Board of Directors from making one-twelfth (1/12) of each annual assessment due on a day each month fixed by the Board of Directors.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is added to the properties already subject to assessment, at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or living unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any owner.

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30-12

Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall upon demand at any time furnish to any owner liable for said assessment or any mortgagee or potential mortgagee or purchaser of property subject to assessment a certification in writing signed by an officer of the Association, setting forth whether said assessment has been paid and the amount of any unpaid assessments. As to any mortgagee or purchaser who had disbursed funds in reliance thereon, such certificate shall be conclusive against the Association as to items set forth therein.

Section 10. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If an assessment is not paid on the date when due, as specified in Section 9 or as set by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property subject to the assessment, which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The assessment shall be a lien against the real property which comprises the lot or living unit assessed, and all appurtenances thereto and fixtures thereon. The real property comprising a lot or living unit shall include fee ownership in any lot occupied by a single-family dwelling, together with the dwelling and all fixtures and appurtenances. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property subject thereto; and there shall

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be added to the amount of such assessment interest as above provided plus all costs of collection, including the Association's reasonable attorney's fees incurred in connection with the default and collection of amounts due. If the Association elects to file a lien, the Association may file with the Clerk and Recorder of the County wherein the property is situate, a Statement of Lien with respect to the property, setting forth the name of the Owner, the legal description of the property, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the President or a Vice President of the Association, and which shall be served upon the Owner of the Property by certified mail to the address of the property or at such other address as the Association may have in its records for the Owner of the Property. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney's fees with respect to the action. 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 Unit.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to issue of a deed to such property pursuant to a decree of foreclosure, or a public trustee's deed pursuant to foreclosure through the public trustee, or a deed issued in any other proceeding in lieu of foreclosure. Such deed shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.



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Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1, hereof; (c) all properties exempted from taxation by the laws of the State of Colorado, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 13. Examination of Books and Records. A first mortgagee shall have the right to examine the books and records of the Association.

Section 14. Notice to Mortgagee. Upon request of a first mortgagee of any Unit, the Association shall report to such first mortgagee any unpaid assessments or other default under the term of this Declaration which are not cured by said mortgagee's mortgagor within thirty (30) days.

Section 15. Payment of Delinquent Taxes and Insurance. The Association agrees that First Mortgagees of the Lots within the Project may, at their option, jointly or singularly pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay over due premiums for hazard insurance or secure new hazard insurance coverage on the lapse of any such policy on the common areas. The Association hereby agrees that in the event any First Mortgagee makes any such payments, the same shall be immediately reimbursed by the Association. Further, the Association agrees that notwithstanding the above, no First Mortgagee shall be obligated to make any of the payments hereinabove set forth, but may do so only upon the exercise of the option granted to them hereby.

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Section 16. Professional Management. This Project may be managed by a Professional Real Estate Management Company licensed to do business in the State of Colorado and the Association's Board of Directors shall be allowed to retain the services of such a company, provided that the term of any such contract shall not be in excess of three (3) years and shall be terminable on ninety (90) days written notice.

Section 17. Notice of Meetings. Any first mortgagee of a Unit, upon written request, shall be entitled to written notice of all Association meetings and be permitted to send a representative to such meetings.

Section 18. Mortgagee as Proxy. Each owner shall have the right to irrevocably constitute and appoint the beneficiary of a trust deed their true and lawful attorney to cast their vote in this Association at any and all meetings of the Association and to vest in the beneficiary any and all rights, privileges and powers that they have as Unit Owners under the Certificate of Incorporation and By-Laws of this Association or by virtue of the recorded Declaration of Covenants, Conditions and Restrictions. Such proxy shall become effective upon the filing of notice by the beneficiary with the Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the Managing Agent or the Unit owners to carry out their duties as set forth in the Declaration of Covenants, Conditions and Restrictions. A release of the beneficiary's deed of trust shall operate to revoke such proxy. Nothing herein shall be construed to relieve a Unit owner as a mortgagor of their duties and obligations as a Unit owner or to impose upon the beneficiary of the deed of trust the duties and obligations of a Unit owner.

