

MAR 24 1983

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 Reception 2259795 MARJORIE PAGE, Recorder

BOOK 3822 PAGE 381

DECLARATION
 OF COVENANTS, CONDITIONS, AND RESTRICTIONS
 OF
 AMERICANA TOWNHOMES

THIS DECLARATION is made and entered into this 17th day of DECEMBER 1982, by Memphis Development Corporation, a Colorado Corporation, hereinafter referred to as "Declarant."

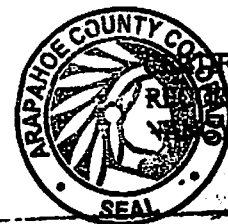
WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Arapahoe, State of Colorado, which is described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the above-described property shall be subject to a certain Master Declaration of Covenants, Conditions and Restrictions of Americana, recorded or to be recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado, as the same may be amended from time to time, and the covenants, conditions, restrictions, reservations, easements, rights-of-way, obligations, liabilities, charges, and other provisions set forth therein; and

WHEREAS, Declarant desires to subject and place upon the above-described property additional covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale and ownership of said property, to the end that a harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of the Declarant, its successors and assigns in said property, or any portion thereof, promoted and safeguarded.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.



VERIFIED TO BE A FULL, TRUE, AND CORRECT COPY OF THE
 RECORDED DOCUMENT IN MY CUSTODY. DATE SEP 30 2011
 A. DOTY, ARAPAHOE COUNTY CLERK & RECORDER
 BY [Signature]

ARTICLE I
DEFINITIONS

Section 1. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

Section 2. "Master Declaration" shall mean and refer to a certain Master Declaration of Covenants, Conditions and Restrictions of Americana, recorded or to be recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado, as the same may be amended from time to time.

Section 3. "Association" shall mean and refer to Americana Townhome Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers.

Section 4. "Master Association" shall mean and refer to Americana Master Association, Inc., its successors and assigns. The Master Association shall act by and through its Board of Directors and officers.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Properties" shall mean and refer to that certain real property described on Exhibit A hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 7. "Common Area" shall mean and refer to all property (including the improvements thereto) 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 is described on Exhibit B attached hereto and incorporated herein by this reference.

Section 8. "Lot" shall mean and refer to any separate lettered or numbered lot or plot of land shown upon any recorded subdivision map of the Properties or any portion thereof, as the same may be amended from time to time, with the exception of the Common Area and any public streets, but together with all appurtenances and improvements now or hereafter thereon.

Section 9. "Declarant" shall mean and refer to Memphis Development Corporation, a Colorado Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 11. "Architectural Control Committee" shall mean and refer to the committee appointed by Declarant or by the Board of Directors of the Master Association, as provided in the Master Declaration.

Section 12. "First Mortgage" shall mean and refer to any unpaid and outstanding, mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of Arapahoe County, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage," for purposes of Article IV, Section 11 and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article V, Section 3 hereof, shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of Arapahoe County, Colorado show the said Administrator as having the record title to the Lot.

Section 13. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including, for purposes of Article IV, Section 11 and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article V, Section 3 hereof, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the Clerk and Recorder of Arapahoe County, Colorado show the said Administrator as having the record title to the Lot), or any successor to the interest of any such person under such First Mortgage.

Section 14. "Townhome" shall mean and refer to a residential dwelling unit constructed upon any Lot.

ARTICLE II PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall

have a nonexclusive right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with written consent of the Members entitled to vote two-thirds (2/3) of the votes of each class of membership, to mortgage said property as security for any such loan; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with; including, but not limited to, the right of the Association to establish reasonable charges and/or admission fees for the use of any recreational facilities, if any, located on the Common Area; and

(d) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights and the right to the use of recreation facilities, if any, within the Common Area, of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

(e) 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 such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved in writing by the Members entitled to vote two-thirds (2/3) of the votes of each class of membership hereunder, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads and/or for other purposes reasonably necessary or useful for the proper maintenance or operation of the properties shall not be deemed a transfer within the meaning of this subsection (e); and

(f) The right of the Association, through its Board of Directors, to enter into, make, perform or enforce

contracts, licenses and agreements, including but not limited to the acceptance or granting of easements and/or rights-of-way, for the use, by Owners, other persons, their family members, guests and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Properties, or any portion thereof. Such agreements shall be upon such terms and conditions as agreed to by the Board of Directors of the Association, which may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining and repairing such real property, and the improvements thereto and thereon, and any such costs shall be treated by the Association as common expenses pursuant to Article IV hereof; and

