

RECORDED APRIL 4, 1985, RECEPTION NO. 85015937

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE BERTHOUD ESTATES COMMUNITY ASSOCIATION

Copyright © 1982
By William A. Love
All Rights Reserved

TABLE OF CONTENTS

<u>ARTICLE</u> <u>Number</u>	<u>PARAGRAPH</u> <u>Number</u>	<u>PAGE</u> <u>Number</u>
	PREAMBLE	1
ONE	DEFINITIONS	2
	1.1 Assessments	2
	1.2 Association	2
	1.3 Association Property	2
	1.4 Board of Directors or Board	2
	1.5 Bylaws	2
	1.6 Declarant	2
	1.7 Declaration	2
	1.8 Dwelling Unit	2
	1.9 First Mortgagee	2
	1.10 Guest	2
	1.11 Improved Lot	2
	1.12 Lot	3
	1.13 Member	3
	1.14 Owner	3
	1.15 Rules	3
	1.16 Sewer System	3
	1.17 The Properties	3
	1.18 VA and/or FHA Approval	3
TWO	SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT	4
	2.1 Property Subject to Declaration	4
	2.2 Annexation	4
	2.3 Conveyances Subject to Declaration	4
	2.4 Member's Rights Subject to the Provisions of this Declaration	4
THREE	PROPERTY RIGHTS	5
	3.1 Member's Easements	5
	3.2 Title to the Association's Property	5
	3.3 Delegation of Use	5
FOUR	THE ASSOCIATION	6
	4.1 General Purposes and Powers	6
	4.2 Board of Directors	6
	4.3 Articles and Bylaws	6
	4.4 Membership	6
	4.5 Voting Rights	6
	4.6 Indemnification	7
	4.7 Professional Management	7
	4.8 Rights of Association/Transfer of Functions	8

TABLE OF CONTENTS

<u>ARTICLE Number</u>	<u>PARAGRAPH Number</u>	<u>PAGE Number</u>
FIVE	ASSESSMENTS	9
	5.1 Creation of the Lien and Personal Obligation of the Assessment	9
	5.2 Purpose of the Assessments	9
	5.3 Basis of Assessments	9
	5.4 Special Assessments	10
	5.5 Notice and Quorum Required to Assess a Special Assessment	10
	5.6 Uniform Manner of Assessment	11
	5.7 Date of Commencement of Assess- ments; Prorations	11
	5.8 Due Dates, Non-Payment of Assess - ments, Remedies of the Association	11
	5.9 Declarant's Obligations	13
	5.10 No Offsets	13
SIX	CONDEMNATION	14
	6.1 Condemnation of the Association Property	14
	6.2 Lien Holders	14
SEVEN	MAINTENANCE	15
	7.1 Maintenance of the Association Property	15
	7.2 Special Maintenance Requirements	15
EIGHT	INSURANCE	17
	8.1 Authority to Purchase/General Requirements	17
	8.2 Property Insurance	18
	8.3 Rebuilding of Damaged Association Property	18
	8.4 Liability Insurance	19
	8.5 Fidelity Bonds	20
	8.6 Other Insurance	20
	8.7 Payment of Insurance Premiums	20
NINE	CERTAIN RIGHTS OF THE FIRST MORTGAGEES	
	9.1 Entitlement	22
	9.2 Payment of Charges	22
	9.3 Restrictions	23
	9.4 Books and Records	23
TEN	DURATION AND AMENDMENTS	24
	10.1 Duration	24
	10.2 Amendments	24
	10.3 Special Amendments	24
	10.4 Annexation	25

TABLE OF CONTENTS

<u>ARTICLE</u> <u>Number</u>	<u>PARAGRAPH</u> <u>Number</u>	<u>PAGE</u> <u>Number</u>
ELEVEN	GENERAL PROVISIONS	25
	11.1 Right of Action	25
	11.2 Successors and Assigns	25
	11.3 Severability	25
	11.4 No Waiver	25
	11.5 Attorneys' Fees and Costs	25
	11.6 Invalidity	25
	11.7 Captions	25
	11.8 Numbers and Genders	25

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE BERTHOUD ESTATES COMMUNITY ASSOCIATION

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by the Owners as hereinafter defined and by GLEN S. DOUTHIT and THE FREEDMAN-MOCH INVESTMENT CO., hereinafter referred to as "Declarant",

WHEREAS, the Owners and the Declarant are the owners of the following property situate in the County of Larimer, State of Colorado, more particularly described as:

See attached Exhibit "A" Parcel One and Two

WHEREAS, the Owners and the Declarant are constructing a residential community on The Properties, together with other improvements thereon; and

WHEREAS, the Declarant has constructed a waste water treatment plant to treat the waste water created within The Properties to be owned by the Association as hereinafter defined; and

WHEREAS, the Declarant has constructed outfall lines to carry waste water to the treatment plant, which outfall lines are owned by the Association; and

WHEREAS, the purpose of this Declaration is to provide for the use, maintenance, repair, and reconstruction and operation of the said waste water treatment plant and its attendant trunk lines; and

WHEREAS, the Owners and the Declarant will convey The Properties, subject to the protective covenants, restrictions, reservations, and obligations as hereinafter set forth.

NOW THEREFORE, the Owners and the Declarant hereby declare that The Properties shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of The Properties and for the benefit of any person having any right, title or interest in The Properties and which shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, successors, heirs, legal representatives and assigns.

