

DECLARATION OF RESTRICTIONS,
COVENANTS AND CONDITIONSFOUNTAIN GREENS RESUBDIVISION NO. THREE
(A Resubdivision of Blocks 4 and 8,
Fountain Greens Subdivision)

WHEREAS, Declarants desire 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 RESUBDIVISION above described, in order to enhance their value, desirability and attractiveness and to subserve and promote the sale thereof; and,

WHEREAS, said RESUBDIVISION is part of a subdivision known as Fountain Greens, which subdivision has established a Homeowners Association, covenants and restrictions to benefit the subdivision and to administer and enforce the covenants and collect and disburse assessments and charges made by the Homeowners Association,

NOW, THEREFORE, Declarant hereby declares that both of the hereinabove described blocks and all of the lots (the "lots") and outlots ("outlots") therein 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. PERMITTED USES. Each and every one of said lots shall be used for single family private residence purposes only. No construction whatsoever other than one first class, private, single-family residence 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. PROHIBITED USES. 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. BUILDING MATERIALS. Roofs covered with asphalt shingles or with material which is metallic in appearance shall be prohibited except when specifically approved by the Architectural Control Committee; unless specifically approved by the Architectural Control Committee, exterior materials shall consist of brick, stucco, stone masonry and natural wood siding; composition materials (such as masonite) or plywood are expressly prohibited.

Section 4. LIVESTOCK AND HOUSE PETS. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept 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. TEMPORARY STRUCTURES. No temporary house, trailer, tent, garage or out-building 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 construction, 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. DWELLING SIZE. Every principal residence constructed on a lot shall have not less than 2,000 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 1,100 square feet of floor area devoted to living space. Furthermore, there shall be constructed on each lot, 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 or private street.

Section 7. BUILDING SETBACKS. Every building, structure, or other improvements other than a wall or fence, which is erected or placed upon any lot (including uncovered terraces and steps) shall be located on the lot in accordance with the specifications shown on the site plan for Blocks 4 and 8 on file with the Boulder County Planning Department.

The Architectural Control Committee may grant reasonable exceptions to the setback requirements hereinabove set forth.

Section 8. FENCES AND EXTERIOR WALLS. The Declarant intends that the views over the lots in the Blocks 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 Control Committee. The Architectural Control 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. BUILDING LOCATION, SIGNS, NUISANCES AND UTILITIES. Any building placed, erected or maintained upon any lot in the tract shall be entirely constructed thereon (prefabricated and modular structures being hereby expressly prohibited), 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 Control 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 Control 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 Control 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 Control 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.

Section 10. TRASH AND VEGETATION. 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 visible from any neighboring lot or street 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 shall, upon demand by the Architectural Control Committee, be removed forthwith by the property owner. Vacant lots shall be maintained by the owners thereof clear of heavy and unsightly vegetation that would otherwise interfere with other owners' landscaping and use of the common areas (Outlots F and C) adjoining properties. After a residence has been constructed on any lot and occupied, the remaining unpaved portion of

the lot shall promptly be planted to grass or other vegetation or covered with decorative materials, and maintained in that condition, so as to prevent the blowing of dust and dirt from the exposed soil.

Section 11. RESUBDIVISION OF LOTS. 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 depicted on the plat of Fountain Greens Resubdivision No. Three shall be used as a building site without the prior written consent of the Architectural Control Committee.

Section 12. EXTERIOR MAINTENANCE. In the event an owner of a lot within the resubdivision shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Architectural Control Committee, then the Architectural Control Committee, after approval of two-thirds vote of the owners of lots within Fountain Greens Resubdivision No. 3, shall refer the matter to the Homeowner's Association established by Fountain Greens Subdivision for such action as that Association may deem appropriate, including, but not limited to, completion by said association of repairs, maintenance and restoration of the lot and the exterior of buildings and other improvements erected thereon. The cost of such maintenance, repair, and restoration shall be assessed in accordance with the authority of the Fountain Green Homeowner's Association as established by the declaration recorded at Reception No. 144190 and the First Amendment thereto recorded as Reception

No. 250929 and any amendments recorded subsequent thereto.

Section 13. ARCHITECTURAL CONTROL COMMITTEE. An Architectural Control 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 on it imposed 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 Control 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 Control 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 Control 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 power of Declarant to establish the number and members of the Architectural Control Committee shall expire on December 31, 1984.

* Section 14. ARCHITECTURAL CONTROL. 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 Control 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 therefore 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, should submit preliminary drawings in duplicate of such work to the Architectural Control 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. One set of preliminary plans shall be retained by the Architectural Control 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. EXTERIOR LIGHTING. Each residence shall provide and maintain at least one gas or electric light post at or near the street property line which said light shall be operated and lighted by a photo-electric cell or other automatic device so that it will be lighted automatically during hours of darkness. The design of the light post and the amount of light emitted therefrom shall be approved by the Architectural Control Committee, and the requirement for such lights may be waived by the Architectural Control Committee.

