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SUBJECT INDEX
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
GREENBROOK TOWNHOUSES

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
GREENBROOK TOWNHOUSES

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the GREENBROOK TOWNHOUSE ASSOCIATION, INC., a Colorado nonprofit corporation (the "Association").

RECITALS:

- A. The Writer Corporation, as "Declarant" and owner of certain real property, executed that Certain Declaration of Covenants, and Restrictions for Greenbrook Townhouses recorded in the real property records of the County of Arapahoe, State of Colorado on July 20, 1982 at Reception Number 2187629, in Book Number 3664 beginning on Page Number 553.
- B. The Writer Corporation recorded a Certificate of Amendment to the Declaration of Covenants, Conditions and Restrictions of Greenbrook Townhouse Association in the real property records of the County of Arapahoe, State of Colorado at Reception Number 2250293, in Book Number 3801 and beginning on Page Number 534;
- C. The Greenbrook Townhouse Association recorded the First Amendment to the Declaration of Covenants and Restrictions of the Greenbrook Townhouse Association in the real property records of the County of Arapahoe, State of Colorado on October 29, 1997 at Reception Number A7136716.
- D. The Greenbrook Townhouse Association recorded the Second Amendment to the Declaration of Covenants and Restrictions of the Greenbrook Townhouse Association in the real property records of the County of Arapahoe, State of Colorado on November 27, 2002 at Reception Number 2187629, in Book Number 3664 and beginning at Page Number 553.
- E. The documents referenced in paragraphs A, B, C and D above shall be referred to hereafter, collectively, as the "Original Declaration." The Original Declaration imposed upon the real property described in the Original Declaration and all property thereafter annexed, certain terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which run with and are binding upon said real property.
- F. By virtue of the Original Declaration, a Planned Common Interest Community was created upon the real property and certain covenants, conditions, restrictions, easements, reservations, and rights-of-way set forth therein for the purpose of protecting the value and desirability of said real property and the Owners of such

Common Interest Common Interest Community.

G. The Owners and Association desire to amend and restate all provisions of the Original Declaration by virtue of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Greenbrook Townhouses (the "Declaration"), and intend upon the recording of this Declaration that all prior recorded amendments, supplements, and instruments creating covenants, conditions, restrictions, and reservations on the real property shall be superseded by this Declaration.

NOW THEREFORE, the Original Declaration is Amended and Restated as follows:

ARTICLE I DEFINITIONS

Each capitalized term in this Declaration or in the Plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

Section 1.1 "Act" shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* as it may be amended from time to time.

Section 1.2 "Articles" shall mean the Articles of Incorporation of the Greenbrook Townhouse Association, Inc., as may be amended from time to time.

Section 1.3 "Association" shall mean and refer to the Greenbrook Townhouse Association, Inc., a Colorado Corporation, not for profit, its successors and assigns.

Section 1.4 "Bylaws" shall mean the Bylaws of the Greenbrook Townhouse Association, Inc., as may be amended from time to time.

Section 1.5 "Common Area" shall mean and refer to all of the real property including the improvements thereto, if any, owned by the Association for the common use and benefit of the Owners.

Section 1.6 "Common Expenses" means (i) all expenses expressly declared to be Common Expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area or any other items for which the Association is responsible to maintain, and including allocations for reserves; (iii) insurance premiums for the insurance carried under Articles XII and XIII; and (iv) all expenses lawfully determined to be Commons Expenses by the Board of Directors of the Association.

Section 1.7 "Eligible Holder" shall mean a holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Association containing its name and address, along with the address and legal description of the Lot upon which it holds a First Mortgage.

Section 1.8 "Enclosed Patio" shall mean and refer to any portion of a Lot, or Common Area directly adjacent to a Lot, which is fully or partially enclosed by a fence, or patio wall, and which is primarily for the use and enjoyment of the Owner or occupant of that Lot, and shall include all of the improvements, including the fence or patio wall which forms the enclosed area.

Section 1.9 "First Mortgage" shall mean any Mortgage upon a Lot which is not subject to any prior or senior lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

Section 1.10 "First Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 1.11 "Guest" shall mean and refer to any agent, tenant, employee, guest, licensee or invitee of an Owner who enters upon the Property.

Section 1.12 "Lot" shall mean and refer to any of the numbered plots of land shown on the recorded Plat or Subdivision Map of the Properties, together with the improvements located thereon, with the exception of the Common Area, as hereinabove defined. Title to each Lot shall be conveyed in fee simple by reference to the numbered plots as shown upon any record plat or subdivision map of the Properties.

Section 1.13 "Member" shall mean and refer to each and every Owner of a Lot subject to assessment.

Section 1.14 "Mortgage" shall mean any mortgage, deed of trust, contract of sale or other document pledging a Lot as security for the payment of a debt or obligation.

Section 1.15 "Mortgagee" shall mean any person, corporation, partnership, trust, company or other legal entity which takes, holds, owns, or is secured by a mortgage.

Section 1.16 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, and contract sellers, but excluding those having such interest merely as security for the performance of an obligation (i.e. a Mortgagee).