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

- 1.1 ASSESSMENTS shall mean all monies due the Association from members as duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE FIVE hereof.
- 1.2 ASSOCIATION shall mean and refer to The Berthoud Estates Community Association, a Colorado Corporation not for profit, its successors and assigns.
- 1.3 ASSOCIATION PROPERTY shall mean and refer to the real and personal property owned by the Association.
- 1.4 BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided.
- 1.5 BYLAWS shall mean the Bylaws adopted by the Association as amended from time to time.
- 1.6 DECLARANT shall mean and refer to Glen S. Douthit and Freedman-Moch Investment Co., their heirs, personal representatives, successors or assigns, if such successors or assigns shall acquire any portion of The Properties for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant for the purpose hereof by a duly recorded written instrument. Any such designation by the Declarant or a successor Declarant may include the right of redesignation by such successor or further successors.
- 1.7 DECLARATION shall mean this Declaration of Covenants, Conditions and Restrictions of The Berthoud Estates Community Association, as may be amended from time to time, together with any and all Supplementary Declarations that may be recorded from time to time pursuant to the provisions of Paragraph 2.2 hereof.
- 1.8 DWELLING UNIT shall mean and refer to the residence constructed on each Lot within The Properties and any replacement thereof.
- 1.9 FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association, or other legal entity which owns holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering an Improved Lot within The Properties. A First Mortgagee shall also include the holder of every executory land sales contract wherein the Administrator of Veteran Affairs (Veterans Administration) is Seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.
- 1.10 GUEST shall mean and refer to any agent, tenant, guest, licensee, or invitee of an Owner and members of such Owner's household.
- 1.11 IMPROVED LOT shall mean and refer to a Lot as defined in Paragraph 1.12 hereof on which a Dwelling Unit has been constructed for which a Certificate of Occupancy has been issued by the County of Larimer.

In the event additional property is made subject hereto in the manner as provided in Paragraph 2.2 hereof, "Improved Lot" shall also mean from and after the date such additional property is made subject to this Declaration, such

additional lots designated as "Lots" in such Supplemental Declaration on which a Dwelling Unit has been constructed and for which a Certificate of Occupancy has been issued by the County of Larimer.

1.12 LOT shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties which is subject to this Declaration. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is defined in Paragraph 1.8 hereof.

In the event additional property is made subject hereto in the manner as provided in Paragraph 2.2 hereof, "Lot" shall also mean from and after the date such additional property is made subject to this Declaration such additional parcels, plots, and lots designated as "Lots" in such Supplemental Declaration.

1.13 MEMBER shall mean and refer to all those who are members of the Association as provided in Paragraph 4.4 hereof.

1.14 OWNER (Dwelling Unit Owner) shall mean and refer to the record Owner of the fee simple title or a seller under a Land Installment Contract of any Improved Lot as defined in Paragraph 1.11, which is a part of The Properties, whether one or more persons or entities, excluding those having an interest merely as security for the performance of an obligation.

1.15 RULES shall mean the Rules and Regulations adopted by the Board of Directors as amended from time to time.

1.16 SEWER SYSTEM shall mean the waste water treatment system situated on that part of The Properties known as Outlot A. Such System shall be owned and maintained by the Association and shall be responsible for the treatment of all the waste water generated within The Properties. This Property, while owned by the Association, shall not be considered a Common Property of the Association, but shall be fenced and only authorized personnel of the Association shall be allowed upon its premises for the purposes of performing maintenance and repair on the System.

The Collection System shall consist of the outfall lines installed within the utility easements as shown on the recorded Plat of The Properties which are owned and maintained by the Association. The individual service lines running from the individual Dwelling Units to the outfall lines shall be owned and maintained by the Owner of the Dwelling Unit to which it serves and not by the Association.

1.17 THE PROPERTIES shall mean and refer to such real property and the improvements located thereon which constitute or shall constitute or shall constitute Berthoud Estates and Berthoud Estates Subdivision, Second Filing, Subdivisions of the County of Larimer, State of Colorado, according to the recorded plat thereof on file in the office of the County Clerk and Recorder of Larimer County, Colorado.

In the event that additional property is made subject to this Declaration in the manner provided in Paragraph 2.2 hereof, "The Properties" shall, from and after the date such additional real property is made subject to this Declaration include any parts thereof designated as "The Properties" (including all improvements thereon) in such Supplemental Declaration.

1.18 VA AND/OR FHA APPROVAL shall mean that The Properties have been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within The Properties.

ARTICLE TWO: SCOPE OF DECLARATION AND RIGHTS RESERVED BY
DECLARANT

2.1 Property Subject to Declaration. The Owners and the Declarant, as the Owner of fee simple title to The Properties, expressly intends to and, by recording this Declaration, does hereby subject The Properties to the provisions of this Declaration.

2.2 Annexation. Additional property within the area described on Exhibit B attached hereto may be annexed by Declarant without the consent of the Owners or Members of the Association or the consent of First Mortgagees, within seven years of the date of recording this Declaration, provided that the Federal Home Administration and Veterans Administration determine that the annexation is in accordance with the general plan heretofore approved by them. Said annexation shall occur when the Declarant records Supplemental Declaration describing the real property to be annexed, and on the date of recording said Declaration, said real property shall be deemed part of The Properties as defined herein and shall be subject to all of the terms and conditions of this Declaration.