Section 19. Assessment Reserves. The Association or the managing agent may require an owner other than declarant to deposit with the Association up to three times the amount

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30-16

of the estimated monthly common assessment, without interest, which sum shall be held by the managing agent or the Association as a reserve to be used for paying such owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an owner from making the regular monthly payments of the monthly common assessment as the same comes due. On the sale of his Living Unit an owner shall be entitled to a credit from the grantee for an unused portion thereof.

#### ARTICLE VI

##### ARCHITECTURAL CONTROL

Section 1. Architectural Control. Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, well, fence, or any structure whatsoever, on any lot or Common Areas there shall be submitted to the Architectural Control Committee (herein referred to as the "Committee"), two complete sets of plans and specifications for said improvements, the erection or alteration of which is desired. No such structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received written approval as herein provided. Such plans shall include plot plans, locations of structures and improvements, floor plans, fence plans, elevations, showing all aspects of dwelling and development of lot as an architectural unit, together with the proposed color scheme and materials for fences, roofs, and exteriors. In order to avoid unnecessary hardships, it is mandatory that all owners contemplating such construction, or alteration, as mentioned above, should submit preliminary drawings in duplicate of such

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30-17

work to the Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans or specifications or incurring substantial expense. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same within thirty (30) days and the other copy thereof shall be retained by the Committee.

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion, for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if in accordance with all of the provisions of this Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Committee by virtue of his membership thereon on discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without the prior written approval of the Committee. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and

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specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced within one year from the commencement thereof, approval will not be required and there will be deemed to have been full compliance with the related covenants.

Section 2. Architectural Control Committee. The Architectural Control Committee shall consist of at least three persons appointed by the Declarant, its successors or assigns. The Declarant, its successors or assigns, may constitute one member of the Committee. The Declarant, its successors or assigns shall have absolute right to remove and appoint members of the Committee at any time. The members of the Committee shall, as long as the restrictions, covenants and conditions herein set forth are in force and effect, perform the duties imposed on it as herein set forth. At any time while the restrictions, covenants and conditions herein set forth remain in force and effect, the Declarant, its successors or assigns, may relinquish its powers to determine the number and members of the Committee. Such relinquishment may be accomplished by recording a declaration of such relinquishment in the office of the County Clerk and Recorder of Boulder County, Colorado. From and after such relinquishment the number and members of the Committee shall be determined by the Board of Directors of the Association. Neither the members of the Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 3. Landscaping. A landscaping plan shall be submitted to the Committee at the time the house and lot plans are submitted or within sixty (60) days prior to the date of occupancy. Said landscaping plans to be approved by the Committee before commencement of landscaping. Approval or disapproval of such landscaping plans shall be in the same manner as set forth in Section 1 hereof.

Section 4. Fences. All fences shall be approved by the Committee and be designed and approved as an integral part of the design of the house.



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30-19

Section 5. Exterior Painting. No exterior painting or staining of the dwellings located upon The Properties shall be allowed without prior written approval of the color scheme by the Committee.

Section 6. Waiver. The Committee may not waive any of the architectural control provisions and shall not be entitled to, by act or omission, change, waive or abandon any scheme of regulations or the enforcement thereof pertaining to architectural design or exterior appearance of the improvements built upon the lots, unless at least seventy-five percent (75%) of the first mortgagees of the lots within The Properties have given their prior written approval.

#### ARTICLE VII

##### LAND USE RESTRICTIONS

Section 1. Land Use and Building Type. No structure or structures shall be erected, placed, altered or permitted to remain on any lot or be occupied or used for any purpose other than single-family dwellings, private garages, and other out-buildings incidental to residential use. An "outbuilding" as used herein shall mean an enclosed covered structure not directly attached to the dwelling which it serves.

Section 2. Dwelling Quality and Size. No residential structure shall be erected on any part of The Properties which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Architectural Control Committee in accordance with Article VI.

Section 3. Building Locations and Height Restrictions. No building, primary or accessory, shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

The Architectural Control Committee shall approve the location and height of any structure placed on any lot. Such approval must be obtained before commencement of any construction or alteration in accordance with Article VI.