Section 1.17 "Plat" shall mean the Plat or Subdivision Map of Greenbrook Townhouses recorded in the records of the Clerk and Recorder of Arapahoe County, State of Colorado, and any other amended, supplemental or additional plats or filings thereof designating Lots.

Section 1.18 "Property or Properties" shall mean and refer to that certain real property described on Exhibit A attached hereto and incorporated by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.19 "Rules and Regulations" shall mean those rules which, after general notice to all Owners, are adopted, amended, or repealed by the Board. Such final actions shall be distributed to all Owners.

Section 1.20 "Residence" shall mean and refer to a residential dwelling unit constructed upon any of the Lots shown upon any Plat of the Properties.

Section 1.21 "Stoop" shall mean the covered area outside the front door, not including the patio.

Section 1.22 "Visitor" shall mean any guest who remains on the property ten consecutive days or more.

ARTICLE II GREENBROOK TOWNHOUSE ASSOCIATION

Section 2.01 Organization.

A. Association. The Association is a Colorado nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth herein. No Article of Incorporation, Bylaw, or Regulation shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Members. Each Owner of a Lot/Townhouse, by virtue of being such an Owner and for so long as he is such an Owner, shall be deemed a Member of the Association. Membership shall be appurtenant to and shall not be separated from the ownership of a Lot.

C. Voting Rights. Each Lot shall be allocated one (1) vote. When more than one person holds an interest in any Lot, all such persons shall become Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

D. Board of Directors. The Board of Directors shall be the governing body of the Association and is responsible for its administration and business functions. The qualifications and number of directors, the term of directors, the manner in which directors shall be elected and the manner in which directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

E. Manager. The Association may retain and pay for the services of an individual or firm to manage the Association Property to the extent deemed advisable by the Board. The Board shall determine such other personnel as necessary for the operation of the Association Property and the conduct of business of the Association, whether such personnel are employed directly by the Association or furnished by the Manager. The

Board may delegate any of its duties, powers, or functions to the Manager, provided that any such delegation shall be revocable upon notice by the Board. The Owners hereby release the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function as delegated, so long as the actions of the Board, and each of its members, are in good faith, using ordinary care, and in a manner believed to be in the best interests of the Association.

Section 2.02 Authority for and Duties of the Association.

The Association shall have the authority to do any and all lawful things which may be authorized, required, or permitted to be done under and by virtue of these Documents and as permitted under the provisions of the Colorado Revised Nonprofit Corporation Act. It shall do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the benefit of the Owners of each Lot/Townhouse.

Without in any way limiting the generality of the foregoing provisions, the Association shall have the power and authority to perform the following duties:

A. Exterior Maintenance and Landscaping. Maintain the exterior surfaces of the buildings and other Improvements. The Association shall provide landscaping throughout the Properties and shall maintain all of the Common Area, and provide landscaping throughout the Properties and shall maintain all of the Common Area except for the residence stoops, concrete pads of residence patios and residence metal window well liners.

B. Regulations. Adopt, amend, repeal, and/or enforce such Regulations as it deems necessary and proper for the benefit of the Owners of each Lot/Townhouse. A copy of said Regulations, as they may from time to time be adopted, amended, or repealed, must be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Regulations shall have the same force and effect as if they were set forth in and were a part of these Documents.

C. Assessments. Levy Assessments on the Owners of Lots/Townhouses and enforce payment of such Assessments in accordance with the provisions of Article IV.

D. Right of Entry. Enter, at any time between 8:00 a.m. and 5:00 p.m., any exterior portion of any Lot/Townhouse for the purpose of carrying out the Association's duties and obligations for exterior maintenance and landscaping. For the purpose of maintenance or repair in an emergency, the Association may enter any Lot/Townhouse at other hours without being liable to the Owner.

E. Enforcement. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Documents and to enforce, by mandatory injunctions or

otherwise, all of the provisions set forth.

F. Committees. Create committees and appoint and remove members as deemed necessary for the benefit of the Owners.

G. Utilities and Services. Be responsible for removing snow from porches, steps, sidewalks, driveways, and the Association's private roads. It shall also pay for water, sewer, electrical service except that used by individual residences, maintenance, landscaping, trash removal, and other necessary utilities or services for the Association Property. It shall retain and pay for legal and accounting services necessary or proper in the operation of the Association, enforcement of these Documents, or performance of any other duty or right of the Association. The Association may enter into contracts for such other services as are necessary for the benefit of the Owners.

H. Insurance. Obtain and maintain in force the policies of insurance set forth in Articles IX and X.

Section 2.03 Liability of Board Members and Manager.

The Board and the Manager shall not be personally liable to any Owner or to any other party for any damage, loss, or prejudice suffered or claimed on account of any act or failure to act, provided that such Board member or Manager acted in good faith, using ordinary care, and in a manner believed to be in the best interests of the Association.

ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, that such right and easement of enjoyment in and to the Common Area shall be subject to the following:

- (a) The right of the Association to suspend an Owner's voting rights and his right to use of the recreational facilities for any period during which any assessment against his Lot remains unpaid.
- (b) The right of the Association to suspend the voting rights and the right to use of the recreational facilities, if any, by an Owner for a period not to exceed sixty (60) days for any failure to comply with its published Regulations or any other obligation under this Declaration or the Bylaws, following notice and an opportunity to be heard;
- (c) The right of the Association to limit the number of Guests of an Owner on the Common areas and the facilities situated upon the Common Area;

(d) The right of the Association to close or limit the use of the Common Area and facilities while maintaining, repairing and making replacements in the Common area;

(e) The right of any Owner to the exclusive use of such portion of the Common Area within his Enclosed Patio area; provided, however, that no Owner shall improve such areas other than in regard to the planting or landscaping of the same, subject to restrictions of Articles V.2, VI.3, and VII.

(f) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of maintaining or improving the Common Area and facilities and those portions of the Residences for which the Association has maintenance responsibilities, or for other purposes consistent with the Articles of Incorporation, the Bylaws and this Declaration, and in aid thereof to mortgage or grant other security interests in the Common Area, or to pledge future Assessments; provided, however, that the rights of any Mortgagee of the Common Area shall be subordinate to the rights of the homeowners; and

(g) The right of the Association to dedicate, sell 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 and the Eligible Holders of First Mortgagees, based upon one vote per mortgage. No such dedication or transfer shall be effective unless two-thirds (2/3) of the owners and all of the Eligible Holders of First Mortgagees of Lots within the Properties (based upon one vote for each mortgage) agree to such action and a written instrument reflecting such agreement is recorded with the Clerk and Recorder of Arapahoe County, State of Colorado;

Section 2. Alienation of Common Area.

The Common Area shall not be sold, abandoned, subdivided, hypothecated, transferred or otherwise encumbered by the Association without the written consent of two-thirds (2/3) of the Eligible Holders of First Mortgages of the Lots within the Properties (based upon one vote for each Mortgage); provided, however, that the granting of easement for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be a prohibited transfer within the meaning of this section.

ARTICLE IV COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation to Pay Common Expense Assessments.

Each Owner of any Lot situated within the Property, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association annual Common Expense Assessments and such other assessments as imposed by the Association. Such

Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association's annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines, and interest charged by the Association shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made.

Section 2. Purpose of Assessments.

The assessments levied by the Association through its Board of Directors shall be used exclusively for: the purposes of promoting the health, safety, welfare and recreation of the residents on the Property; the payment of water and sewer charges; the maintenance, repair and upkeep of the Common Areas and the improvements and facilities located thereon; the fences situated on the Common Area and the exterior of the Residences; the repairing, reconstructing, replacing and maintaining of private roadways, parking areas, sidewalks, footpaths, utilities, landscaping, recreational facilities; any other maintenance obligation which may be deemed necessary by the Association for the common benefit of the Owners, or the maintenance of property values, or which may be incurred by virtue of agreement with, or by requirement of the City, County or other governmental authorities; and for all of these purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law. The assessments shall further be used to provide adequate insurance of all types and in such amounts deemed necessary by the Board of Directors with respect to the Common Area and Residences. Also, a portion of the annual assessments, which are payable monthly, shall be used to provide an adequate reserve fund for the replacement, repair, and maintenance of those portions of the Common Area, and those portions of the Residences for which the Association is liable for maintenance which must be replaced on a periodic basis, and the Board of Directors shall be obligated to establish such reserve fund.

Section 3. Annual Assessments/Commencement of Common Expense Assessments.

The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed to provide for the performance of its duties during such assessment year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Common Expense Assessments shall be due and payable in monthly installments, in advance, unless otherwise determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 4. Special Assessments.

In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or any Area which the Association maintains, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments. The Association shall not levy a Special Assessment without the approval of the Owners at a special meeting called pursuant to Section 5 of this Article. Notice in writing of the amount and time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 5. Meetings for Approval of Special Assessments.

A Special Meeting shall be held for the approval of any Special Assessment. Notice of such meeting shall be given in compliance with the Bylaws. The Association shall not levy a Special Assessment without the approval of two-thirds (2/3) of the Owners present, in person or by proxy at a meeting at which a quorum is present. The quorum at such meeting shall be fifty-one percent (51%) of the Owners entitled to vote. In the event a quorum is not obtained at any special meeting called pursuant to this Section, the meeting may be adjourned and rescheduled at which time the quorum shall be reduced by fifty percent (50%). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Individual Assessments.

If any extraordinary maintenance, repair, or restoration work to Common Areas or other areas which the Association maintains, is required and such extraordinary maintenance, repair or restoration will benefit fewer than all of the Lots, and the Board finds that the maintenance, repair or restoration work is necessary to prevent imminent and substantial harm or injury to persons or property, the costs thereof may, at the discretion of the Board, be borne by the Owners of those affected Lots only. Any extraordinary insurance costs incurred by the Association as a result of the value of a particular Owner's Residence or the actions of a particular Owner or any of his Guests may, at the discretion of the Board, be assessed to that Owner.

