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RESTATED

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR

CENTER GREEN HEIGHTS PARK

BOULDER COUNTY, COLORADO

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BOULDER COUNTY, COLORADO

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**RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CENTER GREEN HEIGHTS PARK
BOULDER COUNTY, COLORADO**

THIS RESTATED DECLARATION, is made on the date hereinafter set forth, by Richard L. McCabe, hereinafter referred to as "Declarant".

RECITALS

- A. Declarant executed and caused to be recorded The Declaration of Covenants, Conditions and Restrictions of Center Green Heights Park on June 30, 1992, at Film 1742, as reception number 01198119 of the records of the Boulder County, Colorado Recorder (the "Covenants"). It was Declarant's intention at that time to effectuate long-standing plans to create an association for the ownership and maintenance of Center Green Heights Park which would include owners of properties in several subdivisions, including Noble Park 2, Apple Green and Noble Park Commons subdivisions, City of Boulder, Boulder County, Colorado.
- B. Declarant is the owner of real property known as Center Green Heights Park, and three nearby median strips in Kings Ridge Boulevard, which properties are collectively referred to as the "Park", or the "Common Areas". The Park or Common Areas are described in Exhibit 1, attached hereto.
- C. When the Covenants were recorded on June 30, 1992, they mistakenly purported to affect properties described in Exhibit A attached to the Covenants. In conjunction with the recording of this Restated Declaration, Declarant has executed and recorded a Quit Claim Deed, disclaiming any interest in the properties described in Exhibit A to the Covenants by virtue of the recording of the Covenants. The Covenants are being restated as new covenants, and are not being amended, as provided in the Covenants, because the properties described in Exhibit A, attached to the covenants, were not sold subject to the terms of the Covenants.
- D. Declarant is restating the Covenants, in cooperation with the Apple Green Homeowners Association, the Noble Park 2 Homeowners Association and the Noble Park Commons Homeowners Association, for the purpose of reconstituting the Association as being comprised of the three Homeowner Associations which most directly benefit from the existence and upkeep of the Park. This Restated Declaration is intended to replace the Covenants as the Declaration which governs the ownership and use of Center Green Heights Park, including the median strips. In conjunction with the recording of this Restated Declaration the Declarant has conveyed the Park to the Center Green Heights Park Association, a Colorado nonprofit corporation, and has filed with the Colorado Secretary of State a Restated and Amended Articles of Incorporation for the Center Green Heights Park Association.

RESTATED DECLARATION

Now Therefore, the Declarant hereby declares that the Properties described herein shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, use and obligations, all of which are to be for the purpose of protecting the value and desirability of the Properties described and which shall be binding upon all persons having any right, title or interest in the described Properties or any part thereof, their heirs, grantees, successors, representatives, and assigns and shall inure to the benefit of each owner thereof and that the common interest community formed hereunder shall be formed as a planned community.

I. ARTICLE I: DEFINITIONS

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

A. "Act"

means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101 et seq. as it may be amended from time to time.

B. "Association"

shall mean CENTER GREEN HEIGHTS PARK ASSOCIATION, INC. a Colorado Non-profit Corporation, its successors and assigns.

C. "Bylaws"

shall mean any instrument which is adopted by the Association for the regulation and management of the Association, including any amendments to these instruments.

D. "Common Areas"

shall mean the Park (which includes the three median strips) and such additional property as is included as Common Area in a later amended Declaration for the Association.

E. "Declarant"

shall mean Richard L. McCabe, his successors or assigns.

F. "Declaration"

shall mean this Declaration of Covenants, Conditions and Restrictions of Center Green Heights Park, as may be amended from time to time.

G. "Dwelling Unit"

shall mean the residential dwelling on a unit.

H. "Executive Board or Board"

shall mean the Executive Board of the Association, duly elected pursuant to the Bylaws of the Association which is authorized, to the extent allowed by law, to act on behalf of the Association except as provided herein.

I. "Lot"

shall mean and refer to any plot of land shown upon any recorded subdivision plat as a subdivided lot within the Properties and which is subject to this Declaration, with the exception of the Common Areas, Maintenance Property, public streets or other public property. Lot shall include any dwelling or structure constructed thereon.

J. "Member"

shall mean all those who are members of the Association as provided in this Declaration.

