

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE DUTCH CREEK VILLAGE HOMEOWNERS & RECREATIONAL ASSOCIATION

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE DUTCH CREEK VILLAGE HOMEOWNERS & RECREATIONAL ASSOCIATION

THIS DECLARATION, made this 10th day of September 1977, by the Dutch Creek Partnership, a Colorado partnership, hereinafter called Declarant

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Jefferson, State of Colorado, which is more particularly described as

Dutch Creek Village, Filing No. 1
Excluding Tract C, a subdivision of the
County of Jefferson according to the
recorded plat thereon, County of Jefferson,
State of Colorado

and

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the said real property. These easements, covenants, restrictions and conditions shall run with the said real property and shall be binding upon all parties having or acquiring any right, title or interest in the above described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

a/ "Association" shall mean and refer to THE DUTCH CREEK VILLAGE HOMEOWNERS & RECREATIONAL ASSOCIATION

b/ "The Properties" shall mean and refer to all such real property as defined in Section 1 of Article II hereof.

c/ "Common Areas" shall mean that portion of The Properties owned by the Association for the common use and enjoyment of the Owners more specifically described as Tracts B, F, and H. The tracts A, D/ E, and G are that portion of The Properties which are owned by the County of Jefferson, but are to be maintained by the Association. Tract I is that portion of The Properties which is owned by the Johnson Ditch Company but is to be maintained by the Association. In the event that additional real property is made subject hereto in the manner provided in Section 4 of Article II hereof, "Common Areas" shall (from and after the date such additional property is made subject hereto) include

any parts thereof designated as "Common Areas" in the Supplemental Declaration making such, additional property subject hereto

d/ "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.

e/ "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such living unit is situated upon its own individual lot

f/ "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of The Properties and described by a lot number, with the exception of Common Areas. In the event additional property is made subject hereto in the manner provided in Section 4 of Article II hereof, "Lot" shall also mean (from and after the date such additional property is made subject hereto) such additional parcels, plots, and lots designated as "Lots" in the Supplemental Declaration making such additional property subject hereto.

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

h/ "Member" shall mean and refer to all those who are members of the Association as provided in Article III hereof.

i/ "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 this Declaration. Assessments shall be used to meet the expenses of the Association which include but are not limited to the following: the expenses of repair and maintenance of Common Areas, to include the mowing of grass, caring for the grounds and gardens, sprinkler systems, maintenance of the tennis courts and swimming pool constructed upon the Common Areas; providing for repair, maintenance, taxes and other charges including fire, hazard and liability insurance premiums. Said common expenses shall be paid in amounts and at times to be determined reasonable and necessary by the Association for the benefit of all the Members as more fully defined in this Declaration.

j/ "First Mortgagee" shall mean a person or entity who is the beneficiary of a mortgage or deed of trust reflecting a first lien against a Lot or Living Unit within The Properties.

k/ "Declarant" shall mean and refer to the Dutch Creek Partnership, its successors and assigns, if such successors or assigns acquire more than one undeveloped lot of the Declarant for the purpose of development.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

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

Dutch Creek Village Filing No. 1, excluding Tract C a subdivision of the County of Jefferson, according to the recorded plat thereof, County of Jefferson, State of Colorado, and (from and after the date that any such additional property is made subject hereto) additional real property from time to time made subject to this Declaration by recording a supplement hereto (The "supplemental Declaration") in the manner provided in Section 4, of Article II hereof.

Section 2. Mergers. Upon a merger or consolidation of the Association with another Association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may by operation of law, be added to The Properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidation association may administer the covenants and restrictions established by this Declaration together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the

covenants, established by this Declaration except as hereinafter provided.

Section 3 FHLMC Restriction. Unless at least seventy-five per cent (75%) of the First Mortgagees within The Properties have given their prior written approval, the Association shall not be entitled to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or improvements thereon. The granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this paragraph.

Section 4. Annexation. Additional property within the area described on Exhibit "A", attached hereto and incorporated herein by reference, may be annexed by Declarant without the consent of the Owners or Members of the Association or the consent of First Mortgagees, within five years of the date of this instrument. Said annexation shall occur when the Declarant records a Certificate of Annexation, describing the real property to be annexed, and on the date of recording said Certificate, 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.