Section 7. Default Assessments.

All monetary fines assessed against an Owner pursuant to the Declaration, Bylaws, Articles of Incorporation or Regulations, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of an Owner shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this

Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 8. Uniform Rate of Assessment.

Both annual and special assessments must be fixed at a uniform rate for all Lots. The rate for annual and special assessments for each Lot shall be calculated by dividing the total amount of each annual Common Expense Assessment or Special Assessment by the number of Lots within the Property. The Board, in its sole discretion, may round the figure resulting from the calculation above, up or down to the next whole dollar.

Section 9. Effect of Non-Payment of Assessments - Remedies of the Association.

Any assessment which is not paid when due shall be delinquent. If an assessment installment is not paid within thirty (30) days after the due date, said assessment installment shall be considered late and shall be subject to a late charge as may be imposed by the Board. Further, late installments may bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the delinquent installments. In addition to such action or as an alternative thereto, the Association may file with the Clerk and Recorder of Arapahoe County, a Statement of Lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the President or Vice-President of the Association or the Association's duly authorized Manager or Attorney. Notice of said action shall be served upon the Owner of the Lot by first class mail, postage prepaid, sent to the address of the Lot or to such other address as the Association may have in its records for the Owner of the Lot. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages on real property under the statutes of the State of Colorado. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, late fees, interest, costs and reasonable attorney fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 10. Lien Priority.

The lien of the Association under this Article is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any

homestead exemption as allowed under State or Federal law, and the acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that the sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor for the lien thereof.

Section 11. Notice to Mortgagee.

Upon written request of a First Mortgagee of any Lot, and upon payment of reasonable compensation therefore, the Association shall report to such First Mortgagee any unpaid assessments or other delimits under the terms of this Declaration which are not cured by said Mortgagee's mortgagor within thirty (30) days.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Composition of Committee.

The Architectural Control Committee shall consist of no fewer than three (3) persons appointed by the board of Directors of the Association. Board members may serve on the Architectural Control Committee. A majority of the committee may designate a representative to act for it.

Section 2. Review by Committee.

No structure or any attachment to an existing structure, whether a Residence, any accessory building, a tennis court, a swimming pool, fences, walls, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed upon the Properties and no alteration of the exterior of a Residence or other structure placed on any Lot shall be made and no change in the final grade, nor the installation of any landscaping shall be performed, unless the complete plans and specifications therefore shall have been first submitted to and approved in writing by the Architectural Control Committee. Said plans and specifications are to show exterior design, height, materials, color, location or the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and the grading plan. One complete copy of plans and specifications shall be submitted to the Architectural Control Committee. The Committee shall review the plans and specifications and render a decision. The original shall be forwarded to the Property Manager who shall file them with the Association's records. An approved copy will be returned to the homeowner within thirty (30) days of submissions; a second copy will be retained by the Committee Chairperson. The

Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping and alterations to structures and on lands within the Property conform to and harmonize with the existing surroundings and structures. Landscaping within Enclosed Patio Areas shall be exempt from the Section provided that no material changes are made to the existing grade, and no materials are planted which will exceed six feet (6') in height when mature.

Section 3. Procedures.

The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after the submission of complete plans and specifications. In the event that the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Voting.

A majority of the Architectural Control Committee is required to approve a proposed improvement, unless the committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 5. Records.

The Association shall maintain written records of all applications submitted to the Architectural Control Committee and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 6. Liability.

The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variance.

The Architectural Control Committee may grant reasonable variances or adjustments from any conditions imposed by this Article in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained in this Article. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 8. Minor Violations of Setback Restrictions.

If upon the erection of any Residence upon any of the Lots which are subject to these restrictions, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation or infringement occurs, and such waiver shall be binding upon all other Owners who are subject to this Declaration. Nothing herein contained shall prevent the prosecution of a suit for any other violation of the restrictions contained in this Declaration. A "minor violation" for purpose of this Section is a violation of not more than one (1) foot beyond the required setback lines or lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to such structure.

ARTICLE VI EXTERIOR MAINTENANCE

Section 1. Association's Responsibility.

In addition to the maintenance upon the Common Area, and subject to the conditions of Sections 2 and 3, below, the Association shall provide exterior maintenance and exterior repair upon each Residence constructed on a Lot which is subject to assessment, as follows: paint or stain; repair, replacement, maintenance and improvement of roofs, original construction skylights, gutters, downspouts, siding and exposed exterior building surfaces. Such exterior maintenance shall not include the maintenance or replacement of garage doors and frames, skylights not installed during the original construction of the residence, entry doors and frames, windows and frames, and sliding doors and/or windows and their frames, stoops, patio concrete pads and metal window well liners, which shall be the sole responsibility of the Owner.

Section 2. Owner's Responsibility.