K. "Properties"

shall mean Apple Green Subdivision, Noble Park 2 Subdivision and Noble Park Commons Subdivision, and any additional property which is made subject to this Declaration as provided herein.

L. "Unit"

means a physical portion of the Properties which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the recorded subdivision plats within the Properties.

M. "Unit Owner or Owner"

which may include the Declarant, means the owner of record of the fee simple title to any Unit which is subject to this Declaration, whether one or more persons or entities, including the Declarant, including a contract seller, but excluding a contract purchaser, and excluding those having an interest merely as security for the performance of an obligation.

II. ARTICLE II: PROPERTY RIGHTS

A. Owner's Use of Common Areas.

Every Unit Owner shall have the nonexclusive right of use and enjoyment in and to any Common Areas related to this Declaration (hereinafter referred to as Common Areas), subject to the following provisions:

1. The right of the Association through its Executive Board to make such use of the Common Areas as may be necessary or appropriate for the performance of its duties and functions which it is obligated or permitted to perform under this Declaration;
2. The right of the Executive Board, in its sole discretion, to grant easements and rights of way on, across, under and over the Common Areas to any entity providing water, sewer, gas, electricity, telephone, cable television, drainage or other similar service to the Properties;
3. The right of the Executive Board to make reasonable rules and regulations regarding the use and upkeep of the Common Areas and facilities located thereon;
4. The right of the Executive Board to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;

5. The right of the Association to close or limit the use of the Common Areas or portions thereof for any reasonable purpose.

B. Delegation of Use.

Any Owner may delegate, in accordance with the Bylaws and the adopted Rules and Regulations of the Association, his or her right of enjoyment of the Common Areas to members of his family, his tenants, contract purchasers or guests. All owners shall comply strictly with and cause all family members, tenants, purchasers or guests to comply with this Declaration, the Articles of Incorporation, the Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association. Each Owner shall be fully responsible for the actions of their guests.

C. Emergency Easement.

A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Common Areas, to enter upon any part of the Common Areas in the performance of their duties.

D. Easements Deemed Appurtenant.

The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in such document in full, even though no specific reference to such easements or rights of way appear.

III. ARTICLE III: MEMBERSHIP - ASSOCIATION

A. General Purposes and Powers.

The Association, through the Executive Board, shall perform management functions as provided in this Declaration. The Association shall have all the power necessary or desirable to effectuate such purposes including such powers as are enumerated in the Act, unless modified herein.

B. Articles and Bylaws.

The purposes and powers of the Association and its rights and obligations set forth in this Declaration may 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.

C. Membership.

The Association shall be comprised of three Members ("Member Associations" or "Member Homeowner Associations") initially. The three members are:

1. The Apple Green Homeowners Association, a Colorado non-profit corporation;

2. The Noble Park 2 Homeowners Association, a Colorado non-profit corporation; and
3. The Noble Park Commons Homeowners Association, a Colorado non-profit corporation.

The Executive Board, by unanimous vote, may add additional homeowner associations to membership of this Association.

D. Voting Interest.

The Association shall have one class of voting membership. Each Member Homeowner Association shall be entitled to one vote. The vote for each Member Homeowners Association, shall be exercised by its elected member of the Executive Board. Each Member Homeowner Association shall elect one member of the Executive Board, and shall notify the Association, in writing, signed by the president and the secretary of each such Member Association, of the election of such member of the Executive Board.

E. Indemnification.

The Association shall indemnify every director, officer, agent or employee and any former director, officer, agent or employee against loss, costs, and expense, including reasonably attorney fees incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer agent or employee of the Association or Executive Board. This indemnification shall not apply to acts where such person is liable for gross negligence or fraud. Any such Indemnification may only be only paid out of the Insurance coverage which furnishes Officers and Directors of the Association errors and omissions insurance coverage or similar coverage. All payments or settlements of this indemnification shall be limited to the actual to the actual proceeds of insurance policies received by the Association, however, any deductible shall be paid by the Association. Said indemnification shall not apply to any managing agent hired by the Association as an independent contractor.