Section 5. Notice. That portion of the property lying within Tract C, Dutch Creek village Filing No. 1, together with the unplatted portion bounded on the south by West Coal Mine Road and on the west by South Pierce Street, containing 13 acres, plus or minus, County of Jefferson, Colorado, may at some later date be rezoned by the Declarant from its present townhouse/multi-family classification to a commercial, office or single-family classification by an amendment to its PUD.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

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

§2.01. Class A. Class A members shall be all those Owners as defined in Section 1 with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership in Section 1. When more than one person holds such interest or interests in any Lot or Living Unit all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

§2.02. Class B. Class B members shall be the Declarant. The Class B member shall be entitled to

three votes for each Lot or Living Unit in which it holds the interest required for membership by Section 1; provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier.

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

b/ On January 1, 1987.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 4 of this Article, every member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Title to the Common Areas The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens on or before June 1, 1981

Section 3. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Areas to the members of his family, his tenants, or contract purchasers who reside on his Lot or Living Unit.

Section 4. Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

a/ The right of the Association to limit the number of guests of Members; and

b/ The right of the Association to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said Common Areas upon the written

approval of 75% of the total membership together with written approval of 75% of the First Mortgagees; and

c/ The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure; and

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

e/ The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members and seventy-five per cent (75%) of the First Mortgagees agreeing to such dedication or transfer has been recorded.

Section 5. Insurance Proceeds and/or Condemnation Awards. No Owner or any other party shall have priority over any rights of First Mortgagees pursuant to its mortgages in the case of a distribution to Owners of insurance proceeds or condem-

nation awards for losses to or a taking of a part or all of the Common Areas

Section 6. Charges Against the Common Areas. 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 for such Common Areas and may also pay taxes and other charges which are in default or which may or have become a charge against such Common Areas. 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 of Lots within The Properties duly executed by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Living Unit, except those exempt under Section 10 of this Article, by acceptance of a deed therefore whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association (1) annual assessments and (2) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments together with interest thereon and costs of collection thereof, shall be a charge on the Lot or Living Unit and shall be a continuing lien upon such property against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. For purposes of assessment when a Living Unit is assessed, the Lot or Lots upon which such Living Units are situated shall not be assessed.

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

but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments.

There shall be no assessment until March 1, 1978. Commencing March 1, 1978, the monthly assessment shall not exceed Four (4) Dollars per Lot or Living Unit per month. Upon the completion of the swimming pool, the annual assessment shall not exceed One Hundred Twenty (120) Dollars per Lot or Living Unit per year, payable in advance.

From and after June 1, 1979, the maximum annual assessment may be increased by the Board of Directors effective June 1 of each year without a vote of the membership in conformance with the rise if any of the "Consumer Price Index, United States City Average for Urban Wage Earners and Clerical Workers All Items" (as published by the Department of Labor, Washington, D.C.) for the preceding month of December.

From and after June 1, 1979, the maximum annual assessment may be increased above that established by the Consumer Price Index formula only by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose; written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized

to participate under its Articles of Incorporation.

After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum. A separate reserve fund for the replacement of the improvements on the Common Areas shall be established and be funded by a portion of the annual assessment rather than by special assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized by Section 1 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction unexpected repair or replacement of a described capital improvement upon The Properties, 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, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum for Any Action Authorized Under Sections 3 and 4. The quorum required for any action authorized by Sections 3 and 4 hereof shall be as follows:

At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set

forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Assessments, Due Dates. The annual assessments provided for herein shall commence on the date fixed by the Declarant but shall not be later than March 1, 1979, and shall be due and payable annually thereafter.

The first annual assessments shall be made for the balance of the fiscal year and shall become due and payable thirty (30) days from the day fixed for commencement

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

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

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of payment and the amount of the annual assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time prepare a roster of The Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the annual assessment shall thereupon be sent to every Owner subject there to.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessment: the Personal Obligation of the Owner; the Lien; Remedies of Association. If the annual and/or special assessments are not paid on the date due (being the dates specified in Section 6 hereof), then such assessment shall become delinquent and shall, together with interest and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot or Living Unit assessed which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay

such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the annual and/or special assessments are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve (12%) per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment, interest, reasonable attorney's fees, together with all costs of collection. A First mortgagee is entitled to written notification of any default by the Owner of a Lot or Living Unit upon which their mortgage exists when there is a default in the performance of such Owner's obligations and such default has continued for a period of thirty (30) days.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon The Properties subject to assessment; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property

subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- a/ all Lots and Living Units owned by the Declarant;
- b/ all properties dedicated to and accepted by a local public authority; and
- c/ the Common Areas as defined by Articles I(c) hereof.

