

DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS  
COVERING FOUNTAIN GREENS RESUBDIVISION NO. TWO,  
A RESUBDIVISION OF BLOCK 3, FOUNTAIN GREENS,  
A SUBDIVISION IN THE S½ OF THE NW¼ OF SECTION 12, T1N,  
R7W OF THE 6TH P.M., BOULDER COUNTY, COLORADO

WHEREAS, Declarant desires to establish and impose a general plan for the improvements, development, use and occupancy of all of said lots which shall be binding on and inure to the benefit of the owners and future owners of lots within the Block above described, in order to enhance their value, desirability and attractiveness and to subserve and promote the sale thereof;

NOW, THEREFORE, Declarant hereby declares that the hereinabove described Block and the lots therein (the "lots") and any part thereof are held and shall henceforth be sold, conveyed, used, improved, occupied, resided upon, hypothecated, and held upon and subject to the provisions, conditions, restrictions, agreements and covenants set forth as follows, to-wit:

Section 1. Each and every one of said lots shall be used for single family private residence purposes only. No construction whatsoever other than first class, private, single-family residences shall be erected. Garages or carports must either be attached to the residence as an integral part thereof or attached thereto by arbor or breezeway and shall conform to the architecture thereof.

Section 2. No room or rooms in any residence or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing contained in this Section, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit to a single family. No business or profession of any nature shall be conducted on any lot or in any residence constructed thereon.

Section 3. Roofs covered with asphalt shingles or with material which is metallic in appearance shall be prohibited except when specifically approved by the Architectural Committee.

Section 4. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept

10  
or maintained on any part of said lots except that residents may keep not more than two dogs, two cats, and litters thereof under the age of four months, or other animals which are bona fide and customary household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property.

Section 5. No temporary structure, including but not limited to house, trailer, tent, garage or outbuilding shall be placed or erected upon any part of said lots, and no residence placed or erected on any lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans as herein set forth; provided, however, that during the actual construction or alteration of a building on any lot, necessary temporary buildings may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling any building or any part of the property shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 6. Every principal residence constructed shall have not less than 1,600 square feet of floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, basements, garages or carports) and shall have a garage or carport of sufficient size to house not less than two cars. If a residence of more than one story is constructed then the main floor shall have not less than 1,000 square feet of floor area devoted to living space. Furthermore, there shall be constructed on each lot or building site, at time of construction of the principal residence, and kept in place thereafter, paved off-street parking space (which may be a driveway on the lot) sufficient for two cars in addition to the space in the garage or carport. No vehicles shall be parked on any lot except on the paved areas. Vehicles shall not be parked on any common driveway, private or public street.

## Arch Review

Section 7. Every building, structure, or other improvements other than a wall or fence, which is erected or placed upon any lot (excluding uncovered terraces and steps) shall be located in accordance with the following prescribed distances from lot lines:

(a) Front Yard Setbacks: Not less than 10 feet from the edge of any street. Corner lots fronting on two streets shall be considered as having two street lot lines and the setbacks shall not be less than 10 feet from the front street lot line and 10 feet from the side street lot line. However, the front of a garage shall not be less than 25 feet from the edge of any street abutting the front of the lot on which such garage is situate.

(b) Rear Yard Setbacks: None.

(c) Side Yard Setbacks: No setback is required.

However, houses must be no less than 10 feet apart.

Roofs may overhang the setback requirements by not more than three feet. The Architectural Committee may grant reasonable exceptions to the setback requirements hereinabove set forth.

Section 8. The Declarant intends that the views over the lots in the Block subject hereto will be generally unobstructed by high fences or walls. Therefore, no fence or wall shall be constructed on any lot without the prior written consent of the Architectural Committee. The Architectural Committee, as a general rule, shall refuse permission for boundary fences and walls which would obstruct views, but shall, as a general rule, be receptive to granting permission for privacy fences or walls screening patios, outdoor eating areas, and the like, which encompass substantially less than all of a rear, side, or front yard. For purposes of this section, hedges shall be considered to be the same as fences and subject to

the same restrictions. (The term "wall" as used in this section shall not include the walls of a house or garage, but rather shall mean walls which are free standing and intended to enclose or screen areas outside the house or garage).