Section 4. Resubdivision of Lots. No lot or lots shall be subdivided except for the purpose of combining portions with an adjoining lot provided that no additional building site is

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FILE 993

30-20

created thereby. Any ownership or single holding by any person comprising the whole of one lot and part or parts of one or more adjoining lots shall for all purposes of this Declaration be deemed as constituting a single lot. Not less than one entire lot as originally platted shall be used as a building site.

Section 5. Trees. No tree or trees, whether now growing or hereafter grown upon any part of The Properties, shall be cut down without prior written approval of the Architectural Control Committee, provided however, that this restriction shall not apply unless such tree is more than two (2) inches in diameter as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees within The Properties.

Section 6. Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon any part of The Properties and no residence placed or erected on any lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth; provided however, that during the actual construction or alteration of a building on any lot reasonable and necessary, temporary buildings for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration or remodeling. The work of construction, altering and remodeling any building on The Properties shall be prosecuted diligently from its commencement and completed within one year from commencement.

Section 7. Trash, Etc. Each lot shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each owner must provide for regular removal of garbage, unless provided by the Association, and each lot at all times shall be kept in a clean, sightly, and wholesome condition and weeds shall be kept mowed. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber

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30-21

or other building materials shall be permitted to remain exposed upon any lot so it is visible from any neighboring lot or the street, except as reasonably necessary during the period of construction. In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all debris and remaining portions of the structure including the foundations shall be promptly removed from the property. No noxious or offensive activity shall be carried on upon The Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Nuisances. No boats, trailers, campers, wrecked cars, tractors, equipment, etc., shall be kept or stored so that they are visible from neighboring lots or from the street.

Section 9. Utilities. All electric, television, radio and telephone line installations and connections from the owner's property line to the residence shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed.

Section 10. Signs. No sign or advertising of any character except for those of the Developer and his sales agents shall be erected, placed, permitted or maintained on any lot except for a "For Sale" or "For Rent" sign not exceeding the size permitted by the Committee.

Section 11. Mailboxes and Property Identification. The Developer shall provide, and the owner shall maintain, a commonly designed mailbox and address identification to be used consistently throughout The Properties. No other mailbox or property identification will be permitted without the Architectural Control Committee Approval.

Section 12. Livestock and Poultry. No animals, live-stock, or poultry of any kind shall be raised, bred or kept on The Properties, except that dogs or cats or other household animals may be kept thereon if they are not raised, bred, or maintained for any commercial purpose, and do not make objectional noises or otherwise constitute a nuisance or inconvenience to any of the residents of nearby property.

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FHM 993

30-22

Section 13. Pets Within the Common Properties. Dogs, cats and other household animals shall not be allowed to run at large within the Common Areas, but shall be at all times on a leash or other immediate control of its owner. It shall be the duty of the Association, or its representative, to notify the proper authorities of pets found at large within The Properties in violation of Municipal Ordinances and County resolutions.

It shall be the duty of the Association to keep the Common Areas free from litter caused by and left by pets or people. The owners of pets known to be at large shall be properly assessed by the Association for the cleanup expenses incurred, as a special assessment against the owner of such pets or person causing such litter.

Section 14. Oil and Mining Operations. No oil drilling, development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

#### ARTICLE VIII

##### EXTERIOR MAINTENANCE

In the event an owner of any lot in The Properties shall fail to maintain his premises and/or the improvements thereon in a manner satisfactory to the Board of Directors of the Association, after approval by two-thirds (2/3) vote of the Board of Directors, the Board of Directors shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and the exterior of the buildings and any other improvements erected thereon. The cost of such restoring, repairing or maintenance shall be added to and become a part of the assessments to which such lot is subject.

#### ARTICLE IX

##### EASEMENTS

Section 1. Utility Easement. Easements for public utilities over and across the Common Areas shall be those shown upon the recorded plat of The Properties, and such other easements as

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FILM 993

30-23

may be established pursuant to the provisions of this Declaration or as may hereinafter be granted over and across the Common Areas by the Board of Directors of the Association.

Section 2. Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve an easement and right-of-way over all Common Areas and all lots not conveyed for the sole use of constructing improvements, utilities and other matters including the right to erect temporary buildings to store any and all materials. This reservation shall terminate upon conveyance of the last lot platted in The Properties. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office, construction office or model home for demonstration purposes. This reservation shall cease on December 31, 1979.