(g) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 4. Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, or the Lot which secures said First Mortgage if the policy therefor is held by the Association, and any First Mortgagees making any such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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

Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Lot owned which is neither leased, nor rented, nor otherwise occupied as a residence. Leasing, renting, or allowing entry for residential occupancy shall terminate the Declarant's weighted voting advantage in relation to any Lot so leased, rented, or occupied as a residence, and will limit Declarant in relation to any such Lots to the same voting rights as a Class A Member. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

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

(b) on that date which is five (5) years after the date of recording of this Declaration in the office of the Clerk and Recorder of Arapahoe County, Colorado; or

(c) in the event that there is neither any new unit construction initiated nor evidence of any continuing construction, within the Properties, for a continuous period of six (6) months.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments and (3) reconstruction assessments, such assessments to be established and collected as hereinafter provided. The annual, special and reconstruction assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Arapahoe, Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such

Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration, the Articles of Incorporation or Bylaws of the Association, including without limitation maintaining the exteriors of the structures located on Lots, as more fully provided in Article VIII of this Declaration, and providing for blanket hazard insurance coverage on the structures located on each Lot, as more fully provided in Article V Section 2 hereof, and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment.

(a) Until commencement of the second annual assessment period, the maximum annual assessment per Lot shall be Seven Hundred Two Dollars (\$702.00) (\$58.50 per month), subject to the rate of assessment on Lots owned by Declarant as more fully provided in Section 7 of this Article IV.

(b) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment against each Lot shall be increased effective each annual assessment year in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967 = 100), for the one (1) year period ending with the preceding month of July; this annual increase in the maximum annual assessment shall occur automatically upon the commencement of each annual assessment year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by

using a substantially comparable index designated by the Board of Directors of the Association.

(c) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the Members for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) 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 not less than 30 days nor more than 60 days in advance of such meeting setting forth the purpose therefor.

(d) The Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and the other financial needs of the Association, fix the actual assessment against each Lot at an amount less than the maximum; provided, however, that Declarant shall have no obligation for any shortfall in assessments, as more fully provided in Section 7 of this Article IV, during any such annual assessment period in which less than the maximum assessment is levied by the Association, unless the Association obtains the written approval of Declarant prior to levying such lesser assessment. In the event the Board of Directors of the Association determines, at any time and from time to time, during any annual assessment period in which the Association shall have levied an assessment in an amount less than the maximum, that the rate of assessment then in effect is less than may be necessary to adequately fund all maintenance costs and other financial needs of the Association, then the Board of Directors of the Association may increase the actual assessment against each Lot, upon written notification thereof to each Owner, to an amount not in excess of the maximum annual assessment for that annual assessment period.

(e) The limitations contained in this Section 3 shall not apply to any change in the maximum, actual and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(f) The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements of the Common Area that must be maintained, repaired or replaced on a periodic basis.

Section 4. Special Assessments. In addition to the annual and reconstruction assessments authorized in this Article IV, the Association may levy, in any assessment year, a special

assessment 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, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, and shall be set equally against each Lot, subject to the rate of assessment on Lots owned by Declarant as more fully provided in Section 7 of this Article IV.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than 30 days or more than 60 days in advance of the meeting. At the first such meeting called, 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, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article IV, the Association may levy, in any assessment year during which insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed residences which are covered by a policy of property insurance carried by the Association, reconstruction assessments for the purpose of repair or reconstruction of such damaged or destroyed residences. All such reconstruction assessments shall be equal to the amount by which the cost of repair or reconstruction of such residence(s) exceeds the sum of the insurance proceeds awarded for the damage or destruction thereof and shall be set equally against each Lot, subject to the rate of assessment on Lots owned by Declarant as more fully provided in Section 7 of this Article IV. Such reconstruction assessments shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice hereof.