F. Rights of the Association.

1. Association as Attorney-in-Fact for Owners.

The Executive Board is hereby irrevocable appointed attorney-in-fact for the Association, to manage, control and deal with the interest of the Association so as to permit the Association to fulfill all of its duties and obligations hereunder. The Executive Board is granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate in order to accomplish all duties required of it.

2. Contracts, Licenses and Other Agreements.

The Executive Board shall have the right, to enter into or grant contracts, easements, licenses, leases and agreements, concerning the use of the Common Areas and any improvements located thereon.

3. Implied rights.

The Executive Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably implied from the provisions of this Declaration, or given of implied by law, including those established by the Colorado Common Interest

Ownership, (Article 33.3, Title 38 of the Colorado Revised Statutes) or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

G. Removal of Members of Executive Board.

Notwithstanding any provision of the Declaration or Bylaws to the contrary, each Member Association may remove only its designated member of the Executive Board.

H. Meetings.

The meetings of the Association shall be held at least once a year. Special meetings of the Association may be called by the president or by one member of the Executive Board. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by the United States mail to the mailing address of each member of the Executive Board or to any other address designated in writing by the member of the Executive Board, and also to the president and the secretary of each Member Association. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Board.

I. Quorums.

Unless the Bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association if all members of the Executive Board are present, in person or by proxy, throughout any such meeting.

J. Vote Required; Ordinary and Extraordinary Matters

All actions of the Executive Board on extraordinary matters, such as an action to sell or dispose of all or a portion of the Park, to construct new improvements on the Park which cost more than \$1000.00, to acquire additional property, to add new member homeowner associations, to encumber the Park or other property of the Association, to borrow funds in the name of the Association, to settle any claims with insurers, to authorize use of the Park as not described herein, and all other actions shall require the approval of all members of the Executive Board who are entitled to vote, in person or by proxy. The following day-to-day actions which may be approved and undertaken upon the vote of two-thirds (2/3) of the members of the Executive Board who are entitled to vote:

1. Approval of any agreement or contract for the maintenance, repair or upkeep of the Park, or any contract or agreement of insurance, or any other type of contract, agreement or expense which is necessary for the normal operation of the Park or the Association, as provided herein, up to a maximum of \$5000 per contract or agreement.
2. Approval of any agreement or contract for the construction of new improvements for the Park, up to a maximum of \$1000 for such new improvements.
3. Approval of ordinary actions for maintenance, repair or upkeep of the Park.
4. Approval of uses of the Park as authorized herein.

IV. ARTICLE IV: ASSESSMENTS

A. Creation of the Lien and Obligation of the Assessment.

Each Member Association hereby covenants and agrees to pay to the Association an Annual Assessment, Special Assessment and other assessments to be established and collected as provided hereinafter. The Annual and Special Assessments and other assessments, created and defined in this Declaration, together with late fees, individual assessments, interests, costs, and reasonable attorney fees shall be a charge on each Member Association they are levied against and shall be a continuing lien upon the interest of the Member Association in this Association and in the Common Areas until such Assessment or charge, together with any late fees, costs of collection, attorneys fees are fully paid.

B. Purpose of Assessments.

The Assessments levied by the Executive Board of the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association. In addition, said Assessments may be used for the maintenance, repair and improvement of the Common Area and landscaping thereon, for payment of management fees, payment of insurance premiums and maintaining adequate reserves, for the payment of insurance premiums and deductibles, payment of legal, accounting and other professional services provided for the benefit of the Association, maintenance of an adequate reserve fund for repair and maintenance of the Common Areas, for payment of utility charges of the Association, and for other expenses incurred by the Executive Board for the benefit of the Association and its members. Also, the Assessments may be used for any other purpose reasonably necessary to implement the purposes described herein.

C. Annual Assessments.

1. Annual Assessment for Common Expenses.

An Assessment for the common expenses shall be levied and assessed not less than annually by the Executive Board against each Member Association, based upon a budget adopted by the Association. Said Assessment may include the establishment and maintenance of a reserve fund for the maintenance, replacement, reconstruction and repair of those portions of the Common Areas which the Association has a duty to replace, repair, maintain and/or reconstruct on a periodic basis and/or a cash reserve fund which may be used to pay any expenses of the Association. Such Assessment may also include the establishment and maintenance of a reserve fund for payment of insurance premiums and deductibles. Such Assessment shall be paid in the proportion which the number of Units owned by a particular Owner bears to the total number of Units which have been established by the recording of a subdivision plat or plats for the Properties.