Section 9. Any building placed, erected or maintained upon any lot in the tract shall be entirely constructed thereon, and same shall not nor shall any part thereof be moved or placed thereon from elsewhere, except with the express written consent of the Architectural Committee.

No advertising or signs of any character shall be erected, placed, permitted or maintained on any lot other than a name plate of the occupant and a street number and except for a "for sale" or "for rent" sign not exceeding the size permitted in residential areas in the City of Boulder. Elevated tanks of any kind shall not be erected, placed or permitted upon any part of said property without prior written consent of the Architectural Committee, except that such tanks may be placed on any lot for use in connection with construction of a building thereon. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas, or oil, will ordinarily be required to be below ground. All types of refrigerating, cooling or heating apparatus must be concealed in a manner which has the prior written approval of the Architectural Committee. Large objects such as boats, campers, trailers or trucks shall not be maintained, stored or parked on said lots. No garbage or trash cans or receptacles shall be maintained in such a manner that they are exposed to the view of passersby in a public or private street. All aerial masts, radio and television antennae mounted on the exterior of a structure are prohibited except with the written consent of the Architectural Committee and the interior mounting of such objects will be preferred. No overhead utility lines shall be installed or maintained on any

portion of the lots covered by these restrictions except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

There shall be erected and maintained, by the Owner of each residence in the Block, one mailbox for such residence. Each mailbox shall be of a type approved for use by the United States Postal Service and the Architectural Committee. Mailboxes shall be located within the utility easement extending over each lot in the Block which abutts the street designated as Cedarwood Circle on the plat map of Fountain Greens Resubdivision No. Two, a resubdivision of Block 3, Fountain Greens, a subdivision in the S $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 12, T1N, R70W of the 6th P.M., Boulder County, Colorado, which plat map is recorded on Film 939 at Reception No. 193339 in the records of the Clerk and Recorder of Boulder County, Colorado. Each lot is hereby subordinated to the right of Declarant to locate more than one mailbox in the said utility easement of each lot without regard to the fact that the residences served by such mailboxes are not owned by the Owner of the lot on which such mailboxes are situate.

Section 10. Each lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any lot so they are visable from any neighboring lot, street or golf course, except as necessary during the period of construction. In the event any structure is destroyed either wholly or partially by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration, or all remaining portions of the structure, including the foundations, and all debris shall be promptly removed from the property. Each occupied lot shall at all times be kept clear of weeds and other unsightly growth, and any and all landscaping that becomes objectionable or should interfere with the operation of a

golf course located adjacent to the property covered hereby, shall, upon demand by the Architectural Committee, be forthwith removed by the property owner. After a residence has been constructed on any lot, the remaining unpaved portion of the lot shall promptly be planted to grass ground cover or other vegetation or covered with appropriate decorative aggregate materials, and maintained in that condition, so as to prevent the blowing of dust and dirt from the exposed soil.

Section 11. No lot or lots shall be subdivided, except for the purpose of combining portions with an adjoining lot, provided that no additional building site is created thereby. Any ownership or single holding by any person comprising the whole of one lot and part or parts of one or more adjoining lots shall, for all purposes of this declaration of conditions and restrictions, be deemed as constituting a single lot. Not less than one entire lot as platted shall be used as a building site without the prior written consent of the Architectural Committee.

Section 12. Declarant and the Owner of each lot in the Block shall have, subject only to the other restrictions, covenants and conditions contained herein, full rights of ingress and egress over the said Cedarwood Circle.

Section 13. An Architectural Committee, the number of which shall be determined from time to time by Declarant, and the members of which shall be appointed by Declarant, shall, as long as the restrictions, covenants and conditions herein set forth are in force and effect, be constituted and shall perform the duties imposed upon it as herein set forth. At any time while the restrictions, covenants and conditions herein set forth remain in force and effect, Declarant may relinquish its power to determine the number and members of the Architectural Committee. Such relinquishment may be accomplished by recording a declaration of such relinquishment in the office of the County Clerk and Recorder of said County of Boulder. From and after such relinquishment the members of the Architectural Committee

shall be elected by a majority of the Owners of the Lots subject hereto. There shall be one vote per lot. Elections shall be held at such times, and terms of office shall be for such length, as the lot Owners may determine by the majority vote. In the absence of an Architectural Committee, or if the term of any member shall have expired without a replacement being appointed or elected, any Owner of a lot subject hereto may call an election at a reasonably convenient time and place by written notice thereof mailed to all other lot Owners at least twenty days in advance of the date of the proposed election.