Except for repair, replacement and maintenance expressly designated herein as the Association's responsibility, all repair, replacement and maintenance of the interior and exterior of each Residence including metal window well liners, stoops, and patio concrete pads, and all other improvements, structures, and landscaping located within the Lot boundaries shall be the sole responsibility of the Owner. All exterior repair, replacement and maintenance of the Residences and improvements of structures, and landscaping located within the Lot boundaries shall be subject to the rules and regulations promulgated by the Board.

Section 3. Enclosed Patio Areas.

The Association shall be responsible for the repair of the brick pillars, the dividing wall, the picket fence, and the solid fence surrounding the patio area. Each Owner shall be responsible for the repair, replacement and maintenance of the Enclosed

Patio Area. Each Owner shall maintain their Enclosed Patio Area in a clean, safe and sanitary condition, including any necessary snow or ice removal

Section 4. Utilities Serving a Single Residence.

Each Owner is responsible for the maintenance, repair, and replacement of any utility, plumbing, mechanical, or electrical fixture, wiring, piping, chute, flue, duct, conduit, or related or supporting system or components of the above, including sanitary sewer systems ("Utilities"), which serve only that Owner's Residence. Owners shall be responsible for maintenance, repair and replacement under this section beginning at the point at which Utilities enter the residence, provided, however, that Owners shall be responsible for maintenance, repair and replacement of electrical fixtures, wiring, components and conduit beginning at the individual electric meter serving the Owner's Residence.

Section 5. Board's Determination.

Determination of the specifications, scope, extent, nature, schedule and parameters of the Association's maintenance responsibilities, and whether any such repair or maintenance is the obligation of the Association shall rest solely with the Board, which shall also have the sole responsibility for determining the color, kind and type of materials used in such repair and maintenance.

Section 6. Owner's Negligence.

If the need for maintenance or repair is caused through the willful or negligent act of any Owner, his agent, family, or Guests, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject.

**ARTICLE VII
USE RESTRICTIONS**

Section 1.

The use of the Common Area, Lots and improvements thereon shall be subject to the restrictions set forth in Article III, Section 1, and to the restrictions hereinafter set forth.

Section 2.

The use of the Common Area shall be subject to such Regulations as may be adopted from time to time by the Board of Directors of the Association or the Association.

Section 3.

No use shall be made of the Common Area which would in any manner violate the statutes, rules, regulations, orders or decrees of any court or governmental authority having jurisdiction over the Common Area.

Section 4.

No Owner shall place any structure upon the Common Area, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Area to any or all Owners.

Section 5.

No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to lots only over Common Area and the right of ingress and egress to said Lots is hereby expressly granted.

Section 6.

The Property is hereby restricted to private residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structures of a temporary character, trailer, motor home, shed, tent, shack, garage, barn or other outbuilding, shall be at any time used as a residence either temporarily or permanently.

Section 7.

Dogs, cats or other commonly maintained household pets of a type and quantity as permitted by the ordinances and regulations of the City of Aurora and/or the published Regulations of the Association may be kept, provided that they are not kept, bred or maintained for any commercial purpose and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any other resident. All household pets shall be controlled by their owner and shall not be allowed in or on the Common Area or any facility located thereon except when properly leashed and under the owner's control. Each owner of a household pet shall be financially responsible and liable for any damage caused by said household pet or any expense incurred by the Association as a result of the keeping of such pet. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot.

Section 8.

No advertising sign, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Common Area or any Lot, provided, however, each Lot may display one sign in the window of the Residence not more than five square feet and containing the words "For Sale" or "For Rent"

Section 9.

No business or commercial activity of any kind whatever shall be conducted on any Lot or upon any portion of the Property, unless the Activity:

(a) Is conducted and carried out entirely within a single Residence, excluding the garage and Enclosed Patio Areas; and

(b) The total area of the Residence utilized in the Activity is less than 20% of the floor area of the Residence including all incidental storage of stock, supplies or products; and

(c) There is no sign or advertising of the activity anywhere on the Property; and

(d) There is no odor, noise, vibration, smoke, dust, heat or glare noticeable outside the Residence, even when doors and windows are open; and

(e) The Activity is clearly secondary to the use of the Residence as a residential dwelling unit and does not change the character of the Residence as a residential property; and

(f) The Activity does not increase traffic within the Property, provided, however that no more than three (3) deliveries or pick-ups of express mail, United Parcel Service, Federal Express or any other carriers of mail or packages may be permitted incidental to such business or commercial Activity in any seven (7) day period.

Section 10.

All equipment, garbage cans, service yards, wood piles or storage piles shall be kept within the boundaries of each Lot so as to conceal them from view of neighboring Lots and streets, except in regard to garbage cans on collection days. All rubbish, trash, or garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon.

Section 11.

No planting or gardening shall be done and no fences, hedges, walls, balconies or additions to the improvements situated upon a Lot shall be erected or maintained except as are installed in accordance with the initial construction of the buildings located thereon and as approved by the Board. It is expressly acknowledged and agreed by all parties concerned that this prohibition is for the mutual benefit of all Owners of Lots and is necessary for the protection of said Owners. Changes in planting or landscaping within the boundaries of a Lot must be approved by the Board. After the approved landscaping changes have been completed, the Association will assume the responsibility for its maintenance. Enclosed Patio Areas shall be exempt from this Section provided that

no material changes are made to the existing grade, and no materials are planted which will exceed six feet (6') in height when mature.