Section 7. Rate of Assessment. Annual, special and reconstruction assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association; provided, however, that notwithstanding anything to the contrary contained in this Declaration, the rate of annual, special and reconstruction assessments set for the Lots owned by Declarant which are neither leased, rented, nor otherwise occupied as a residence, shall be fixed at one-quarter (1/4) of

the assessment rate for the other Lots; and further provided, however, that in the event that, prior to the termination of the Class B membership, assessments for annual common expenses, exclusive of those amounts necessary for an adequate reserve fund and for working funds, fail to equal or exceed the actual expenses incurred by the Association during any particular annual assessment period because of such partial Declarant assessment, then Declarant shall pay a sufficient amount, up to the amount of full parity on such assessments, to the Association to meet any such shortfall so long as: (a) written notice must be given by the Association to the Declarant within sixty (60) days following the termination of the then-current fiscal year of the Association at the time of the termination of the Class B membership, but in no event more than one (1) year following the termination of such Class B membership, and (b) Declarant shall have no obligation for any such shortfall caused by expenditures for capital improvements or by any decrease in assessments, including without limitation the levying of any assessment in an amount less than the maximum for any annual assessment period, unless the same has previously been approved in writing by Declarant. At the time any Lot owned by Declarant is leased, rented, or occupied as a residence, that Lot shall be assessed at the same rate as those Lots which are not owned by the Declarant. In the event there is more than one "Declarant," as defined in this Declaration, then, subject to the conditions hereinabove stated, each such Declarant shall pay a pro rata share of the aforesaid shortfall, such pro rata share to be based on the number of Lots owned by each Declarant compared to the total number of Lots owned by all Declarants.

Section 8. Date of Commencement of Annual Assessments.
The initial annual assessment shall commence on the first day of the month following conveyance of the Common Area by Declarant to the Association, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable in twelve monthly installments per annum on such dates as determined by the Board, provided that the first annual assessment shall be adjusted according to the number of months in the first annual assessment year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum and the Association may assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest and late charges on the assess-

ment, as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of 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 Lot.

Section 10. Working Fund. The Association or Declarant shall require the first Owner of any Lot who purchases that Lot from Declarant to make a non-refundable payment to the Association in an amount equal to the greater of One Hundred Fifty Dollars (\$150.00) or two (2) times the monthly installment of the maximum annual assessment (one-sixth of the maximum annual assessment) against that Lot and in effect at the time of conveyance of the Lot, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot, as aforesaid, and all such working funds shall be maintained in a segregated account for the use and benefit of the Association. Such payment to the working fund shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee for the aforesaid payment to working fund.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein, including without limitation any fees, costs, late charges or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the liens for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of such assessment charges which became due prior to any such sale or transfer, or foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure, provided, however, that any such delinquent assessment charges, including interest, late charges, costs and reasonable attorney's fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve such Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee.

ARTICLE V
INSURANCE

Section 1. Insurance on Common Area. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article V, the Association may also consider in determining the types and amount of insurance it needs to obtain, the then-existing requirements of the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, with respect to their insurance, guaranty, or purchase of First Mortgages secured by real property located within the Properties.

(a) A policy of property insurance covering all insurable improvements located on the Common Area, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," a "Vacancy Permit Endorsement" or the equivalent, and/or coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000.00 covering bodily

ARTICLE V
INSURANCE

Section 1. Insurance on Common Area. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article V, the Association may also consider in determining the types and amount of insurance it needs to obtain, the then-existing requirements of the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, with respect to their insurance, guaranty, or purchase of First Mortgages secured by real property located within the Properties.

(a) A policy of property insurance covering all insurable improvements located on the Common Area, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," a "Vacancy Permit Endorsement" or the equivalent, and/or coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000.00 covering bodily

injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds 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, in an amount at least equal to the estimated maximum of funds, including maintenance reserves in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than the greater of three (3) months aggregate assessments on all Lots, plus such reserve fund, or one hundred and fifty percent (150%) of the Association's estimated annual operating expenses and reserves. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) such fidelity coverage or 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.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) If the Common Area, or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Area in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

(e) in addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association and, if appropriate, coverage for loss or damage resulting from steam boiler equipment or air conditioning equipment accidents in an amount not less than \$100,000.00 per accident per location or such greater amount as may be deemed prudent by the Association based on the nature of the property.

Section 2. Insurance on the Structures on Lots. The Board of Directors of the Association or its agent shall obtain and maintain at all times insurance of the type and kind hereinafter provided, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance; a policy of property insurance covering each Townhome, except for land, foundation, excavation and other items normally excluded from coverage, with an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," and/or a "Vacancy Permit Endorsement" or the equivalent. Such insurance as maintained by the Association pursuant to this section shall afford protection against at least the following:

(a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(b) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

Section 3. General Provisions of Insurance Policies.