Section 11. FHLMC Restriction. Unless at least seventy-five (75%) per cent of the First Mortgagees have given their prior written approval the Association shall not be entitled to change the method of determining the obligations, assessments due or other charges which may be levied against a Lot or Living Unit.

Section 12. Examination of Books and Records. A First Mortgagee shall have the right to examine the books and records of the Association.

ARTICLE VI

INSURANCE

Unless at least seventy-five (75%) per cent of the First Mortgagees have given their prior written approval, the Association shall not be entitled to:

1/ Fail to maintain fire and extended coverage on insurable common area property on a current replacement cost basis in an amount not less than one hundred (100%.) per cent.

2/ Use hazard insurance proceeds for losses to any part of the Common Areas for other than repair, replacement or reconstruction of such improvements.

ARTICLE VII

EXTERIOR MAINTENANCE

In the event an Owner of any Lot or Living Unit within The Properties shall fail to maintain his premises and/or the improvements thereon in a neat and attractive manner satisfactory to the Board of Directors of the Association, after (a) giving the Owner thirty (30) days written notice sent to such Owner's last known address and (b) approval by two-thirds (2/3) vote of the Board of Directors, the Board of Directors shall have the right, through its agents and employees to enter upon said Lot or Living Unit and to clean, repair, maintain, and restore the Lot or Living Unit and the exterior of the buildings and any other improvements erected thereon, together with the right to use the Lot's or Living Unit's utilities to accomplish same. The cost of such restoring, repair or

maintenance shall be added to and become a part of the assessments to which such Lot or Living Unit is subject and such added assessment shall not be subject to the maximum assessment limitations herein contained.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply Each wall which is built as a part of the original construction of the improvements upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and the liability for property damage due to negligence or willful acts or omission shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent

or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators and shall be binding on all parties and shall be final.

ARTICLE: IX

ARCHITECTURAL CONTROL

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

substantial expense. Notice of approval or disapproval shall be sent to the person submitting same within thirty (30) days, and the plans shall be retained by the Committee

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion, for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if in accordance with all of the provisions of this Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Committee by virtue of his membership thereon or discharge of his duties required thereby shall be

responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said Lots thereafter shall be moved without the prior written approval of the Committee. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced within one year from the commencement thereof, approval will not be required and there will be deemed to have been full compliance with the related covenants.

Section 2. Architectural Control Committee. The Architectural Control Committee shall consist of the Declarant and any other person the Declarant shall appoint. The Declarant, its successors or assigns shall have absolute right to remove and appoint members of the Committee at any time. The members of the Committee shall, as long as the restrictions, covenants and conditions herein set forth are in force and effect, perform the duties imposed on it as herein set forth. At any time while the restrictions covenants and conditions herein set forth remain in force and effect, the Declarant, its successors or assigns may relinquish its powers to determine the number and members of the Committee. Such relinquishment

may be accomplished by recording a declaration of such relinquishment in the office of the County Clerk and Recorder of Jefferson County, Colorado. From and after such relinquishment the number and members of the Committee shall be determined by the Board of Directors of the Association. Neither the members of the Committee, nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

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

Section 4. Fences. All fences shall be approved by the Committee.

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

Section 6. Waiver. The Committee may, at its discretion, waive any provision of Article IX of these Protective

Covenants in the event there is a practical difficulty or unnecessary hardship; provided, however, unless at least seventy-five (75%) per cent of the First Mortgagees of the Lots within The Properties have given their prior written approval, the Association shall not be entitled to, by act or omission, change, waive or abandon any scheme of regulations or the enforcement thereof pertaining to architectural design or exterior appearance of the improvements built upon the Lots, the exterior maintenance of the improvements, the maintenance of party walls, common fences and driveways, or the upkeep of lawns and plantings on all Lots within The Properties.

ARTICLE X
LAND USE RESTRICTIONS

Section 1. Land Use and Building Type. No structure or structures shall be erected, placed, altered or permitted to remain on any Lot or be occupied or used for any purposes other than single family or multifamily dwellings, private garages, carports, and other outbuildings incidental to residential use. An "outbuilding" as used herein shall mean an enclosed covered structure not directly attached to the dwelling which it serves. A common or party wall between two dwellings shall I be permitted if approve by the Architectural Control Committee.

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

Each residence shall have off-street parking of sufficient *size* to accommodate 2.5 cars.

Section 3. Building Locations and Height Restrictions. No building, primary or accessory, shall be located on any Lot within the setbacks as follows:

- a/ Single Family: front yard 20 feet
- side yard 15 feet total,
5 feet minimum
- rear yard 20 feet

b/ Townhouses: a minimum of 30 feet setback from dedicated streets.