2.3 Conveyances Subject to Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants perpetual and appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in The Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, rights, benefits, and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in The Properties shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.4 Member's Rights Subject to the Provisions of This Declaration. Each Member shall own his Lot in fee simple for use as a single family residence, and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

ARTICLE THREE: PROPERTY RIGHTS

3.1 Member's Easements. Every Member and his delegees as described in Paragraph 3.3 below, shall have the right and easement of the use of the Association's Sewage System, which shall be appurtenant to and shall pass with the title to the Lot of such Member subject to the following rights:

a) The right and easement of the Association to make such use of the Sewage System as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. The Board of Directors, in its sole discretion, may from time to time grant easements and rights of way on, across, under and over its property to any entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to The Properties.

b) The right of the Board of Directors to make such reasonable Rules regarding the use of the Sewage System by Members and other persons entitled to such use.

c) The rights reserved in this Declaration to the Declarant, the Members and the Association.

d) The right of the Association to charge reasonable assessments and other fees for the use of Sewage System, including tap fees.

e) The right of the Association to dedicate or transfer all or any part of the Sewage System to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of each class of Members has been recorded.

f) The right of the Association to suspend the voting rights and the use of the Sewage System by any Owner for any period during which any assessment against his Lot remains unpaid; provided however, upon full payment of such assessment, prompt restoration of service and use of the Sewage System shall be provided.

3.2 Title to the Association's Property. The Declarant hereby covenants that it will convey fee simple title to the Association Property to the Association, free and clear of all liens and at the time of the recording of this Declaration and furnish and pay for a title insurance policy reflecting same.

3.3 Delegation of Use. Any Member may delegate, in accordance with the Bylaws and Rules and Regulations of the Association, his right of the use of the Sewage System to the members of his household, to his tenants or to contract purchasers who reside upon his Lot within The Properties and to his guests as defined in Paragraph 1.10. All such persons shall be subject to the Rules concerning such use. A Member is fully responsible for the actions of the members of his household, guests, contract purchasers, tenants or invitees.

ARTICLE FOUR: THE ASSOCIATION

4.1 General Purposes and Powers. The Association, through its Board of Directors, shall perform functions and manage the Associations Sewage System as provided in this Declaration so as to further the interests of the residents of The Properties and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the powers necessary or desirable to effectuate such purposes.

4.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.3 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.4 Membership. Every person or entity who is a record Owner of a fee interest in any Improved Lot as defined in Paragraph 1.11 hereof, which is located within The Properties and is subject by covenants of record to assessment by the Association shall be a Member of the Association, including the Declarant (as defined in the Declaration) so long as it is an Owner and contract sellers; 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.

Membership shall be appurtenant to and may not be separated from ownership of any Improved Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds interest in such Lot, all such persons shall be Members.

Membership shall at all times be identified with the Owner of the Improved Lot and shall not be subject to the approval of the Board of Directors or other Members.

4.5 Voting Rights. Voting rights are restricted to property with improvements only.

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Improved Lots, with the exception of the Declarant, and shall be entitled to one vote for each Improved Lot owned.

The vote for such Improved Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such Lot is made prior to

such Lot shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of such Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost. In no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant who shall be entitled to three (3) votes for each Improved Lot owned. Class B Membership may be converted to Class A Membership at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall be converted to Class A Membership without further act or deed not later than when fifty-one percent (51%) of all of the Lots within The Properties have been conveyed to Purchasers other than the Declarant and have become an Improved Lot as defined by Paragraph 1.11 of this Declaration, or five (5) years following the recording of this Declaration, whichever shall first occur.

No expulsion of Members or cancellation of voting rights shall be permitted.

4.6 Indemnification. Each director and officer of the Association, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceedings to which they may be a party, or in which they may become involved, by reason of being or having acted as such upon behalf of the Association. The amount of the indemnification shall be limited to the extent covered by Directors and Officers Errors and Omissions Liability Insurance Policies, obtained in advance by the Association, and only to the extent payable from such policy. The indemnification shall not apply if the said person is legally adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the indemnification shall apply only when the Board approves such settlement. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

The words "director" and "officer" shall not include any officer, director, agent, or employee of the Declarant or any managing agent, or any officer, director, employee or agent of any managing agent heretofore or hereafter employed by the Association.

4.7 Professional Management. Any agreement for professional management of the Sewage System or any contracts providing for services of the Declarant, may not exceed one (1) year. Any such agreement must provide for termination fee or penalty upon thirty (30) days' written notice, provided however, the Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into prior to the conversion of the Class B Membership to the Class A Membership in accordance with Paragraph 4.5 hereof unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such conversion upon not more than thirty (30) days' notice to the other party thereto.

When professional management has been required by any First Mortgagee any decision to establish self-management by the Association shall require the prior written consent of Owners of Improved Lots to which at least eighty percent (80%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Improved Lots which have at least eighty percent (80%) of the votes of Improved Lots subject to first mortgages within The Properties.

4.8 Rights of Association/Transfer of Functions. With respect to the Association Property, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other like associations and other homeowners associations, both within and without The Properties.

Unless otherwise specifically prohibited herein or within the Articles of Incorporation or Bylaws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners association or like association.

Any of the above actions shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association and shall not relieve the Board from any responsibility thereof.

ARTICLE FIVE: ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of the Assessment. The Declarant, for each Lot owned, within The Properties, hereby covenants, and each Owner, other than the Declarant, of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain assessments to be fixed, established and collected from time to time as herein provided. All assessments created and defined in this Declaration, together with interest, costs, and reasonable attorney's fees shall be:

a) a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made, which lien shall attach as of the date the assessment is made, and shall continue until such assessment, together with any penalties and interest, costs of collection, and attorneys' fees are paid; and

b) a personal obligation of the person who was the Owner or of the persons jointly and severally, who were the Owners of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the purpose of operating, maintaining, repairing, reconstructing the Association's Sewer System and providing insurance therefore. Such assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement, and repair of the Sewer System which the Association has an on going duty to replace, repair and/or maintain on a periodic basis.