All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney in fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage on a Lot. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees of Lots, upon request. Any such Owner's policy shall also contain waivers of subrogation. All such policies of insurance shall contain a "Severability of Interest Endorsement," which shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of a particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 4. Deductibles. No policy of insurance in which the Association or its designee is the beneficiary shall include a deductible clause in an amount greater than \$500.00 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association any said loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment.

Section 5. Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney in fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interest may appear.

Section 6. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any annual assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 7. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to transact business within the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 8. Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and public liability insurance coverage upon each Lot shall be the responsibility of the Owner thereof. Owners shall also obtain such policies of title insurance related to any sale of a lot other than the purchase by the initial Owner from the Declarant.

Section 9. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee of a Lot shall be furnished with a copy of such appraisal upon request.

ARTICLE VI DAMAGE OR DESTRUCTION

Section 1. 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 adversity or disaster, 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 Area, the Association shall present to the Members a notice of a special assessment for approval by the membership in accordance with Article IV, Section 4 hereof. If such assessment is approved, the Association shall levy such assessment as provided in Article IV, Section 4 hereof, 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 membership as expressed by the written consent of seventy-five percent (75%) of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any. Such special assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof. The special assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

Section 2. Destruction of Improvements on Lot. In the event of damage or destruction to a Townhome due to fire or other adversity or disaster, the insurance proceeds shall be adjusted with the Association and paid or payable to the Association as trustee for the Owners, but to be held by the Association in trust for Owners and First Mortgagees as their interests may appear. "Repair and Reconstruction" of any Townhome, as used in

this Section 2, shall mean restoring the improvements to substantially the same condition in which they existed prior to such damage or destruction, with each such Townhome having the same boundaries as before.

(a) If such insurance proceeds are sufficient to repair or reconstruct any damaged or destroyed Townhome, the Association shall promptly authorize the necessary repair and reconstruction work, and the insurance proceeds shall be applied by the Association to defray the cost thereof.

(b) If the insurance policy covering the loss is a policy of property insurance carried by the Association pursuant to Article V, Section 2 of this Declaration and such insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Townhome, such damage or destruction shall be promptly repaired and reconstructed by the Association, using the insurance proceeds and the proceeds of a reconstruction assessment levied as provided in Article IV, Section 6 hereof. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Lot and the improvements thereon, and shall be enforced and collected as provided in Article IV hereof.

(c) If the insurance policy covering the loss is not a policy of property insurance carried by the Association pursuant to Article V, Section 2 of this Declaration and the insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Townhome, such damage or destruction shall be promptly repaired and reconstructed using the available insurance proceeds and other personal funds of the Owner(s) of the affected Lots.

ARTICLE VII PARTY WALLS

Section 1. Definition. For purposes of this Article VII, "Party Wall" shall mean and refer to any wall which is part of the original construction of the Townhomes, is placed on or immediately adjacent to a Lot line, and which separates two structures.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions 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 who make use of the Party Wall in proportion to such use.

Section 4. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of 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 and run with the land and shall pass to such Owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request therefor by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

ARTICLE VIII EXTERIOR MAINTENANCE

Section 1. General. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon the structures of each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, fences, walks, and other exterior improvements. Such exterior maintenance shall not include windows or other glass surfaces.

Section 2. Maintenance of Landscaping. The Association shall be responsible for the landscaping and maintenance of the Common Area and Lots, including having the grass, weeds, trees, and vegetation cut and/or trimmed when necessary, except that those portions of Lots which are enclosed by a fence or other structure shall be maintained by the Owner(s) thereof. No Owner shall, in whole or in part, change the landscaping of his Lot or any portion of the Common Area by the addition or removal of any items thereon without the prior written approval of the Architectural Control Committee.

Section 3. Access Easement. Each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance as provided in this Article VIII during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that in emergency situations entry upon a Lot may be made at any time, provided that the Owners or occupants of affected Lots shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to such easements as provided for in this Section.

Section 4. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article VIII, in the event that the need for maintenance or repair of the Common Area, a Lot, or any improvement(s) located thereon, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance or repair shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

ARTICLE IX RESTRICTIONS

Section 1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Properties, all thereof in order to enhance the value, desirability, and attractiveness of the Properties and subserve and promote the sale thereof.

Section 2. Restrictions Imposed. The Declarant hereby declares that all of the Properties shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon, and hypothecated upon, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants, and subject to those applicable provisions, conditions, limitations, restrictions, agreements and covenants contained in the Master Declaration, as well as those contained elsewhere in this Declaration.