2. Levy of Assessments.

At least thirty days prior to the close of the Association's fiscal year, the Executive Board shall determine, subject to the provisions of this Declaration, the Annual Assessment which is payable by each Member Association. The Annual Assessment may be later adjusted upon a finding of necessity by the Executive Board, but no more than twice in any one year. Written notice of any such Assessment or adjustment shall be sent to every

Member Association. The omission or failure of the Board to levy any Assessment or failure to send notice shall not be deemed a waiver, modification or a release of the Member Association from its obligation to pay the Assessment. Each Member Association shall be responsible for notifying the Association in writing of his or her legal address.

3. Non-exemption.

No Member Association obligated to pay an Assessment may waive or otherwise escape liability for any Assessments provided for herein by non-use of the Common Areas, abandonment of its interest in the Association, or by any other action.

4. Maximum Annual Assessment.

a) Initial Assessment. Until the second annual assessment period, the maximum Annual Assessment shall be \$ 120 per Unit (equal to \$ 10 per month). This Annual Assessment is separate from the Initial Cash Reserve Assessment described herein.

c) Annual Adjustment. On an annual basis, after consideration of current maintenance costs, the current financial situation and future needs of the Association, the Executive Board shall fix the Annual Assessment at any amount.

D. Special Assessments.

In addition to the other Assessments authorized herein, the Executive Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any of the Common Areas or any other capital improvements of the Association, provided that any such Assessment shall have the assent of at least sixty-seven percent (67%) of the votes of the Members of the Executive Board. This requirement shall not apply to expenditures made by the Executive Board for repairs in the event of damage or destruction as set forth in this Declaration.

E. Notice to Increase the Maximum Assessments or Assess a Special Assessment.

Written notice of any meeting of the Executive Board called for the purpose of taking action authorized under paragraphs authorizing an increase in the Annual Assessment and Levy of Special Assessment shall be sent to all Member Associations not less than ten days nor more than fifty days in advance of the meeting.

F. Uniform Manner of Assessment.

All Annual Assessments and Special Assessments must be fixed at a uniform rate of all Units. In addition, at the option of the Executive Board, any Assessment, either Annual or Special, may be collected on a monthly or quarterly basis.

G. Date of Commencement of Assessments; Prorations; Due Date.

The Annual Assessment provided herein shall commence as of the date of recording of this Declaration or at such time as established by the Executive Board. The Annual Assessment shall be prorated according to the number of months remaining in the Association's fiscal year at the time of said assessment. The Annual Assessment shall be due and payable on an installment basis as determined by the Executive Board. Special Assessments shall be due and payable in a manner as established by the Executive Board but may not be payable on an installment basis, as so determined by the Executive Board.

Written notice of all Assessments shall be sent to each Member Association subject thereto specifying the type of Assessment, the amount and the date such Assessment is due. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the Assessments on a Member Association have been paid or the amount of Assessment currently owing with respect to a Member Association. The Association, the Executive Board, the Officers and the Members shall have no liability for any inaccurate information supplied under this paragraph other than as specifically set forth in C.R.S. 38-33.3-317(8).

H. Non-payment, Remedies of the Association.

1. Late Fee, Interest, Acceleration of Amounts Due.

All types of Assessments shall become delinquent unless paid by the due date. If any such Assessment is not paid by the due date, the Member Association obligated to pay such Assessment may be required to pay a reasonable late fee, as determined by the Executive Board. Any Assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of 18% per annum. The failure to make payment within sixty days of the due date thereof shall cause the total amount of such Member Associations Annual Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Executive Board, without further notice.

2. Action to Collect, Costs.

The Association may bring an action at law or equity against the Member Association obligated to pay the Assessment or undertake any other remedies allowed by law. In the event it shall become necessary for the Executive Board to collect any delinquent Assessments in any manner, the delinquent Member Association shall pay, in addition to the Assessment, interest and late fees as herein provided, all costs of collection including reasonable attorneys fees and costs incurred by the Association.