Section 16. IMMOBILIZED VEHICLES. 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. BINDING EFFECT. 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 subsequent 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. FUTURE ANNEXATION. 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. SEVERABILITY. 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. NON-WAIVER. Any variance or adjustments of these conditions and restrictions granted by the Architectural Control 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. COVENANTS TO RUN WITH THE LAND: AMENDMENT OR REVOCATION. 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, 1984, only the Declarant may amend or revoke these restrictions, conditions and covenants. At any time after December 31, 1984, 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, 1984, and by the owners of not less than 75% of such lots if after December 31, 1984, 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. WAIVER. Declarant (or the Architectural Control Committee) may, by its signed written instrument, waive or release any provision of the within protective covenants as they pertain to any part of all of the Blocks 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 Control 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 Control 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 Control Committee shall be immune from suit or liability in accordance with the foregoing. The authority of Declarant (but not of the Architectural Control Committee) to grant any such waiver shall expire on December 31, 1984.

Section 23. CONVEYANCE OF OUTLOTS TO FOUNTAIN GREENS HOMEOWNERS ASSOCIATION. Outlots R, S, T and U shall be conveyed by the Declarant to the Fountain Greens Homeowners Association which Association shall have the responsibility for maintaining said Outlots in accordance with the terms of the Declaration of Homeowners Association Covenants and Restrictions for Fountain Greens and amendments thereto; owners of properties within Fountain Greens Resubdivision No. Three shall be liable for assessments for maintenance, repair and reconstruction of driveways, curbs, gutters and any landscaping located on said Outlots in accordance with the terms of said Declaration.

Section 24. PARKING ON PRIVATE DRIVES OVER OUTLOTS R, S, T AND U. Declarant will erect "no parking" signs at appropriate locations on Outlots R, S, T and U; costs of maintenance and repair thereof shall be borne by the Fountain Greens Homeowners Association which shall assess expenses thereof in accordance with the terms of the Declaration of Homeowners Association Covenants and Restrictions for Fountain Greens and amendments thereto.

Section 25. DECLARATION OF COVENANTS AND RESTRICTIONS; HOMEOWNERS ASSOCIATION, FOUNTAIN GREENS SUBDIVISION. Owners of property subject to this Declaration of Covenants for Fountain Greens RESUBDIVISION of Blocks 4 and 8, Fountain Greens, are subject to the Declaration of Homeowners Association Covenants and Restrictions for Fountain Greens recorded with the Boulder County Clerk and Recorder July 10, 1975, as Reception No. 144190, and the First Amendment thereto recorded with the Boulder County Clerk and Recorder as Reception No. 250929. Said Declaration and Amendment provide generally for the amenities throughout the subdivision, establish a Homeowners Association to manage and collect assessments required for the maintenance, repair and operation of common properties and private streets situated throughout the subdivision and improvements and facilities located thereon.

Section 26. MAIL BOXES AND PROPERTY ADDRESSES. The owners of Lots 1, 5, 6 and 10, Block 4, hereby grant unto themselves and the owners of Lots 2, 3, 4, 7, 8 and 9, Block 4; and,

The owners of Lots 1, 8, 9 and 11, Block 8, hereby grant unto themselves and the owners of Lots 2, 3, 4, 5, 6, 7 and 10, Block 8, an exclusive easement for the location of commonly designated mail boxes to serve said lots; said mail box facilities may be constructed by the Declarant and maintained by the owners thereof consistent with the requirements of the postal authorities and the Architectural Control

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Committee; these exclusive easements and the construction of common mail box facilities may be abrogated by Declarant should the postal authorities agree to deliver mail in the customary fashion to individually owned mail boxes over the private drives designated as Outlots R, S, T, and U, located within Blocks 4 and 8.

Section 27. HEADINGS. The section headings herein are for convenient reference only and, in no way, define, limit or describe the scope of this Declaration or the intent of any provision herein.

Section 28. ENFORCEMENT. Any owner, including the Declarant, shall have the right by any proceeding at law or in equity to enforce all restrictions, conditions, covenants, reservations now or hereinafter imposed by the provisions of this Declaration. Failure by the Declarant or by any owner to enforce any rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

Section 29. DECLARANT'S RETAINED RIGHTS. Anything to the contrary herein notwithstanding, Declarant hereby reserves the license to use all lots not theretofore conveyed by it to an owner for the purpose of constructing improvements, utilities and other matters, including the right to erect such temporary buildings as may be necessary to store any and all materials in connection with construction activities. Declarant further reserves the right to use a completed structure on any lot not therefore sold by Declarant to an owner for the purpose of a sales office or model home. The rights and licenses herein reserved by Declarant shall cease when Declarant has conveyed the last lot in the RESUBDIVISION.

DECLARANT:

COURT-SQUARE INVESTMENT CO.,
a Colorado Corporation

By 
JAMES H. TULL, President

Attest:

Elayne J. Johnson
ELAYNE J. JOHNSON, Asst. Sec.

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged by me this
24th day of July, 1978, by JAMES H. TULL as
President, and ELAYNE J. JOHNSON as Assistant Secretary of
COURT-SQUARE INVESTMENT CO.

Witness my hand and official seal.

My Commission expires 2-9-82

Christine Hulik
Notary Public Christine Hulik

Edward M. Ladley, Jr.
EDWARD M. LADLEY, JR.

Joan F. Ladley
JOAN F. LADLEY

Owners in joint tenancy of Lot 8, Block 4, FOUNTAIN
GREENS RESUBDIVISION NO. THREE, County of Boulder, State of
Colorado.

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged by me this
24th day of July, 1978, by EDWARD M.
LADLEY, JR. and JOAN F. LADLEY.

Witness my hand and official seal.

My Commission expires 2-9-82

Christine Hulik
Notary Public