In any event, the exclusive power of Declarant to establish the number and members of the Architectural Committee shall expire on December 31, 1983.

Section 14. Before anyone shall commence the construction, reconstruction, remodeling, addition to, or alteration of any building, swimming pool, wall, fence, or other structure whatsoever on any lot subject hereto, there shall be submitted to the Architectural Committee two complete sets of plans and specifications for said improvement, the erection or alteration of which is desired, and no such structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received written approval as herein provided. Such plans shall include plot plans showing the location on the lot or property of the wall, fence, or other structure proposed to be constructed, placed, altered, or maintained, together with the proposed color scheme for roofs and exteriors thereof. In order to avoid unnecessary hardships, it is mandatory that all lot owners contemplating such construction, or alteration, as mentioned above, submit preliminary drawings in duplicate of such work to the Architectural Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans or specifications, or incurring substantial expense in that regard. A

service charge established by the Architectural Committee not in excess of \$50.00 shall be paid by the Owner to said Committee. One set of preliminary plans shall be retained by the Architectural Committee. The Committee shall approve or disapprove plans, specifications and details within thirty days from the receipt thereof. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same, and the other copy thereof shall be retained by the Committee. The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid in the event such plans, specifications and details are not in accordance with all of the provisions of this Declaration, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures, 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, or contrary to the interest, welfare or rights of all or any part of the real property subject hereto, or the owners thereof, or of the adjacent property owners, all in the sole and uncontrolled discretion of the Committee, and the decisions of the Committee shall be final. Neither the Declarant nor any architect or agent of the Declarant nor any member of the Committee 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 such specifications. No buildings or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without prior written approval of the Committee.

Section 15. Each residence shall provide and maintain at least one exterior light at or near the front entrance of the

dwelling, which said light shall be operated and lighted during hours of darkness. The design of the light fixture, its location and the amount of light emitted therefrom shall be approved by the Architectural Committee, and the requirement for such lights may be waived by the Architectural Committee.

Section 16. No vehicle, motorcycle, motorbike or similar equipment shall be parked on any lot or street adjacent thereto while it is undergoing repairs which immobilize the vehicle for a period of more than two consecutive days, unless the vehicle (or other item undergoing repairs) is within an enclosed garage during the entire period of such repairs.

Section 17. Each grantee of the properties included within this Declaration, by acceptance of a deed conveying any of the lots or properties, shall accept title thereto upon and subject to each and all of the restrictions, conditions, covenants and agreements herein contained, and by such acceptance, shall for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with the grantees and subsequent owners of each of said other lots, to keep, observe, comply with and perform said restrictions, covenants, conditions and agreements and each thereof. Said restrictions, covenants and agreements are intended and imposed for the direct and mutual and reciprocal benefit of each and all of said lots and owners thereof, and to create mutual and equitable servitudes upon each of said lots in favor of each other lot, and reciprocal rights and obligations and privity of contract and estate between the grantees of said lots, their respective heirs, successors and assigns.

Section 18. Each owner by the acceptance of a deed to a lot thereby covenants and agrees that when the lot or lots or parts of lots owned by him is eligible to be annexed to the City of Boulder said owner will cooperate in every effort to annex said lot to the City and will sign the petition for annexation and vote in favor of annexation when and if given the opportunity so to do. In this connection reference is made