3. Lien, Foreclosure.

The Association is hereby granted a continuing lien against a Member Association's interest in the Association, or in the Common Areas for payment of an Assessment which the Member Association fails to make as required by this Declaration. Such lien shall attach at the time of levy of the Assessment and continue until such Assessment, together with all late fees, interest and costs of collection, including reasonable attorneys fees are paid in full.

The lien hereunder may be foreclosed upon by the Association as provided by the laws of the State of Colorado for foreclosure of mortgages and deeds of trusts on real property, foreclosure of an interest in an association or as provided by the Colorado Common Interest Ownership Act. The Association shall have all rights in this regard as provided by the Colorado Revised Statutes.

4. Costs of Filing Lien.

In the event any lien is required to be filed and released to enforce collection hereunder, all costs of preparation, filing and release shall be paid by the Member Association as a cost of collection.

5. Suspension of Right to Vote and Right to Use Common Areas.

The Executive Board may suspend the right of any Member Association which is in default in the payment of its obligations to the Association, or the rights of any Unit Owner in the defaulting Member Association, to use the Common Areas, until such default is cured. Further, the Executive Board may suspend the right of the Executive Board Member appointed by the defaulting Member Association to vote on Association matters until such default is cured. During any such period of suspension of the right of any member of the Executive Board to vote, one-hundred percent (100%) of the remaining Executive Board members must approve of any action of the Board. Further, any action which requires the approval of 100% of the members of the Executive Board may be made by approval of the one hundred percent of the Executive Board who are entitled to vote.

V. ARTICLE VI: Restrictive Covenants

A. Use of Common Areas.

The Center Green Heights Park shall be used only as a park and open recreation area, except that the Association may construct such improvements on the Park as it deems necessary for the use and enjoyment of the Park. The median strips shall be used only as landscaped street parkway areas.

B. General Restriction.

None of the Common Areas shall be used in any way for any purpose which may endanger the health of any person.

C. Nuisances and Hazards.

No nuisance shall be allowed on the Common Areas, nor any use or practice which interferes with the peaceful enjoyment or possession of the Properties. All of the Common Areas shall be kept clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be permitted to exist.

D. Prohibited Uses.

No unlawful use shall be permitted or made of the Common Areas or any part thereof. Any laws, ordinances and regulations of all government bodies having jurisdiction shall be complied with.

E. Utilities.

All utility lines shall be placed underground. The Executive Board must give prior approval to the installation of utilities.

VI. ARTICLE VII: INSURANCE

A. Property Insurance.

The Executive Board shall obtain and maintain an "all-risk" form policy for broad form covered causes of loss, including fire and hazard insurance with extended coverage for vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal,

cost of demolition and water damage endorsements, all of the insurable improvements located on the Common Areas, including fixtures, machinery, equipment, fences and supplies and any other personal property belonging to the Association.

B. Liability Insurance.

The Executive Board shall obtain and maintain comprehensive commercial general liability insurance with such limits as the Association determines appropriate with respect to Common Areas of the Association and insuring the Association and each Officer, Director, Member, Executive Board Member, the management agent, and their respective employees, agents, and all persons acting as agents, against any liability to the public or to owners and their invitees, agents and employees arising out of, or incident to, ownership and use of such Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

The Executive Board shall review such coverages and the policy limits thereunder once each year, but in no event shall such insurance coverage be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or death and property damage out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained at the discretion of the Executive Board.

C. Other Insurance.

1. The Association shall obtain and maintain adequate fidelity insurance, coverage, to protect against dishonest acts on the part of the Directors, Officers, Trustees, Employees or Volunteers of the Association and all others who handle or are responsible for handling funds. Such Fidelity coverage shall name the Association as the named insured and be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association at the time while the insurance is in force, but in no event less in aggregate than two month's current assessments plus reserves, as calculated from the current budget of the Association. In addition, the fidelity insurance coverage must contain waivers of any defense based upon the exclusion of persons who serve without compensation.

2. The Association shall obtain Workman's Compensation and Employer's Liability Insurance and other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.

3. The Association may obtain such other insurance of a similar or dissimilar nature, as the Executive Board shall deem appropriate, including, but not limited to, Host Liquor Liability, Contractual and All-Written Contract Insurance, Comprehensive Automobile Liability Insurance.