5.3 Basis of Assessments.

a) Sewer Assessment. The Board of Directors shall assess against each Owner of an Improved Lot as defined in Paragraph 1.11 hereof, within The Properties, a Sewer Assessment to pay for the common expenses of the Association. Said assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of those portions of the Sewer System which the Association has a duty to replace, repair and/or maintain on a periodic basis. Such assessment shall be paid by the Owners in the proportion which the number of Improved Lots owned by an Owner bears to the total number of Improved Lots within The Properties. Said assessment shall commence in accordance with Paragraph 5.7 hereof.

b) Individual Assessments. The Board of Directors shall have the right to individually assess any Owner amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraph 7.1, 8.3, & 8.7 hereof. No Individual Assessment shall be assessed until: the affected Owner have been given thirty (30) days' written notice as to the reason for the assessment, the affected Owner have had an opportunity for a hearing before the Board of Directors, and the Board of Directors levy the assessment by a two-thirds vote of the total votes of all Directors of the Association.

c) Fines. The Board of Directors of the Association shall have the right to assess a fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such fine shall be assessed until the affected Owner or Owners: have been given notice as to the reason for the fine, the affected Owner or Owners have had the opportunity for a hearing before the Board of Directors, and the Board of Directors levy the fine by a two-thirds vote of the total votes of all Directors of the Association.

No fine may be assessed for more than one percent of such Lot Owner's total yearly Sewer Assessment for any one violation, but each day a violation continues after the fine has been assessed against an Owner, is a separate violation.

d) Levy of Assessments. At least thirty days prior to the close of the Association's fiscal year, the Board of Directors shall determine the Sewer Assessment all of which are payable monthly by each Owner; provided however, that said Assessments may be adjusted upon a finding of necessity by the Board, but no more than four times in any one year. Said Assessment shall be the amount estimated to be necessary to pay for the expenses to be incurred by the Association and to provide the necessary reserves and shall include but not be limited to the expense items set forth in Paragraphs 5.2 and 5.3 hereof. Written notice of such Assessments shall be sent to every Owner subject thereto. As soon as practicable after the close of each fiscal year, actual expenses shall be tallied and any coverages or shortages of actual expenses and assessments made shall then be charged or credited to each Owner against the following year's assessment.

The omission or failure of the Board of Directors to fix the Sewer Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Fines and Individual Assessments may be assessed at any time as required and are exempt from any voting requirements for assessments required for other assessments called for under the Declaration.

e) Non-exemption. No Owner may waive or otherwise escape liability for any assessments provided for herein by the non-use of the Sewer System or abandonment of his Improved Lot.

5.4 Special Assessments. In addition to the assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable for that year only for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, repair or replacement of any of the Sewer System provided that 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.

5.5 Notice and Quorum Required to Assess a Special Assessment. Written notice of any meeting called for the purpose of taking any action authorized

under Paragraphs 5.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (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 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.6 Uniform Manner of Assessment. The Sewer Assessment must be assessed in a uniform manner upon all Lots within The Properties.

5.7 Date of Commencement of Assessments; Prorations. The Sewer Assessment provided for herein shall commence as to an Improved Lot on the first day of the month following the connection of such Lot to the Sewer System to enable it to use the system for the Dwelling Unit located on that Lot.

The Sewer Assessment shall be prorated respectively according to the number of months remaining in the Association's fiscal year at the time of the issuance of a Certificate of Occupancy for that Dwelling Unit.

5.8 Due Dates, Non-Payment of Assessments, Remedies of the Association.

a) Individual Assessments and Fines shall be due and payable as established by the Board of Directors.

b) The Sewer Assessment shall be due and payable on the first day of the period fixed by the Board of Directors for payment of the assessment which shall be monthly.

c) Written notice of the assessment shall be sent to each Owner subject thereto specifying the amount and the date such assessment is due.

d) All assessments shall become delinquent unless paid within thirty (30) days of their due date. If such assessments are not paid within thirty (30) days of its due date, the assessment shall bear interest from its date of delinquency at a rate as fixed by the Board and uniformly applied not to exceed, however, the rate of ten percent (10%) per annum.

Failure to make payment within sixty (60) days of the due date thereof shall cause the full amount of such Owner's total Assessment for the remainder of that fiscal year to become due and owing at once at the option of the Board.

In the event it shall become necessary for the Board to collect any delinquent Assessments, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay, in addition to the Assessment and interest as herein provided, all costs of collection including a reasonable attorney's fee and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is required to be filed to enforce collection, the cost of preparation, filing and release shall be considered a cost of collection.

e) The Association is hereby granted a lien against the Owner's Lot for any payment of an Assessment which the Owner fails to make as required by this Declaration. The lien of the Assessments together with interest costs of collection to include attorneys' fees and fines as provided for herein shall be subordinate to the lien of any loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Such lien to attach at the time of the levy of the Assessment, and continue until such Assessment, together with interest, all costs of collection including reasonable attorneys' fees are paid.

The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided however, the lien shall also be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust.

If a foreclosure action is filed to foreclose any assessment lien, and an Owner abandons or leaves vacant his Dwelling Unit, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee as set forth in its deed of trust or mortgage (including any assignment of rents) which creates that First Mortgagee's Interest in the Lot.

In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Lot, and obtain judgment for the amount of the Assessments due together with interest and late fees incurred, plus all costs of collection, including reasonable attorneys' fees and costs incurred by the Association in enforcing payment.