Section 3. Use of Common Area.

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

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

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

(d) No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area, and the right of ingress and egress to said Lots is hereby expressly granted.

Section 4. Architectural Control Committee Review. No structure or any attachment to an existing structure, whether a Townhome, garage, any other building, a tennis court, a swimming pool, fences, walls, canopies, awnings, roofs, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed upon the Properties, no alteration of the exterior of a residence or other structure shall be made, and no change in the final grade, nor the installation of any landscaping, shall be performed, unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and grading plan) shall have been first submitted to and approved in writing by the Architectural Control Committee, as more fully provided in the Master Declaration.

Section 5. Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot, the Common Area, or any street, except as necessary during the period of construction.

Section 6. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

Section 7. Clotheslines and Storage. No clotheslines, dog runs, drying yards, service yards, wood piles, or storage areas shall be so located on any Lot as to be visible from a street and/or public view and/or from the Common Area.

ARTICLE X
FIRST MORTGAGEES

Section 1. Member and First Mortgagee Approval. Subject to Article XI, Section 8(b) of this Declaration, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members and sixty-seven percent (67%) of the First Mortgagees of Lots (based upon one vote for each First Mortgage owned):

(1) by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Lots, improvements thereon or the Common Area;

(2) fail to maintain full current replacement cost fire and extended insurance coverage on the Common Area;

(3) use hazard insurance proceeds for Common Area property losses for purposes other than to repair, replace, or reconstruct such property;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any common property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads, or other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties or the Association);

(5) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner; or

(6) terminate the legal status of the Properties as a planned unit development, provided that this subsection (6) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or improvements thereon;

(b) unless it has obtained the prior written consent of at least seventy-five percent (75%) of each class of Members, and fifty-one percent (51%) of the First Mortgagees of Lot: based upon one vote for each First Mortgage owned):

(1) add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request, and provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (1) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or the improvements thereon, or to a reallocation of interests in the Common Area which might occur pursuant to any plan of expansion or phased development contained in this Declaration:

- (A) voting;
- (B) assessments, assessment liens or subordination of such liens;
- (C) reserves for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;
- (D) insurance, including but not limited to fidelity bonds;
- (E) rights to use of the Common Area;
- (F) responsibility for maintenance and repair of any portion of the Properties;
- (G) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;
- (H) boundaries of any Lot;

(I) interests in the Common Area;

(J) convertibility of Lots into Common Area or of Common Area into Lots;

(K) leasing of Lots or dwellings constructed thereon;

(L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;

(M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

(2) effectuate any decision to terminate professional management and assume self-management of the Association, when professional management has previously been required by any First Mortgagee of a Lot or insurer or guarantor of such a First Mortgage;

(c) unless it has obtained the prior written consent of at least fifty-one percent (51%) of the First Mortgagees of Lots (based upon one vote for each First Mortgage owned):

(1) restore or repair the Properties, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Properties and the construction of improvements thereon;

(2) terminate the legal status of the Properties after substantial destruction or a substantial taking in condemnation of the Properties.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the residence address of the property which is subject to such First Mortgage, each such First Mortgagee of a Lot, or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

(A) any condemnation loss or casualty loss which affects a material portion of the Properties or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(B) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

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

(D) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article X.

Section 3. Audit. At any time after that date on which the Properties has been expanded, pursuant to Article XI, Section 6 hereof, to include fifty (50) or more Lots, the Association shall provide an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Lot, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor by any such party. So long as the Properties includes less than fifty (50) Lots, fifty-one percent (51%) or more of the First Mortgagees of Lots shall be entitled to have such an audited financial statement prepared at their expense if one is not otherwise available.

Section 4. Association Books and Records. The Association shall make available to Owners, First Mortgagees of Lots, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation or Bylaws of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons, including without limitation the Association, violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association and

any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto. 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 2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Construction and Maintenance Easement. If any portion of any exterior wall of a residence is situated within five feet of any adjoining lot line, a valid easement shall and does exist, five feet in width along the adjoining lot and adjacent to the said lot line, which easement may be used for the purpose of construction, reconstruction, maintenance and repair of said exterior wall of a residence that is situated within five feet from the nearest point of said easement.

Section 4. Utilities. There is hereby created a blanket easement upon, across, over and under the Properties for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master television antenna systems, if any, provided that said blanket easement shall not extend upon, across, over or under any structure located on any lot. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Properties and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Area without conflicting with the terms hereof, provided, however, that such right and authority shall cease and determine upon conveyance by Declarant of the last lot to the first purchaser thereof (other than Declarant).