No building, primary or accessory, on any Lot shall be located within six feet of a primary or accessory building located on an adjacent or adjoining Lot without the requisite firewall construction required by the then local Building and Fire Codes as promulgated by the Building Department of the County of Jefferson, Colorado. For the purposes of this covenant, steps, and open porches shall not be considered as part of a building.

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

Section 4. Trees. No tree or trees, whether now growing or hereafter grown upon any part of The Properties

shall be cut down without prior written approval of the Architectural Control Committee, provided however, that this restriction shall not apply unless such tree is more than two (2) inches in diameter as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees within The Properties. Each Owner shall plant and maintain no less than three trees, one of at least two and one-half inch caliber within one hundred twenty (120) days of occupancy of house. In the event the Owner fails to plant and maintain such trees, the Association may do so and recover the costs thereof from the Owner.

Section 5. Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon any part of The Properties and no residence placed or erected on any Lot shall be occupied in any manner at any time prior to its exterior being fully completed in accordance with approved plans nor shall any residence when completed be in any manner occupied until there is compliance with all requirements conditions, covenants, and restrictions herein set forth; provided, however, that during the actual construction or alteration of a building on any Lot reasonable and necessary temporary buildings for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration,

or remodeling. The work of constructing, altering and remodeling any building on The Properties shall be prosecuted diligently from its commencement and completed within one year from commencement.

Section 6. Trash, Etc. Each Lot shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each Owner must provide for regular removal of garbage, and each Lot at all times shall be kept in a clean, sightly, and wholesome condition and weeds shall be kept mowed. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or the street, except as reasonably necessary during the period of construction. In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all debris and remaining portions of the structure including the foundations shall be promptly removed from the property. No noxious or offensive activity shall be carried on upon The Properties, nor shall anything be done thereon which may be or may become an annoyance of nuisance to the neighborhood.

Section 7. Nuisances. Boats, trailers, campers, motor homes, wrecked cars, tractors, equipment, etc., shall not be kept or stored so they are visible from neighboring Lots or from the

street. No tanks of any kind shall be erected, placed or permitted upon any part of The Properties, provided, however, the Declarant may install as part of the original first built improvements LP gas storage tanks on The Properties to provide gas services for some of the improvements. The tanks shall be temporary in nature and must be removed from The Properties within three years from the date or the recording of this Declaration. All types of refrigerating, cooling or heating apparatus must be concealed.

Section 8. Utilities. All electric, television, radio and telephone line installations and connections from the Owner's property line to the residence shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed.

Section 9. Signs. No sign or advertising of any character except for those of the Declarant and its sales agents shall be erected, placed, permitted or maintained on any Lot except (1) a sign of not more than 1 square foot and (2) a "For Sale" or "For Rent" sign not exceeding the size permitted in residential areas in the County of Jefferson may be placed on the Lot.

Section 10. Animals within The Properties. No animals, livestock, or poultry of any kind shall be raised, bred or kept

on The Properties, except that dogs, cats or other household animals may be kept thereon if they are not raised, bred, or maintained for any commercial purpose, and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of The Properties. In the event a dog, cat or other household animal shall constitute a nuisance or inconvenience to a residence of The Properties, then the Board of Directors after approval by 2/3 vote shall have the right to direct that the animal be permanently removed from The Properties.

Section 11. Oil and Mining Operations. No oil drilling, development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 12. Parking. Automobile parking will be subject to regulation and restriction by the Association.

Section 13. Exception. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the improvements upon The Properties to maintain during the period of construction and sale of said buildings, upon such portion of The Properties as the

builder may choose, such facilities as in the sole opinion of the builder may be reasonably required, convenient or incidental to their construction and sale, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 14. Animal Litter. Dogs, cats and other household animals shall not litter the Common Area. It shall be the duty of the Association to keep the Common Area free from litter caused by and left by pets. The owners of pets known to be at large shall be properly assessed by the Association for the cleanup expenses incurred, together with costs of collection and enforcement to include reasonable attorney's fees, as a special assessment against the owner of such pets causing such litter, as a part of the assessments to which the Owner's Lot is subject and such added assessment shall not be subject to the maximum assessment limitations herein contained.

Dogs, cats and other household animals shall not be allowed to run at large within The Properties, but shall be at all times on a lease or other immediate control of its Owner. It shall be the duty of the Association, or its representative, to notify the County Dog Warden of pets found at large within The Properties in violation of County Ordinances.