In the event an Owner is in default on any obligation secured by an encumbrance on his Lot, the Board, at its option, may pay the amount due on said obligation and shall have a lien against the Lot which lien shall attach in the manner as provided for unpaid assessments.

f) The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.

g) The lien of all assessments created and defined by this Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against such assessment lien.

h) Sale or transfer of an interest in any Lot shall not affect the liens for unpaid assessments except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract by a First Mortgagee shall extinguish the lien of all unpaid assessments as to

assessments which became due prior to such transfer of title or cancellation or forfeiture of executory land sales contract i.e. the date the First Mortgagee acquires fee simple title to the Lot. Provided however, the Association shall still have the right to recover such amount from the delinquent Owner. No transfer of title, or cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

i) The Association shall upon demand, and for a reasonable charge, furnish to an Owner or his First Mortgagee, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the Assessments against a Lot is binding upon the Association as of the date of its issuance.

5.9 Declarant's Obligations. After the Certificate of Occupancy is issued for a Dwelling Unit owned by the Declarant, the Declarant like any other Owner shall be responsible for the payment of the Sewer Assessment for that Lot in accordance with the above.

The Declarant agrees that it has a binding obligation and a duty to pay any deficit or shortage that may arise in connection with the estimated budget prepared for the initial period of the operation of the Association. The obligation of the Declarant to subsidize the obligations of the Association shall terminate upon the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof.

5.10 No Offsets. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

ARTICLE SIX: CONDEMNATION

6.1 Condemnation of the Association Property. In the event of a proceeding in condemnation or partial condemnation of the Association Property by any governmental authority authorized to do so, then the proceeds from such condemnation shall be distributed to the Association for repair of the Association Property remaining after condemnation and the balance shall be distributed to all Owners in the same proportion as the Sewer Assessment is assessed in accordance with Paragraph 5.3(a) hereof; subject to the provisions of Paragraph 6.2 below.

6.2 Lien Holders. When a condemnation occurs to the Association Property and a Lot is entitled to a distribution of the condemnation proceeds in accordance with Paragraph 6.1 above and such Lot is subject to first mortgage the proceeds payable thereunder shall be distributed by checks made jointly payable to Owners and their respective First Mortgagees. No Owner or other parties shall be entitled to priority over First Mortgagees with respect to any such distribution.

ARTICLE SEVEN: MAINTENANCE

7.1 Maintenance of the Association Property. The Association shall provide for the operation, repair, maintenance and/or reconstruction of the Association Property. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Association Property safe, attractive, clean, functional and in good operating repair; and may make necessary or desirable alterations or improvements thereon.

In the event the repair, maintenance and/or reconstruction to the Association Property is resulting from the act or negligence of an Owner or such Owner's guests, as defined in Paragraph 1.10 hereof, the cost of such maintenance, replacement, repair and reconstruction shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(b).

7.2 Special Maintenance Requirements. The Association shall establish a reasonable regular maintenance program for sewage treatment and collection system that serves The Properties. Should such maintenance be deemed to be inadequate by the Board of Larimer County Commissioners, the Board of County Commissioners may order the Association to take reasonable corrective action, and the Association shall promptly comply with such order. In the event the Association shall fail to maintain the sewage treatment and collection system in a reasonable order and condition in accordance with the original plan submitted with the final subdivision plat, the Board of County Commissioners for Larimer County may serve written notice upon such organization or upon the residents of The Properties involved, setting forth the manner in which the Association has failed to maintain such sewage treatment and collection system in a reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a hearing thereon, which shall be held within fourteen (14) days of the notice. At such hearing, the County may modify the terms of its original notice as to the deficiencies, and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty (30) days or any extension thereof, the County, in order to preserve the taxable values of the property contained within The Properties, and to prevent the sewage treatment and collection system from becoming a public nuisance and public liability, may undertake to maintain the same for a period of one (1) year. Before the expiration of said year, the County, upon its initiative or upon the written request of the Association theretofore responsible for the maintenance of the sewage treatment and collection system, may call a public hearing upon notice to such Association and to the residents of The Properties involved, to be held by the Board of County Commissioners, at which hearing such Association or the residents of The Properties shall show cause why such maintenance by the County shall not, at the election of the County, continue for a succeeding year. If the Board of County Commissioners shall determine that such Association is ready and able to maintain said sewage treatment and collection system in a reasonable condition, the County shall cease to maintain said sewage treatment and collection system at the end of said year. If the Board of County Commissioners shall determine such organization is not ready and able to maintain such sewage treatment and collection system in a reasonable condition, the County may, in its discretion, continue to maintain said sewage treatment and collection system during the next succeeding year subject to a similar hearing and determination in each year thereafter.

The cost of such maintenance by the County shall be paid by the Owners of Improved Lots as defined by Paragraph 111 hereof, within The Properties and any unpaid assessments shall become a tax lien upon said Improved Lots. The County shall file a notice of such lien in the office of the County Clerk and Recorder upon the Improved Lots affected by such lien within The Properties, and shall certify such unpaid assessments to the County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.

The Association shall further provide for:

1. Adequate funding and means of enforcement;
2. Continous safety inspections and immediate follow-up maintenance to correct unsafe conditions;
3. The receiving and processing of complaints;
4. Regular maintenance program for the sewage treatment and collection system.

The Association may not be dissolved without the prior permission of the Board of County Commissioners of Larimer County.

ARTICLE EIGHT: INSURANCE

8.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association Property and any insurable improvements located thereon shall be purchased by the Board of Directors. The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

The Board of Directors 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 Association, Dwelling Unit Owner, First Mortgagee or such First Mortgagee's successor and assigns, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Dwelling Unit Owners or First Mortgagees, their successors and assigns from collecting insurance proceeds.