Section 12.

All exterior placement or installation of antennae, satellite dishes and other over-the-air reception devices within the Property shall be subject to the Regulations to the extent permitted by federal law, including the Telecommunications Act of 1996, as amended from time to time.

Section 13.

Damage to any portion of the Common Areas and improvements located thereon caused by an Owner or his family or Guests or Visitors shall be paid for by said Owner after due notice and hearing. The term "damage" shall not include ordinary wear and tear.

Section 14.

The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced on his Lot or within his Residence or the Common Areas. Neither shall an Owner suffer or permit any activities which constitute nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment or quality of the Properties.

Section 15.

No activities shall be conducted on the Properties and on improvements constructed on the Properties which might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Properties and no open fires shall be lighted or permitted on the Properties except in a contained barbecue unit while attended and in use for cooking purposes. Owners shall be liable for any and all damage caused by fire resulting from the negligent use of a barbecue or other outdoor cooking appliance.

Section 16.

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; no odor shall be emitted on any Lot which is noxious or offensive to others.

Section 17.

No parking or storage of any type of house trailer, camping trailer, boat trailer, running trailer, running gear, boat, truck exceeding a rated load capacity of 3/4 tons, self-contained motorized vehicle or accessories thereto, or other type of recreational vehicle or equipment shall be permitted on any Lot, parking area, street, or drive, unless

specifically designated by the Association therefore, unless contained in an enclosed garage. Such vehicles may be parked as a temporary expedience for loading, delivering, emergency, etc. (However, this restriction shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the Common Area.)

Section 18.

No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Property except in an enclosed garage. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self contained motorized recreational vehicle, or other similar vehicle, which has not driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which has an invalid registration or expired license plates. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges as incurred by the Association.

Section 19.

All parking areas lying within the Common Area shall be subject to rules and regulations as promulgated by the Board of Directors.

Section 20.

Any Owner who leases his Lot or the improvements constructed thereon shall be required to provide in his Lease that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and shall be for a minimum term of three (3) months. Within ten (10) days after entering into the Lease, the Owner shall give the Property Manager contact information in writing, including the mailing address, telephone number, and the names(s) of the lessee(s). The Owner is also required to notify the Property Manager, in writing within ten (10) days, of any changes in his/her mailing address.

**ARTICLE VIII
EASEMENTS**

Section 1 Common Area.

The easements over and across the Common Area shall be those shown or provided for upon the recorded Plat. and such other easements as may be established pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions.

Section 2 Encroachments.

Each Lot and the Common Area shall be subject to an easement for encroachment of Residences, downspouts, air conditioning equipment, chimneys and fences onto adjoining Lots or the Common Area or encroachment of the Common Area onto any Lot overhangs, as designed or constructed, by the Declarant; and for any encroachments occurring thereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments and overhangs for their maintenance, repair and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of the Lots agree that minor encroachments of parts of construction onto adjoining Lots or the Common Area due to the reconstruction shall be permitted and that a valid easement for such overhangs and the maintenance thereof shall exist.

Section 3 Utilities.

There is hereby created a blanket easement upon, across, over and under the Common Area for installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electricity, master television antenna system, or data transmission lines, if any. Further, there is hereby created an easement upon, across, over and under the Enclosed Patio Area of each Lot for the installation, repairing and maintaining common water, sewer and other utility lines. By virtue of this easement, it shall be expressly permissible for the providing utility companies or municipalities supplying such utility service or the Association to erect and maintain the necessary equipment on the Property and to affix, repair and maintain water and sewer pipes, gas, electric and telephone wires, circuits, conduits and meters.

Section 4 Easement for Association.

Each Lot and the Common Area shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for providing maintenance as provided for herein during regular business days after twenty four (24) hours' notice to the occupants of any affected Lots except where the occupants have no objections to earlier entry for repairs. In emergency situations earlier entry is authorized; however, the occupants of affected Lots shall be warned of impending emergency entry as early as is reasonably possible.

Section 5. Party Wall Easements.

Mutual reciprocal easements are hereby established, declared, and granted for all party walls between improvements constructed or to be constructed on Lots, which reciprocal easements shall be for mutual support, and shall be governed by this Declaration. Every deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(a) General Rules of Law to Apply

Each wall which is built as a part of the original construction or restoration of the Residences upon the Property and placed on the dividing line between the Lots shall constitute a party wall; further, each fence placed on the dividing line between Lots shall also constitute a party fence, and, to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of any party wall shall be borne in proportion to their use of the wall by the Owners on either side of the party wall.

(c) Destruction by Fire or Other Casualty.

If a party wall is destroyed or damaged by fire with no fault of any of the owners who use the wall in common, the owners shall contribute to the restoration of the wall in proportion to their shared usage.

(d) 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.