to Ordinance No. 2684 passed by the City Council of the City of Boulder on June 18, 1963, in which the City agrees to furnish water to the water and sanitation district serving properties subject hereto on certain conditions and each owner takes with knowledge of the conditions and reservations in said Ordinance set forth. The provisions herein contained are for the benefit of each and all of said lots and are and shall operate as covenants running with the land, and shall inure to the benefit of and be binding upon Declarant and the purchasers and subsequent owners of each of said lots. A violation of said provisions, conditions, restrictions or covenants shall entitle the Declarant or other lot owners to apply to any court of law or equity having jurisdiction thereof for an injunction for damages or other proper relief, and if such relief be granted, the Court may, in its discretion, award to the plaintiff his court costs and reasonable attorney's fees. No delay or omission on the part of the Declarant or its successors or assigns in interest, or the owner or owners of any other lot or lots in said property in exercising any right, power or remedy herein provided for in the event of any breach of any of the provisions, conditions, restrictions and covenants herein contained, shall be construed as a waiver thereof or an acquiescence therein; and no right of action shall accrue nor shall any action be brought or maintained by, for, or on account of its failure or neglect to exercise any right, power, or remedy herein provided for in the event of any such breach, or for imposing herein provisions, conditions, restrictions, or covenants which may be unenforceable.

Section 19. In the event that any one or more of the provisions, conditions, restrictions, and covenants herein set forth shall be held by any Court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions and covenants herein set forth shall continue unimpaired and in full force and effect.

Section 20. Any variance or adjustments of these conditions and restrictions granted by the Architectural Committee or

Declarant, or any acquiescence or failure to enforce any violation of the conditions and restrictions herein shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

Section 21. The restrictions, conditions and covenants herein set forth are covenants which run with the land and shall be binding upon Declarant and successive owners of the hereinabove described lots or any parts thereof until the 31st day of December, 2002, and after said date they shall be extended for successive periods of ten years each, unless there is recorded within one year before December 31, 2002, or before the expiration of any extended ten year period an instrument signed by the then owners of not less than 75% of the lots then subject to these restrictions eliminating or modifying such restrictions. Prior to December 31, 1983, only the Declarant may amend or revoke these restrictions, conditions and covenants. At any time after December 31, 1983, these restrictions, conditions and covenants may be amended or revoked by the then owners of not less than 75% of such lots. Amendment or revocation of these restrictions, conditions and covenants shall be effected by the recording in the office of the County Clerk and Recorder of Boulder County of an instrument signed by the Declarant, if prior to December 31, 1983, and by the owners of not less than 75% of such lots if after December 31, 1983, setting forth such amendment or revocation, provided always, however, that any such amendment shall not have the effect of rendering said restrictions, covenants and conditions more difficult to comply with or of imposing more severe restrictions. A certificate signed and acknowledged by the County Assessor of the County of Boulder or by an abstractor or title company doing business in Boulder County that any such instrument has been signed by the then owners of not less than 75% of such lots shall be deemed prima facie evidence that such instrument has been signed by the owners of the required number of lots.

Section 22. The benefits and duties herein accrued or

imposed shall be binding upon and inure to the benefit of Declarant, and its successors and assigns until December 31, 1983, or the last date when Declarant is Owner in fee of a lot subject hereto, whichever later occurs.

Section 23. Declarant (or the Architectural Committee) may, by its signed written instrument, waive or release any provisions of the within protective covenants as they pertain to any part or all of the Block encumbered, which waiver or release shall be effective as to all parties otherwise entitled to enforce the within protective covenants. Neither Declarant, its partners, nor any employee thereof, nor any member of the Architectural Committee shall incur any liability whatsoever to any owner or other party aggrieved or injured on account of such release or waiver. In return for such waiver or release, Declarant or the Architectural Committee may impose on the lot involved such additional or altered covenants as the Owner in fee of the Lot involved may agree to. Each Owner agrees by accepting title or any interest in any Lot that Declarant and each partner or employee thereof and each member of the Architectural Committee shall be immune from suit or liability in accordance with the foregoing. The authority of Declarant (but not of the Architectural Committee) to grant any such waiver shall expire on December 31, 1983.

FOUNTAIN GREENS, a joint venture

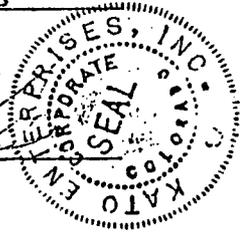
MIDLAND SERVICE CORPORATION By: KATO ENTERPRISES

By William H. Joffe  
Vice President

By [Signature]  
President

ATTEST:  
[Signature]  
STATE OF COLORADO )  
COUNTY OF BOULDER )

ATTEST:  
[Signature]  
Secretary



The foregoing instrument was acknowledged by me this