Each such policy shall provide that:

a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant in his capacity as an Owner, the Association, the Board of Directors, the Managing Agent or the Dwelling Unit Owners, and their respective agents, employees, guests and, in the case of the Dwelling Unit Owners, the members of their households;

b) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Dwelling Unit Owner (including his guests, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within thirty (30) days after such demand;

c) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy.

d) The Declarant, so long as Declarant shall own any Dwelling Unit, shall be protected by all such policies as a Dwelling Unit Owner.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado and be in a financial category as designated by BEST'S KEY RATING GUIDE, of Class X-B or better.

The amount of the deductible, if any, on any insurance policy shall be as the Directors determine necessary and consistent with good business practice.

The insurance shall be carried naming the Association as the owner and beneficiary thereof in respect to the Association Property. Any loss covered by the policies carried under this Article shall be adjusted by the Association, and the insurance proceeds for any loss shall be payable to the Association as attorney-in-fact for the Owners.

The Association shall hold any insurance proceeds received in trust for the Owners. The proceeds shall be disbursed for the repair and/or restoration of the damaged areas. Any surplus remaining after repair and/or restoration of the Association Property shall be deposited in the Reserve Fund of the Association. Neither Owners nor First Mortgagees are entitled to receive any portion of such insurance proceeds.

8.2 Property Insurance. The Board of Directors shall obtain and maintain a Blanket, "All-Risk" Form Policy of insurance with extended coverage, insuring all insurable improvements located on the Association Property and any personal property owned by the Association and used in conjunction therewith including fixtures and building service equipment to the extent they are part of the Association Property. Such insurance shall be in the amount of the full replacement value, as defined below.

Such insurance shall at all times represent one-hundred percent (100%) of the replacement cost based on the most recent appraisal of all insurable improvements on the Association Property. The replacement cost shall not include values for items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall and consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, which shall be maintained as a permanent record, showing that the insurance represents one-hundred percent (100%) of the replacement cost as defined above for all insurable improvements located on Association Property together with all personal property owned by the Association.

Such policies shall also provide:

a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Increased Cost of Construction Endorsement, Agreed Amount Endorsement, Cost of Demolition Endorsement, and Inflation Guard Endorsement if available.

b) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least thirty (30) days prior to expiration of then current policy.

8.3 Rebuilding of Damaged Association Property. Any portion of the Association Property damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration Not to Rebuild" signed by Members holding seventy-five percent (75%) or more of the total votes

hereunder and by one-hundred percent (100%) of the First Mortgagees is recorded within one-hundred (100) days of the date of damage or destruction indicating their intention not to rebuild in the office of the County Clerk and Recorder, Ft. Collins, Colorado.

In the event of any repair and/or reconstruction of any portion of the Association Property areas, the Board of Directors shall repair or reconstruct the same in a workmanlike manner with materials comparable to those used in the original construction and in conformity in all respects with the laws or ordinances regulating construction in force at the time of such repair or reconstruction. The Association Property, when built or repaired, shall be substantially similar to the architectural design of the original Association Property.

The Board of Directors shall not be relieved of this obligation to repair and/or reconstruct by the fact that proceeds received from the Insurer to repair or rebuild are not sufficient to cover the cost thereof.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of such repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Association Property, such excess cost shall be assessed as an Individual Assessment against all Owners in accordance with Paragraph 5.3(b) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership. Such Individual Assessment shall be assessed in the same proportion as the Sewer Assessment is assessed in Paragraph 5.3(a) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment was levied.

If the entire damaged Association Property is not repaired or replaced (a) the insurance proceeds shall be used to restore the damaged Association Property to a condition compatible with the remainder of the Association Property, and (b) the remainder of the proceeds shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagee. No Dwelling Unit Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

8.4 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability insurance (including libel, slander, false arrest, and invasion of privacy) and property damage insurance covering claims arising out of an incident to the ownership or use of the Association Property insuring each officer, director, the Managing Agent and each Improved Lot Owner, to include the Declarant in its capacity as an Improved Lot Owner. Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injury and deaths of persons in connection with the operation, maintenance or use of the Association Property and the legal

liability arising out of lawsuits relating to employment contracts of the Association.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to projects similar in construction, location and use, including, but not limited to, contractual and all-written contract insurance, employer's liability insurance and comprehensive automobile liability insurance and a severability of interest endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one-million dollars (\$1,000,000.00) covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

8.5 Fidelity Bonds. The Board of Directors shall obtain and maintain adequate fidelity bond coverage, to protect against dishonest acts on the part of the directors, officers, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association, provided however, the Board of Directors shall not maintain fidelity coverage to cover any Managing Agent.

Such fidelity coverage shall name the Association as an obligee, be written in an amount which the Association deems consistent with good business practices and with requirements of the First Mortgagees and 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, such fidelity bond shall be required for its officers, employees and agents handling or responsible for funds or other administration on behalf of the Association.

8.6 Other Insurance.

a) Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the association in the amounts and in the forms now or hereafter required by law;

b) Adequate Directors and Officers liability insurance, if available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Association seems adequate;

c) Such other insurance of a similar or dissimilar nature as the Board of Directors shall deem appropriate with respect to The Properties.

8.7 Payment of Insurance Premiums. The cost of insurance obtained by the Association in accordance with this Article shall be paid from Association funds and be collected from the Owners as part of the Sewer Assessment as provided for in Paragraph 5.3(a) hereof.

In the event there are not sufficient funds generated for the Sewer Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by Individual Assessment in accordance with Paragraph 5.3(b) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Membership.