#### ARTICLE X

##### INSURANCE

Section 1. Liability and Fidelity Insurance. The Association shall maintain:

(a) A comprehensive policy of public liability insurance covering all of the common areas insuring the Association in an amount not less than \$500,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(b) The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

(1) All such fidelity bonds shall name the Association as an obligee, and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the planned unit development project, including reserves, and



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FHM 993

30-24

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(c) All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a member of the Association and shall provide that the policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all insureds, including the mortgagees of any Unit. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any first mortgagee of any Unit upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as trustee for each of the Owners.

Section 2. Reappraisal. The Association shall, at least every year obtain an appraisal for insurance purposes which shall be maintained as a permanent record, showing that the insurance in any year represents one hundred percent (100%) of the full replacement value of the improvements on the insurable Common Area, if any.

Section 3. Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster or damage to an area required to be repaired by contract with a governmental authority, the insurance proceeds if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Areas, the Association shall present to the members a notice of special assessment for approval by the membership in accordance with Article V, Section 4. If such assessment is approved, the Association shall make such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the members, as expressed by majority vote, except that the proceeds shall not be distributed to the Owners, unless made jointly

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FILE 993

30-25

payable to Owners and the first mortgagees of their respective Unit, if any. The assessment to each Owner and Unit shall be in the same percentages as provided for the payment of annual assessment. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit thereon and may be enforced and collected by foreclosure proceedings in the courts.

#### ARTICLE XI

##### Contractual Obligations with Governmental Authorities

Section 1. Annexation to City of Boulder. Each owner and successor by acceptance of any deed to any lot or living unit agrees that he will in fact consent to and petition for annexation to the City of Boulder with regard to any lot or living unit with owner may own when requested to do so by the City of Boulder, Colorado, after the property becomes eligible for annexation to the City of Boulder under the provisions of present or future laws of the State of Colorado, or if requested, to do all things necessary to further the annexation to the City of Boulder, Colorado. Each owner and successor by the acceptance of any deed to a lot or living unit agrees not to annex any lot or living unit to any governmental unit other than the City of Boulder and shall not promote or agree to promote, form, organize or participate directly or indirectly in the promotion, formation, or organization of any municipal corporation, quasi-municipal corporation, or other governmental unit of whatever type, designation or form, or by whatever name or designation the same may be shown, as now or hereafter provided by the laws of the United States or of the State of Colorado, and included therein, without the express permission of the City of Boulder.

Section 2. Traffic Light at 30th and Jay. Each owner and successor by the acceptance of any deed to a lot or living unit agrees to pay a proportionate cost of traffic control devices at the intersection of Jay Road and 30th Street at such time as Boulder County deems it necessary for the public safety and welfare to install such devices.

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30-26

Section 3. Street Maintenance. The Association shall be responsible at such time as 80% of the lots are sold by Declarant, for the maintenance and repair of all streets in Palo Park Filing No. 3 which are damaged because of the placement, replacement or repair of utilities located under the streets until such time as Palo Park Filing No. 3 is annexed to the City of Boulder. However, the obligation contained in this section shall be shared equally with the Palo Park Filing No. 3 Townhome Homeowners Association as far as any expenses concerned with Corriente Place.

Section 4. Street Lighting. All lots and living units are subject to and bound by Public Service Company tariffs which are now and may in future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The owner or owners shall pay as billed a portion of the cost of public street lighting in the subdivision according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 5. Maintenance of Pedestrian Walkways. The Homeowners Association shall be responsible for the maintenance of the pedestrian walkways shown on the plat as pedestrian easements, which easements are either adjacent to or on Lots 11 and 12, Lots 31 and 32, Lots 38 and 39, Lot 52 and Outlot A. The maintenance for the pedestrian pathway shown for Lot 52 and Outlot A shall be shared equally between this Homeowners Association and the Palo Park Filing No. 3 Townhomes Homeowners Association.