D. Coverage.

1. Each policy carried pursuant to Article VII (A) (Property Insurance) or Article VII (B) (Liability Insurance) shall provide:

a. Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in Common Areas or membership in a Member Association.

b. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.

c. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

d. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

e. Such policy shall not be canceled, invalidated or suspended because of the conduct of any Owner (including said Owner's guests, tenants, or agents) or of any officer, agent or employee of the Association without a prior demand in writing to the Association that the conduct or defect be cured and the Association shall not have so cured within sixty (60) days of said demand.

f. The Declarant, so long as Declarant shall continue to own any Unit or portion of the Properties, shall be protected by all such policies;

g. A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made by the Executive Board pursuant to this Declaration not to do so.

h. The insurer shall not cancel or refuse to renew such policy until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and to each Executive Board Member, at their respective last-known addresses.

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

j. That any "no other insurance" clause expressly exclude individual owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise requires by law.

2. No policy shall contain any of the following limitations or provisions:

a. Under the terms of the insurance company's charter, bylaws or rules, contributions or Assessments may be made against the Association, the Owner, a first mortgagee or said mortgagee's designee or assignee;

b. Under the term of the insurance company's charter, bylaws, or rules any loss payments are contingent upon action by the insurance company's board of directors, shareholders, policy holders or members.

3. All policies, to the extent obtainable, shall contain waivers of subrogation against the Declarant, the Association, the Executive Board, Members, Owners, their guests and assignees. The named insured under the policies shall be the Association for the use and benefit of the individual Owners.

4. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Executive Board and shall provide that all claims are to be settled on a replacement cost basis. The insurance proceeds for that loss shall be payable to the Association as attorney-in-fact for each Member Association. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas.

5. The Executive Board may require that said policies shall contain endorsements such as the following: No control; Contingent liability from operation of building codes; Cost of demolition; Increased cost of construction; Inflation guard.

6. A certificate or memorandum of insurance, or a duplicate original of any policy of insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be promptly delivered by the insurer to the Association or to any Owner requesting the same.

7. The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgage.

8. As attorney-in-fact, the Board of Directors of the Association shall have full and complete authorization, power and right to make, execute and deliver any contract or any other instrument with respect to the interest of the Common Areas which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the damaged Common Areas shall be done in accordance with these Declarations.

9. The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business not to exceed, however, Ten Thousand Dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

E. Rebuilding of Damaged Common Areas.

Any portion of the insurable Common Areas that are damaged or destroyed shall be repaired or replaced promptly by the Board unless a "Declaration Not to Rebuild" signed by at least two-thirds of the members of the Executive Board is recorded within one hundred days of the date of damage or destruction indicating their intention not to rebuild in the office of the County Clerk and Recorder, Boulder County, Colorado.

In the event of any repair and/or reconstruction of any portion of the said Common Areas, the Board shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with this Declaration and in accordance with original plans and specifications for such Common Areas unless other action is approved by two-thirds of the members of the Executive Board.

The Board 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, except by a vote of two-thirds of the members of the Executive Board.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Common Areas, such excess cost shall be assessed as an Assessment against the Member Associations in accordance with these Declarations. Such individual Assessment shall be assessed in the same proportion as the Annual Assessment for Common Expenses is

assessed. 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 Member Associations by the Association in the same proportion as the assessment was levied.

If any portion of the damaged Common Areas are not repaired or replaced, the insurance proceeds shall be used to restore the damages Common Areas to a condition compatible with the remainder of the Common Areas and the remainder of the proceeds shall be distributed to the Member Associations in the same proportions as the Annual Assessments for Common Expenses are levied.

F. *Payment of Insurance Premiums.*

The cost of the insurance obtained by the Association in accordance with this Article, shall be paid from Association funds and shall be collected from the Member Associations as part of the Annual Assessment as provided for in this Declaration.

G. *Miscellaneous.*

The Executive Board and the Declarant shall not be liable for failure to obtain any coverages required if such failure is due to the unavailability of such coverages or if such coverages are available only at unreasonable cost. If requested in writing by an Owner, the Executive Board shall furnish a certificate of insurance or notices of termination of coverage or changes in coverage

VII. ARTICLE IX: PROPERTY OWNERSHIP AND USE

A. *Easements.*

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any recorded subdivision plat which includes the Common Areas. No action shall be taken or use made of the easement area which damages or interferes with the installation and maintenance of utilities or which obstructs or interferes with the flow of water through drainage easements. In addition, an easement is granted to all police, fire and other emergency agencies to enter onto any portion of the Common Area in the performance of their duties.