ARTICLE NINE: CERTAIN RIGHTS OF THE FIRST MORTGAGEES

9.1 Entitlement. A First Mortgagee, upon written request by such First Mortgagee to the Association, shall be entitled to receive any of the following:

a) Budgets, notices of assessments, or any other notices provided for under this Declaration by the Association to the Owner of a Dwelling Unit in which a First Mortgagee has a security interest.

b) Financial statements of the Association which are prepared for the Association and distributed to its Members.

c) Notices of meetings of the membership and the right to be represented at any meeting by a designated representative.

d) Notice of the decision of the Owners to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.

e) Notice of the commencement of any condemnation proceedings with respect to any part of the Association Properties.

f) Notice of any default by an Owner of a Unit in which a First Mortgagee has a security interest in the performance of any obligations under this Declaration, the Articles of Incorporation and/or Bylaws of the Association, which remains uncured for a period of sixty days.

g) Notice of any lapse, cancellation or material modification of any casualty or liability insurance policy or fidelity bond maintained by the Association.

h) Notice of any condemnation loss or any casualty loss which affects a material portion of the Association Property or any Dwelling Unit in which a First Mortgagee has a security interest.

i) Notice of any proposed action contained in Paragraph 9.3 hereof, requiring the consent of the First Mortgagees.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which same shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from the purported First Mortgagees of the same Dwelling Unit, the Association shall honor the most recent request received.

9.2 Payment of Charges. First Mortgagees, jointly or singularly, may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on a lapse of a policy and may also pay taxes and other charges which are in default or which may or have become a charge against the Association Property. A First Mortgagee making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement is to be reflected in an agreement in favor of all First Mortgagees

duly executed by the Association.

9.3 **Restrictions.** The consent of the Owners to which at least eighty percent (80%) of the votes in the Association are allocated and the approval of those First Mortgagees holding mortgages on Improved Lots which have at least eighty percent (80%) of the votes of the Improved Lots subject to first mortgages within The Properties shall be required to add or amend any material provisions of the Declaration, Bylaws, Articles of Incorporation or The Map which establish, provide for, govern or regulate any of the following:

- a) Assessments, manner of assessment, assessment liens or subordination of such liens;
- b) Reserves for maintenance, repair and replacement of the Association Property;
- c) Insurance or Fidelity Bonds;
- d) Right to use of the Association Property;
- e) Responsibility for maintenance and repair of the Association Property;
- f) Expansion of The Properties or the addition, or annexation of property to The Properties; subject to the provisions of Paragraph 2.2 hereof;
- g) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey an Improved Lot;
- h) Use of hazard insurance proceeds for losses to any improvements insured by the Association for other than the repair, replacement or reconstruction of such improvements;
- i) Partition or subdivide any Improved Lot;
- j) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any of the Association Property, except that approval shall not be required for the Board of Directors to grant easements for utilities and similar or related purposes;
- k) By act or omission seek to abandon or terminate the Association Sewer System or the removal of any part or all of The Properties from the provisions of this Declaration;
- l) The duty to maintain fire and extended coverage on insurable Association Property at a current replacement cost basis in an amount not less than one-hundred percent (100%) of the insurable value (based on current replacement cost as defined by Paragraph 8.2 hereof);
- m) Waiver or abandonment of the scheme of the maintenance of the Association Sewer System;
- n) Amending any provisions in the Declaration, Articles of Incorporation or Bylaws which are for the express benefit of First Mortgagees hereunder.

9.4 **Books and Records.** Owners and their First Mortgagees shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice. Copies are available at cost.

ARTICLE TEN: DURATION, AMENDMENTS AND ANNEXATION

10.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the Rule against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendents of Ronald Reagan, President of the United States.

10.2 Amendments. Except in cases of Amendments that may be executed by the Declarant pursuant to Paragraph 10.3 hereof, this Declaration may be amended only by written agreement by Owners of Improved Lots to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Improved Lots which have at least seventy-five percent (75%) of the votes of the Improved Lots subject to first mortgages within The Properties. All Amendments must be recorded in Larimer County, Colorado.

If The Properties have been or are to receive Veterans Administration and/or Federal Housing Administration approval as defined by Paragraph 1.18 hereof, until the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof, the following actions will require the prior written approval of the Federal Housing Administration and/or the Veterans Administration: (a) annexation of additional properties, and (b) any amendment of this Declaration.

10.3 Special Amendments. Declarant hereby reserves and is granted the right and power to record Special Amendments to this Declaration at any time until the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof, which amends this Declaration to comply with any written requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering the Dwelling Units.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of such Owner. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record such Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Dwelling Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Dwelling Unit.

10.4 Annexation. Additional residential property and/or Association Property may be annexed to The Properties only by written agreement by Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Lots which have at least eighty percent (80%) of the votes of the Lots subject to first mortgages within The Properties.

ARTICLE ELEVEN: GENERAL PROVISIONS

11.1 Right of Action. The Association and any aggrieved Lot Owner shall have an appropriate right of action against Lot Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation and Rules and Regulations of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto. Lot Owners shall have a similar right of action against the Association.

11.2 Successors and Assigns. This Declaration shall be binding upon and shall insure to the benefit of the Declarant, Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

11.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

11.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

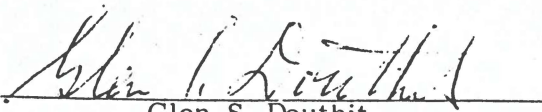
11.5 Attorneys' Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action. Attorneys' fees and costs may be paid by mutual stipulation of the parties that any such action is resolved by stipulation and agreement of the parties.

11.6 Invalidity. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

11.7 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

11.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this _____ day of _____, 1982.


Glen S. Douthit

THE FREEDMAN-MOCH INVESTMENT CO.