Section 5. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, and the Master Declaration, Articles of Incorporation and/or Bylaws

of the Master Association, the Master Declaration, Articles of Incorporation or Bylaws of the Master Association, as appropriate, shall control.

Section 6. Annexation. Additional residential property and/or Common Area may be annexed with the consent of two-thirds of each class of Members. Notwithstanding the foregoing, the Declarant may annex additional residential property and Common Area within the lands described on Exhibit C attached hereto and incorporated herein by this reference, until five (5) years after the date of recording of this Declaration in the office of the Clerk and Recorder of Arapahoe County, Colorado, without consent of the individual Owners, subject to a determination by the Federal Housing Administration of the U.S. Department of Housing and Urban Development or the Veterans Administration that the annexation is in accord with the general plan heretofore approved by them. Each such annexation shall be effected, if at all, by recording an annexation of additional land in the Office of the Clerk and Recorder of the County of Arapahoe, Colorado, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land, and may include such other provisions as deemed appropriate by the Declarant. All provisions of this Declaration, including but not limited to those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording an annexation of additional land with respect thereto, as aforesaid. Prior to transferring ownership of the first Lot conveyed in the Properties and in any property which is annexed by Declarant pursuant to this Section 6, Declarant shall convey the Common Area contained in the Properties or in such annexed property, as applicable, to the Association.

Section 7. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by condemnation or the power of eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any interest therein, 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 Members. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Common Area, any part thereof, or any interest therein, and each Owner hereby appoints the Association as his attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Members and their mortgagees as their interest may appear.

(a) In the event that all the Common Area is taken or condemned, or sold or otherwise disposed of, in lieu of or in

avoidance thereof, any award or settlement shall be apportioned by the Association on a reasonable basis as the Association determines to be equitable in the circumstances, or as determined by judicial decree. If the allocation of condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.

(b) In the event that less than the entire Common Area is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless seventy-five percent (75%) of the Owners and seventy-five percent (75%) of the First Mortgagees of Lots (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (a) of this Section 7. No provision of the Declaration or any other document relating to the Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, in the case of a distribution to any Owner of insurance proceeds or condemnation award for losses to or taking of Lots or Common Area or both.

Section 8. Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in Article X hereof, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than fifty-one percent (51%) of the Members of each class. Such amendment shall be effective when duly recorded in Arapahoe County, Colorado; provided, however, that any amendment must comply with the statutes of Colorado and the resolutions and ordinances of the City of Aurora, Colorado, or of any successor governmental entity having jurisdiction over the Properties, in existence at the time such amendment becomes effective.

(b) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the

Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Class B membership as provided in Article III, Section 2 of this Declaration; and each such amendment must contain thereon the written approval of the Veterans Administration or the Federal Housing Administration of the U.S. Department of Housing and Urban Development.

Section 9. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to 2260 South Xanadu Way, Aurora, Colorado, until such address is changed by the Association.

Section 10. FHA/VA Approval. As long as there is a Class B membership, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

Section 11. Dedication of Common Area. Declarant in recording this Declaration of Covenants, Conditions and Restrictions has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

MEMPHIS DEVELOPMENT CORPORATION, a Colorado Corporation

(SEAL)

ATTEST:

Christopher S. Dreher
Title: Reg. V.P.

By: [Signature]
Title: Reg. V. Pres

STATE OF COLORADO

COUNTY OF ARAPAHOE

)
) ss.
)

The foregoing instrument was acknowledged before me this 17th day of MARCH, 1983 by Christopher S. Dreher as Reg. V.P. and Greg W. McElvain as V.P. Production of MEMPHIS DEVELOPMENT CORPORATION.

WITNESS my hand and official seal.