Section 15. Special Restrictions. To protect the views of certain Lots within The Properties, privacy fences will not be allowed to be constructed on portions of the following described Lots:

- (a) The Northerly 20' of Lot. 11 through 15, Block 1, Lots 10 through 14, Block 2, Lots 9 through 13, Block 6; and
- (b) The Southerly 20' of Lots 2 through 9, Block 4 and Lots 1 through 4, Block 5; and
- (c) The Easterly 20' of Lots 14 through 18, Block 2 and Lot 9, Block 4; and
- (d) The Westerly 20' of Lots 1, 10, and 11, Block I and Lot 1, Block 5.

Split rail fences are permitted to be constructed on any portion of the Lot. All plantings shall be done so as to maximize a neighboring Lot's view and shall be maintained and trimmed in a manner to reasonably accomplish this purpose.

ARTICLE XI
EASEMENTS

Section 1. Utility Easement. Easements for public utilities over and across The Properties shall be those shown upon the recorded plat of The Properties and such other easements as may be established pursuant to the provisions of this Declaration or as may hereinafter be granted over and across The Properties by the Board of Directors of the Association.

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

Section 3. Special Easements. Due to the anticipated style of improvements to be placed on certain Lots, an improvement may be located on or so near its property line or a roof overhang may actually encroach upon an adjoining Lot or Lots so as to make entry upon an adjoining Lot or Lots a necessity incident to the construction and maintenance of such improvement.

In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement provided such construction shall commence within twenty (20) years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of such overhang if one shall encroach and for the construction, maintenance, repair, replacement and/or reconstruction of such improvement which encroaches or is so located on or near its property line. Said easement or easements (1) shall be over and across the Lot or Lots immediately adjoining the Lot upon which such improvement is so located, (2) shall extend the full depth of the adjoining Lot or Lots, and (3) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such improvement so located with an easement of such width that, when added to the space lying between the improvement and its property line, such easement shall be six feet in width; provided that such Owner shall immediately repair, and be liable for, any damages caused any failure immediately to repair, any damage to such Lot or the improvements or other property thereon resulting from the exercise of this easement. Construction or any structure shall be prohibited within these easements except as such structure shall be approved in writing by the Architectural Control Committee, of the Association. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

Section 4. Solar Easements It is probable that certain Lots within The Properties will be locations for solar collector panels to enable the improvements constructed thereon to be heated with solar heat. To encourage the use of solar energy it is required that so long as it does not cause an alteration of plans or an undue hardship on adjoining Lots, that Owners of such Lots cooperate fully in the granting of solar easements over their lots for the purpose of allowing uninterrupted sunlight to the solar collector panel.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of the Association and the Owner of any lot or Living Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time these covenants shall be automatically extended for successive periods of ten (10) years unless an instrument terminating these covenants and restrictions signed by the then Owners of two-thirds of the Lots and Living Units has been recorded prior to the commencement of any ten-year period.

Section 2. Amendments. These covenants and restrictions may be amended by an instrument executed on behalf of the Association by the President and attested by the Secretary; provided, that, any amendment 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, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting however, any amendment must have the written approval of ninety (90%) per cent of the First Mortgagees. Any amendment must be properly recorded.

The quorum required for any action authorized by this section shall be as follows:

At the first meeting called, as provided for in this section, the presence at the meeting of Members or of proxies entitled to cast eighty (80%) per cent of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not forthcoming at this meeting, another meeting may be called, subject to the notice requirements set forth above and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting: provided, that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4. Enforcement. The Association, any Owner, Architectural Control Committee and/or the Declarant, may enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of the Declaration, either to prevent or restrain any violation of same or to recover damages or other dues for such violation.

Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 7. 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 these covenants, conditions and restrictions, 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.

Section 8. Binding Effect. The benefits and duties herein accrued to or imposed upon Declarant shall be binding upon and inure to the benefit of the Declarant and its successors and assigns.

(Note: There is a section 9 added by an amendment apparently recorded in Jefferson County July 20, 1978 reception No. 78065390 concerning Public Street Lighting. However, it is not properly included as a part of this reproduction. This document also has a Boulder County reception number.)

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

DECLARANT:

DUTCH CREEK PARTNERSHIP

By: /s/ F. D. Wilkins

(Editorial Note: This page begins a series of signature and notary pages that are extremely difficult to reconstruct and which are of little value in the editable form. Consequently, here endeth the reconstituted DECLARATION OF COVENANTS, etc. of THE DUTCH CREEK VILLAGE HOMEOWNERS etc. Readers are referred to originals and photocopies from this point on.)