By: 

PARCEL ONE

A tract of land in the West One-Half of Section 30, Township 4 North, Range 69 West, and the East One-half of Section 25, Township 4 North, Range 70 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows, to-wit:

Beginning at the Southeast corner of the Northeast Quarter of the Southwest Quarter of Section 30, Township 4 North, Range 69 West, whence the South One-Quarter corner of said Section 30 bears South $00^{\circ}45'04''$ East 1317.69 feet; thence along the South line of the North One-half of the Southwest Quarter of said Section 30, North $89^{\circ}37'04''$ West 2652.59 feet to the Southwest corner of the North One-Half of the Southwest One-Quarter of Section 30 (and the Southeast corner of the North One-half of the Southeast One-Quarter of Section 25, Township 4 North Range 70 West); thence along the South line of the North One-Half of the Southeast Quarter of said Section 25, North $89^{\circ}45'16''$ West, 170.00 feet; thence North $01^{\circ}14'53''$ West, 577.12 feet; thence North $74^{\circ}08'20''$ East, 166.59 feet; thence along an arc to the right, the chord of said arc bears North $17^{\circ}43'45''$ West 30.02 feet, the radius of the curve being 460.39 feet, a distance of 30.02 feet; thence North $12^{\circ}51'40''$ West 427.45 feet; thence North $81^{\circ}48'07''$ East 443.12 feet; thence North $36^{\circ}25'51''$ East 261.01 feet, thence North $52^{\circ}00'05''$ East 203.04 feet, thence North $81^{\circ}30'40''$ East, 338.78 feet; thence North $57^{\circ}59'41''$ East, 683.21 feet; thence North $83^{\circ}56'44''$ East, 581.75 feet; thence North $32^{\circ}39'39''$ East, 411.62 feet; thence North $07^{\circ}17'20''$ West, 433.50 feet; thence North $89^{\circ}14'56''$ East, 351.31 feet to a point on the East line of the Northwest One-Quarter of said Section 30, whence the North One-Quarter corner of said Section 30 bears North $00^{\circ}45'04''$ West, 1244.33 feet; thence along said East line of the Northwest One-Quarter of Section 30, South $00^{\circ}45'04''$ East, 1416.05 feet to the center of said Section 30; thence along the East line of the Southwest One-Quarter of said Section 30, South $00^{\circ}45'04''$ East 1317.70 feet to the POINT OF BEGINNING.

PARCEL TWO

That part of the West One-Half of Section 30, Township 4 North, Range 69 West, and the East One-Half of Section 25, Township 4 North, Range 70 West, of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Commencing at a point on the East line of the Northwest Quarter of Section 30, whence the North One-Quarter corner of said Section 30 bears North $00^{\circ}45'04''$ West, 1244.33 feet; thence South $89^{\circ}14'36''$ West 351.31 feet to the True Point of Beginning; thence along the Northerly and Westerly lines of Berthoud Estates Subdivision the following courses, South $07^{\circ}17'20''$ East 433.50 feet; thence South $32^{\circ}39'39''$ West 411.62 feet; thence South $83^{\circ}56'44''$ West 581.75 feet; thence South $37^{\circ}59'41''$ West 683.21 feet; thence South $81^{\circ}30'40''$ West 338.71 feet; thence South $52^{\circ}00'05''$ West 203.04 feet; thence South $36^{\circ}25'51''$ West 261.01 feet; thence South $81^{\circ}48'07''$ West 443.22 feet; thence South $15^{\circ}51'40''$ East 427.45 feet, to a point of curve; thence along the arc of a curve to the left, (radius of said curve being 460.39 feet; chord of said arc bears South $18^{\circ}50'54''$ East 47.98 feet; a distance of 48.01 feet, to a point of curve; thence along the arc of a curve to the left, (radius of said curve being 20.00 feet, chord of said arc bears North $63^{\circ}50'54''$ West 26.77 feet) a distance of 29.33 feet; thence South $74^{\circ}08'20''$ West 148.22 feet; thence South $01^{\circ}14'53''$ East 577.12 feet to a point on the South line of the North One-Half of the Southeast One-Quarter of Section 25, and the Southwest corner of said Berthoud Estates Subdivision; thence along said South line of the North One-Half of the Southeast Quarter of Section 25, North $89^{\circ}45'16''$ West 1745.00 feet; thence North $00^{\circ}14'44''$ East 575.00 feet; thence South $89^{\circ}45'16''$ East 69.56 feet; thence North $00^{\circ}14'44''$ East 2557.86 feet; thence North $68^{\circ}30'00''$ East 792.56 feet; thence South $81^{\circ}15'14''$ East 263.06 feet; thence South $66^{\circ}02'15''$ East 393.95 feet; thence South $73^{\circ}47'12''$ East 292.88 feet; thence South $45^{\circ}00'00''$ East 390.45 feet; thence South $77^{\circ}01'40''$ East 498.91 feet; thence North $90^{\circ}00'00''$ East 1213.81 ft, thence South $82^{\circ}52'30''$ East 433.73 feet to the True Point of Beginning.

EXHIBIT B

Legal Description of the Real Property which may be submitted to the Declaration of Covenants, Conditions and Restrictions of the Berthoud Estates Community Association in later phases, to wit:

The North Half of the Southeast Quarter and the Northeast Quarter of Section 25, Township 4 North, Range 70 West of the 6th P.M. and the North Half of the Southwest quarter and the Northwest Quarter and the Northeast Quarter of Section 30, Township 4 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado, EXCEPT those portions platted as Berthoud Estates Subdivision and Berthoud Estates Subdivision Second Filing.