My commission expires: Jan. 24, 1987

Katie Farr
Notary Public
Address: 2260 S. Xanadu Way #380
Aurora, CO 80014

(SEAL)

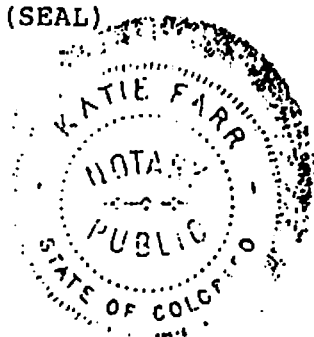


EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AMERICANA TOWNHOMES

BOOK 3822 PAGE 411

Phase I, Americana Townhomes:

A tract of land in the Americana Subdivision, Filing No. 1, City of Aurora, County of Arapahoe, State of Colorado, more particularly described as follows:

Beginning at the Southeast Corner of said Americana Subdivision; thence N 85°41'33" W, a distance of 322.97 feet; thence N 04°18'27" E, a distance of 52.00 feet to a point on a curve to the right, having a radius of 97.00 feet, an arc length of 42.32 feet, and a central angle of 25°00'00"; thence N 29°18'27" E, a distance of 113.18 feet to a point on a curve to the left, having a radius of 141.00 feet, an arc length of 187.02 feet, and a central angle of 76°00'00"; thence N 43°18'27" E, a distance of 6.93 feet; thence S 34°47'20" E, a distance of 476.90 feet to the point of beginning,

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AMERICANA TOWNHOMES

BOOK 3822 PAGE 412

Phase I Common Area, Americana Townhomes

A tract of land in the Americana Subdivision, Filing No. 1, City of Aurora, County of Arapahoe, State of Colorado, more particularly described as follows:

Beginning at the Southeast Corner of said Americana Subdivision; thence N 85°41'33" W, a distance of 322.97 feet; thence N 04°18'27" E, a distance of 52.00 feet to a point on a curve to the right, having a radius of 97.00 feet, an arc length of 42.32 feet, and a central angle of 25°00'00"; thence N 29°18'27" E, a distance of 113.18 feet to a point on a curve to the left, having a radius of 141.00 feet, an arc length of 187.02 feet, and a central angle of 76°00'00"; thence N 43°18'27" E, a distance of 6.93 feet; thence S 34°47'20" E, a distance of 476.90 feet to the point of beginning,

EXCEPTING AND EXCLUDING:

Lots 21 through 38, inclusive, Americana Subdivision Filing No. 1, County of Arapahoe, State of Colorado.

EXHIBIT C
TO

BOOK 3822, PAGE 413

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
AMERICANA TOWNHOMES

A parcel of land located in the north half of Section 17, Township 4 South, Range 66 West of the 6th Principal Meridian, City of Aurora, County of Arapahoe, State of Colorado, more particularly described as follows:

Beginning at the Northeast corner of the Northwest quarter of said Section 17; Thence South $34^{\circ}47'20''$ East, a distance of 1855.97 feet to a point on the Northerly right-of-way line of East Alameda Avenue; Thence Westerly along said right-of-way line the following two (2) courses and distances: (1) North $85^{\circ}41'33''$ West, a distance of 577.97 feet to a point of curve; (2) along said curve to the right having a central angle of $05^{\circ}05'30''$, a radius of 3945.00 feet, and an arc length of 350.58 feet; Thence North $09^{\circ}23'57''$ East, a distance of 277.73 feet; Thence North $00^{\circ}00'00''$ East, a distance of 121.27 feet; Thence South $74^{\circ}00'00''$ West, a distance of 75.00 feet; Thence North $16^{\circ}00'00''$ West, a distance of 25.00 feet; Thence South $74^{\circ}00'00''$ West, a distance of 76.68 feet; Thence North $12^{\circ}51'13''$ East, a distance of 200.00 feet; Thence North $00^{\circ}00'00''$ East, a distance of 368.10 feet; Thence North $34^{\circ}47'20''$ West, a distance of 132.48 feet; Thence North $55^{\circ}12'40''$ East, a distance of 100.00 feet; Thence North $34^{\circ}47'20''$ West, a distance of 160.00 feet; Thence North $03^{\circ}41'06''$ East, a distance of 201.57 feet to the POINT OF BEGINNING,

EXCEPTING AND EXCLUDING:

Beginning at the Southeast Corner of said Americana Subdivision; thence N $85^{\circ}41'33''$ W, a distance of 322.97 feet; thence N $04^{\circ}18'27''$ E, a distance of 52.00 feet to a point on a curve to the right, having a radius of 97.00 feet, an arc length of 42.32 feet, and a central angle of $25^{\circ}00'00''$; thence N $29^{\circ}18'27''$ E, a distance of 112.18 feet to a point on a curve to the left, having a radius of 141.00 feet, an arc length of 187.02 feet, and a central angle of $76^{\circ}00'00''$; thence N $43^{\circ}18'27''$ E, a distance of 6.93 feet; thence S $34^{\circ}47'20''$ E, a distance of 476.90 feet to the point of beginning,