B. *Condemnation.*

In the event of a proceeding in condemnation of any Common Area by any authorized governmental authority then the proceeds from such condemnation attributable to said Common Area shall be distributed to the Executive Board for repair of the Common Areas after condemnation and at the discretion of the Board, the balance remaining shall be distributed to all Member Associations in the same proportion as the Annual Assessments are assessed.

VIII. ARTICLE X: MAINTENANCE

A. Maintenance of the Common Areas.

The Association shall provide for the repair, maintenance and replacement of the Common Areas. In the event such repair, maintenance and replacement is resulting from the act or negligence of an Owner or an Owner's guest, the Executive Board shall have the right, after notice and hearing, to charge the costs of such repair, maintenance and replacement to such Owner's Member Association by an Individual Assessment in accordance with this Declaration with such decision of the Executive Board being final. Said repair, maintenance and replacement shall be at the sole discretion of the Executive Board. In the Event additional areas within the Properties becomes Common Area is added because of annexation to the Properties, the Association shall also provide for the repair, maintenance and replacement of any such Common Area.

B. Association Responsibility.

The determination of when and the magnitude and manner of the maintenance and repair shall be determined solely at the discretion of the Board. The Board shall establish a reasonable regular maintenance and repair schedule for the Common Areas.

IX. ARTICLE XI: GENERAL PROVISIONS

A. Enforcement.

The covenants, conditions and restrictions herein contained and amendments made hereunder shall run with the land and be binding upon and inure to the benefit of the Association, the Declarant and property Owners and be enforced as provided hereinafter. Violation of these protective covenants shall give the Association, the Declarant or the Owners, or any of them, the right to bring proceedings in law or equity against the party or parties violating or attempting to violate any terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, to enjoin them from so doing, to cause any such violation to cease or to recover damages resulting from such violation. In any legal or equitable proceeding to enforce the provisions hereof or to enjoin any violation, the party or parties against whom judgment is entered shall pay the attorney's fees of the party or parties for whom judgment is entered. Such remedies shall be cumulative and not exclusive.

Notwithstanding the foregoing, except as specifically modified by the Act, it is understood that the breach of any of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith and for value, provided, however, the covenants, conditions and restrictions shall at all times remain in full force and effect against said premises or any part thereof notwithstanding any foreclosure of any mortgage. No assent, expressed or implied, to any breach of any one or more of the covenants, conditions and restrictions shall be deemed to be a waiver of any succeeding or other breach.

B. Duration.

The covenants, restrictions and reservations set forth in this Declaration, unless terminated as provided in the Act properly amended shall run with and bind the Common Areas, 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. In the

event any of these covenants, restrictions and reservations would be held to be void because they are in violation of the rule against perpetuities or similar rule of law, these covenants shall then continue to be in effect for a period of twenty-one (21) years after the death of the last surviving descendant of Richard L. McCabe.

C. Amendments.

Except for amendments by the Association, as permitted by the Act, this Declaration may be amended only by execution of a written document by one hundred percent (100%) of the members of the Executive Board. Said requirement shall be satisfied by the recording of a certificate signed by the Secretary of the Association certifying that all members of the Executive Board have given notarized consent to the amendment.

D. Scope of this Declaration.

The undersigned Declarant, as Owner of fee simple title to the Common Areas, expressly intends to subject the Common Areas to the provisions of this Declaration upon recording of this document. Any instrument recorded subsequent to this Declaration purporting to affect an interest in the Common Areas shall be subject to the terms of this Declaration despite failure to make reference thereto.

E. No Representation.

Except as expressly set forth herein, Declarant makes no representation regarding the condition, use or ownership of the Common Areas.

F. Books and Records.

Any Member Association or Owner of any Unit shall have the right to examine the books and records of the Association at any reasonable time upon reasonable notice.

G. Successors and Assigns.

This Declaration shall be binding upon and shall inure to the benefit of the Declarant and to his heirs, representatives, Personal Representatives, successors and assigns.