(e) Right to Contribute Runs with Land.

The right of any Owner to contribution from any other Owner shall be appurtenant to the land and shall pass to such Owner's successor in title

ARTICLE IX INSURANCE

Section 1. Association's Responsibility

The Board of Directors of the Association or its agent shall obtain and maintain in force the following policies of insurance, all containing an express waiver, if available, of any and all rights of subrogation against the Board, Members, employees, and their representatives.

(a) Casualty, Fire, and Extended Coverage Insurance and an all risks endorsement on the Common Area and its improvements and the Lots and their improvements including fixtures and service equipment initially installed by the Declarant but not including upgrades, furniture, furnishings, or other personal property supplied by or installed by unit Owners. Such insurance shall be in an amount equal to the full replacement value (exclusive of the land & other items normally excluded from coverage) and shall include vandalism, malicious mischief, windstorm and water damage, debris removal and cost of demolition. There shall be an annual re-evaluation to determine full replacement value for all properties. Each Lot owner shall be issued a certificate stating the coverages and amounts obtained by the Association for his property.

Fire and extended coverage insurance shall be carried in blanket policy form naming the Association, as insured, as attorney in fact for all Lot Owners. The policy or policies shall identify the interest of each Lot Owner (Owner's name and residence address and/or Lot number designation) and shall contain a standard non-contributory Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be cancelled without ten (10) days prior written notice to each Owner and each First Mortgagee.

(b) Broad form comprehensive Commercial General Liability Insurance covering all of the Common areas and insuring the Association in an amount not less than \$1,000,000, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all persons acting as agent covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and, if applicable, garage keeper's liability, and such other risks as shall be covered with respect to projects similar in construction, location, and use. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy of Workers' Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in forms now or hereafter required by law. Such policies shall be blanket policies covering the Common Areas.

(d) A policy of Volunteer coverage for those who volunteer their time for Association activities and projects.

(e) A policy of Fidelity Coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. All such fidelity bonds shall meet the following requirements: (1) name the Association as an obligee; (2) be written in an amount equal to at least the reserves plus three months worth of homeowners' assessment fees; and (3) obtain waivers of any defense based upon the exclusions of persons who serve without compensation from any definition of "employee" or similar expression.

(f) A policy of Directors' and Officers' Insurance in an amount reasonably necessary to protect the Directors and Officers of the Association.

(g) Other Insurance against such other risks, of similar or dissimilar nature, including flood insurance and boiler insurance, as the Association shall deem appropriate with respect to the Association's responsibilities and duties.

Section 2. Owners' Responsibility

Lot Owners shall have the sole and direct responsibility for:

(a) Personal Insurance coverage for improvements installed by other than the declarant including upgrades, window treatments, pictures, furniture, furnishings, and other items of personality or other property belonging to an owner, his Guest(s) and/or tenants.

(b) Public Liability within their residences.

Section 3. Deductibles

The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. The Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect the amount from said Owner(s) in the same manner as any assessment.

ARTICLE X
DAMAGE OR DESTRUCTION

Section 1 Destruction of Improvements on Lots.

(a) In the event of damage or destruction to a Residence due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Residence, shall be deposited into a bank account which requires, for withdrawals, the signature of an officer of the Association. The Association shall then promptly authorize the necessary repairs and reconstruction work, and the insurance proceeds will be applied by the Association to defray the cost thereof. "Repair and Reconstruction" of the Residences, as used herein, means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Residence having the same boundaries as before.

(b) If the insurance proceeds are insufficient to repair or reconstruct any damaged Residence, such damage or destruction shall be promptly repaired and reconstructed by the Association, using the insurance proceeds and the proceeds of a special assessment against the Owners of the damaged Residences. Any such assessments shall be equal to the amount by which the cost of reconstruction or repair of the Residence exceeds the sum of the insurance proceeds allocable to such Residence. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The special assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon and may be enforced and collected as provided for in Article V.

(c) Notwithstanding the above, the Owners and First Mortgagees of any or all of the destroyed or damaged Residences may agree that the destroyed or damaged Residences shall be forthwith demolished and all debris and rubble caused by such demolition be removed and the lot(s) regraded and landscaped to the satisfaction of the Board of Directors of the Association. The cost of such landscaping and demolition work shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds shall then be disbursed to such Owner and his First Mortgagee jointly and said Owner shall convey his Lot to the Association and the same shall become part of the Common Area.

Section 2. Damage to Common Area.

In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Areas, the Association shall present to the members a notice of a special assessment for approval by the membership in accordance with Article VI, Section 4. If such assessment is approved, the Association shall make such assessment and proceed to repair or reconstruct. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot.

Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon, and may be enforced and collected in the same manner as an assessment lien provided for in the Declaration.

If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by written consent of seventy-five (75%) of the Owners, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any.

ARTICLE XI CONDEMNATION

Section 1. Condemnation.

If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Common Areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(a) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

(b) Complete Taking.

(1) In the event that all of the Common Areas are taken or condemned, or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said proportion shall be made payable to the Owner and the First Mortgagee of his Lot jointly.