Section 6. Four Mile Canyon Creek Pedestrian/Bicycle Path. The Declarant is required by the County of Boulder to construct a pedestrian walkway and bicycle path along the north side of the Four Mile Creek drainage way adjacent to the south boundary line of Palo Park Filing No. 3. The path extends from the western boundary of Palo Park Filing No. 3 in a southeasterly direction to the eastern boundary of Palo Park Filing No. 3 at North 30th Street. It shall be the obligation of the Homeowners Association to maintain the path, which cost shall be shared with the Palo Park Filing No. 3 Townhomes Homeowners Association.

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30-27

Section 7. Pedestrian Crossing. The Declarant has agreed to construct a low water pedestrian crossing across the Four Mile Canyon Creek drainage way, which pedestrian crossing will connect to the pedestrian easement between Lot 52 and Outlot A. It shall be the obligation of this Homeowners Association to share in the cost of the maintenance of that pedestrian crossing with the Palo Park Filing No. 3 Townhomes Homeowners Association.

Section 8. Maintenance of Outlots B, C and D. While Outlots B, C and D have been deeded to the County of Boulder, it shall be the responsibility of the Homeowners Association to maintain these outlots. Outlot B will contain an emergency access facility and it shall be the responsibility of the Homeowners Association to replace such facility should it be damaged during emergency use. The obligation to maintain the emergency access facility on Outlot B shall remain with the Homeowners Association until Outlot B is converted to unrestricted road purposes or until otherwise stated by the County of Boulder. Outlot E shall be owned and maintained by the Homeowners Association.

Section 9. Regular Maintenance Program on Common Properties. The Association shall establish a reasonable regular maintenance program for the Common Properties and drainage facilities. Should such maintenance be deemed to be inadequate by the Board of County Commissioners of the County of Boulder, in its reasonable judgment, the Board of County Commissioners may order the Association to take immediate and reasonable corrective action, and the Association shall promptly and reasonably comply with such order.

Section 10. Routine Safety Inspections; Correction of Unsafe Conditions. The Association shall cause routine safety inspections to be made of the Common Properties and the improvements thereon, and promptly make reasonable corrections of unsafe conditions. Should the Board of County Commissioners of the County of Boulder, in its reasonable judgment, deem unsafe conditions to exist on the Common Properties, the Board of County Commissioners may order the Association to take immediate and reasonable corrective action, and the Association shall promptly and reasonably comply with such order.

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30-28

Section 11. Complaints. Complaints may be made to the President of the Association, or his delegate; or to the Board of Directors of the Association. All complaints made to the Association shall be disposed of pursuant to policies established by the Board of Directors of the Association.

Section 12. Amendments to Require Consent of Public Authority. These covenants shall not be altered or amended from the form in which they are placed of record in the office of the Boulder County Clerk and Recorder without the prior consent of the Board of County Commissioners of the County of Boulder, or the governing body of any city or town within which the Properties are located, should the Properties at a future date be included within the boundaries of a city or town, except as to the maximum amount of annual assessments.

Section 13. The owners are also bound by the General Plat Notes on the Plat of the Subdivision.

Section 14. Setbacks. Residential lots within the subdivision shall maintain minimum front yard setbacks of 20 feet and minimum side yard setbacks of 5 feet.

#### ARTICLE XII

##### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds (2/3) of the living units has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken. Any amendment must also be approved by the Boulder County Board of Commissioners.



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30-29

Section 2. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 5. Title and Section Headings. Titles of Articles and Section headings shall be disregarded in the interpretation of this document, and shall have no binding effect.

Section 6. Rule Against Perpetuities. Any conveyance required herein which has not occurred within the lifetime of the survivor of Phillip W. Ray and Clayton N. Johnson, plus twenty years after the death of such survivor, shall not be required.

Section 7. Amendment. The covenants and restrictions of this Declaration may be amended only by an instrument signed by not less than eighty percent (80%) of the unit or lot owners and not less than seventy-five percent (75%) of the first mortgagees of each unit or lot (based upon one vote for each mortgagee). Any such amendment must be properly recorded. Any amendment must also be approved by the Boulder County Board of Commissioners.

THE FOREGOING covenants and restrictions are approved.

Attest:

  
Paul F. Hauptman

Secretary