H. Severability.

If any portion of this Declaration becomes invalidated in any manner whatsoever, it shall not effect in any manner the validity, enforceability or effect of the remainder of this Declaration and in such event, all other provisions of this Declaration shall continue in full force and effect.

I. Numbers and Genders.

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

J. Controlling Law.

This Restated Declaration, and the rights and responsibilities described herein, shall be governed by the laws of the State of Colorado. Venue for the resolution of any dispute shall be Boulder County, Colorado.

IN WITNESS WHEREOF the Declarant have executed this Declaration this 27 day of September, 1995.

DECLARANT:

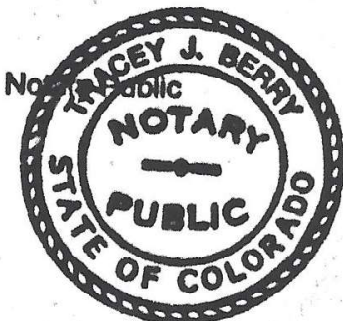
Richard L. McCabe
Richard L. McCabe

STATE OF COLORADO)
COUNTY OF Boulder) ss

The foregoing instrument was acknowledged before me this 27 day of September, 1995, by Richard L. McCabe, as Declarant.

Witness my hand and official seal.

My commission expires: 2-5-99



My Commission Expires 2-5-99

[Signature]

X. EXHIBIT 1: DESCRIPTION OF COMMON AREAS

PARCEL A:

THAT PORTION OF BLOCK 2, REPLAT OF BLOCKS 1, 2, 3, AND 6 OF CENTER GREEN HEIGHTS, COUNTY OF BOULDER, STATE OF COLORADO, THE PLAT OF WHICH IS RECORDED AS PLAN FILE P14, F2, NO. 17, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 2 FROM WHENCE THE NORTHWEST CORNER OF BLOCK 1 BEARS N 00 DEGREES 06'50"W, 346.86 FEET; THENCE ALONG THE NORTHWESTERLY LINE OF SAID BLOCK 2 THE FOLLOWING COURSES AND DISTANCES;

THENCE S 71 DEGREES 19'22"E, 43.61 FEET;

THENCE S 83 DEGREES 00'00"E, 46.00 FEET;

THENCE N 85 DEGREES 00'00"E, 104.00 FEET;

THENCE N 76 DEGREES 00'00"E, 129.00 FEET;

THENCE S 79 DEGREES 30'00"E, 30.50 FEET;

THENCE N 65 DEGREES 10'00"E, 37.50 FEET;

THENCE N 46 DEGREES 20'00"E, 74.50 FEET;

THENCE N 64 DEGREES 30'00"E, 38.00 FEET;

THENCE N 34 DEGREES 45'00"E, 44.50 FEET;

THENCE N 07 DEGREES 10'00"E, 37.04 FEET TO A POINT ON THE SOUTHERLY LINE OF AN EXISTING 23 FOOT WIDE UTILITY EASEMENT; THENCE N 80 DEGREES 51'01"E ALONG THE SOUTHERLY LINE OF SAID EASEMENT, 197.46 FEET TO A POINT ON THE WESTERLY LINE OF AN EXISTING 20 FOOT WIDE UTILITY EASEMENT; THENCE S 00 DEGREES 08'59"E ALONG THE WESTERLY LINE OF SAID EASEMENT, 204.09 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 286.00 FEET; A CENTRAL ANGLE OF 00 DEGREES 35'49", AND A CHORD BEARING N 89 DEGREES 53'38"W, 2.98 FEET TO THE POINT OF A CURVATURE OF SAID CURVE TO THE LEFT; THENCE S 89 DEGREES 48'27"W, 670.40 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 28.93 FEET, A CENTRAL ANGLE OF 50 DEGREES 57'28", AND A CHORD BEARING N 64 DEGREES 42'27"W, 24.90 FEET; THENCE ALONG THE ARC OF SAID CURVE 25.74 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N 25.74 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N 00 DEGREES 06'50"W, 23.20 FEET TO THE POINT OF BEGINNING.

PARCEL B:

OUTLOTS B, C AND D, CENTER GREEN HEIGHTS, COUNTY OF BOULDER, STATE OF COLORADO.