(2) On the basis of the principal set forth in the preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.

(c) Partial Taking.

In the event that less than the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless seventy-five percent (75%) of the Owners and the Eligible Holders of First Mortgages of each Lot, based upon one vote for each Mortgage, agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement

shall be used by the Association for the future maintenance of the Common Area and exterior maintenance of the Residences situated on each Lot.

(d) The Association shall give any Eligible Holder of a First Mortgage of a Lot a timely written notice of any condemnation proceedings or threat thereof

ARTICLE XII RIGHTS OF FIRST MORTGAGEES

Section 1 Notice.

Any Eligible Holder of a First Mortgage upon written request to the Association and payment of a reasonable fee to cover the costs thereof shall be entitled to timely written notice of

(a) Any proposed amendment of the Declaration effecting a change in:

(i) the boundaries of any Lot or the exclusive easement rights appertaining thereto;

(ii) the interests in the Common Area appertaining to any Lot or the liability for common expenses appertaining thereto;

(iii) the number of votes on the Association appertaining to any Lot; or

(iv) the purposes to which any Lot or the Common Areas are restricted.

(b) Any proposed termination of the Greenbrook Community;

(c) Any condemnation or loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held by such First Mortgagee.

Section 2 Approval.

Any consent of First Mortgagees required under the Declaration, Bylaws or Articles of Incorporation shall be solicited by sending a request for approval by Certified Mail, return receipt requested, to the address provided therefore to the Association by such First Mortgagee. Any failure to respond to such written request for approval within thirty (30) days after the request is mailed shall be deemed an implied approval.

**ARTICLE XIII
GENERAL PROVISIONS**

Section 1 Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association 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 2 Amendment.

Except as otherwise provided by the Act or this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes of the Association and the approval of at least 51% of the Eligible Holders of First Mortgages, based upon one vote per mortgage. Said votes may be obtained in any method allowed by the Declaration, Bylaws and Articles of Incorporation. The amendment or repeal shall be effective upon recording, in the office of the Clerk and Recorder of Arapahoe County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association and the Eligible Holders of First Mortgages.

Section 3 Term of the Declaration.

The provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall run with and bind the land in perpetuity.

Section 4 Termination.

This Declaration shall not be revoked nor shall the Association be dissolved unless approved in writing by Owners holding 80% or more of the total vote hereunder and by approval of 67% the Eligible Holders of First Mortgages based upon one vote per Mortgage. Such revocation shall be effective when duly recorded in the office of the Clerk and Recorder of Arapahoe County; provided, however that any amendment or revocation must comply with the Statutes of Colorado and the resolutions and Ordinances of Arapahoe County, Colorado, or of any governmental entity having jurisdiction over the Property.

Section 5 Attorney Fees.

In any proceeding at law or in equity against any person or persons violating or attempting to violate any provisions of this Declaration, the Bylaws or the Articles of Incorporation, either to restrain violation and/or recover damages, or to enforce any lien

or right created by this Declaration, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees. In any action wherein the Association is awarded costs and/or attorneys' fees against an Owner such costs and/or fees shall become an Assessment against said Owner's Lot.

Section 6 Repeal of the Act.

In the event that the Act is repealed during the term of this Declaration, the terms, provisions, conditions and restrictions contained in the Act, as it was last amended prior to its repeal shall remain in full force and effect for purposes of this Declaration, and the Association and the Owners shall retain all rights, obligations and powers conferred by the Act prior to its repeal.

Section 7 Interpretation.

The terms of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Common Interest Community and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 8 Singular Includes Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, the feminine and neuter.

Section 9 Captions.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 10 Conflict of Provisions.

In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of conflict between the provisions of the Articles of Incorporation and the Bylaws, the Articles shall control.

Section 11 Registration.

Each Owner and each First Mortgagee shall register his or her mailing address with the Association. Unless otherwise provided in the Act, the Declaration, Articles or Bylaws of the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner or upon a First Mortgagee shall be sent by Certified Mail, postage prepaid, addressed in the name of the

Owner at such registered mailing address.

All demands or other notices intended to be served upon the Board of the Association, or the Association itself shall be sent by Certified Mail, postage prepaid, to Westwind Management Group, Inc., 15150 E. Iliff Ave., Aurora, Colorado 80014, until such address is changed by a notice of address change mailed to each Owner by the Association.

Section 12 Challenge to this Amendment.

All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.

Section 13 Severability.

Invalidation of any one of the provisions, covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 14 Association as Attorney-In-Fact.

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by Insurance written in the name of the Association pursuant to Article VII upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

The undersigned, being the President and Secretary of Greenbrook Townhouse Association, Inc., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from Owners of at least seventy-five percent (75%) of the Lots within the Greenbrook Townhouse Community, as evidenced by written instruments filed with the records of the Association.

**GREENBROOK TOWNHOUSE ASSOCIATION, INC.,
A Colorado nonprofit corporation.**

BY: Barbara Kennedy
President

ATTEST BY: Susan Meade
Secretary

