

Declaration of Covenants and Restrictions and Information Brochure

**The Quincy Hill
Townhouse Association**



DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 16th day of June, A.D. 1981, by THE WRITER CORPORATION, hereinafter called the "Developer" or the "Declarant",

WITNESSETH:

Whereas, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

Whereas, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

Whereas, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created; and

Whereas, Developer has incorporated under the laws of the State of Colorado, as a non-profit corporation, THE QUINCY HILL TOWNHOUSE ASSOCIATION, for the purpose of exercising the functions aforesaid:

Now therefore, the Developer declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

SECTION 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(A) "Association" shall mean and refer to THE QUINCY HILL TOWNHOUSE ASSOCIATION, its successors and assigns.

(B) "The Properties" shall mean and refer to all such properties as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(C) "Common Properties" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Properties to be owned by the Association at the time of the conveyance of the first Lot is described as follows: THAT PORTION OF TRACT A, QUINCY HILL SUBDIVISION FILING NO. 1, City of Aurora, County of Arapahoe, State of Colorado, describing exhibit A of these covenants.

(D) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined.

(E) "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(F) "Member" shall mean and refer to every person or entity who holds membership in the Association.

(G) "Developer" shall mean and refer to The Writer Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from Developer for the purpose of development.

(H) "Architectural Control Committee" shall mean the Committee appointed by the Board of Directors of QUINCY HILL TOWNHOUSE ASSOCIATION.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION:

SECTION 1. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of ARAPAHOE, State of Colorado, and is more particularly described on Exhibit A which is attached hereto and made a part hereof, all of which real property shall hereinafter be referred to as "The Properties".

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

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

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

Class B. The Class B member shall be the Developer. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1, Article III, PROVIDED THAT the Class B Membership shall cease and become converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(A) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or

(B) January 1, 1989.

ARTICLE IV ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A Members and two thirds (2/3) of the Class B Members if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A Membership or two-thirds (2/3) of the Class B Membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat. Annexation under this section requires that consent of two-thirds (2/3) of each class of members.

SECTION 2. If within 8 years of the date of the incorporation of this Association, the Developer should develop additional lands within the area described on Exhibit B which is attached hereto and made a part hereof, such additional lands may be annexed to said properties without the assent of the Class A Members, and said lands on the Date of Annexation shall be deemed a part of the Properties, PROVIDED, HOWEVER, that the development of the additional lands described on Exhibit B shall be in accordance with a general plan submitted to the Federal Housing Administration or Veterans Administration with the processing papers of the first section. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration or the Veterans Administration prior to such development. If the Federal Housing Administration or Veterans Administration determine that such detail plans are not in accordance with the general plan on file, the development of the additional lands must have the assent of two-thirds of each class of Members.

ARTICLE V PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot;

SECTION 2. Title to Common Properties. The Developer agrees to convey title to the Common Properties to the Association free and clear of all liens and encumbrances prior to the conveyance of any Lot described on Attached Exhibit A.

SECTION 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(A) The right of the Association, as provided in its Certificate of Incorporation and By-Laws, to suspend the voting rights and right to use of recreational facilities by a Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations and

(B) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such

conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

(C) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties and the rights of such mortgagee in said common properties shall be subordinate to the rights of the Members hereunder.

SECTION 4. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Properties to his tenants, or contract purchasers who reside on the Property.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of Lien and Personal Obligation of Assessments and Special Assessments. Declarant for each Lot owned within the Properties shall be deemed to covenant and agree, and each Owner of any Lot, except those exempt under Section II of this Article, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association monthly assessments or charges and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, and said amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or special assessment is made. Each such assessment and special assessment, together with such interest thereon, cost of collection and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment or special assessment fell due. The personal obligation for delinquent assessment or special assessment shall not pass to his successors in title unless expressly assumed by them.

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

SECTION 3. Basis and Maximum of Annual Assessments. The Board of Directors shall fix the monthly assessment within the maximum amount and may raise or lower said monthly assessment amount within said maximum as they may deem necessary in their discretion. The initial monthly assessment is established at \$45.00 for each Lot.

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be \$80.00 per Lot.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be adjusted in conformance with the Consumer Price Index (CPI) published by the U.S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, unadjusted for seasonal variation. The maximum monthly assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first

sentence of this Section, (b) multiplying that amount by the published CPI number for the fourth month prior to the beginning of the subject year and (c) dividing that resultant by the published CPI number for the fourth month prior to the month in which this declaration was signed by the Declarant.

SECTION 4. Change in Basis and Maximum of Annual Assessments. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment amount specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

SECTION 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, PROVIDED, THAT, any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

SECTION 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots, PROVIDED THAT the rate set for the Lots owned by Developer including Show Homes/Model Areas, shall be fixed at ONE-THIRD (1/3) the assessment rate for the other Lots, unless occupied as a residence.

SECTION 7. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5 and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 8. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Properties. The Board of Directors shall fix the amount of the monthly assessment at least 30 days in advance of said commencement date and any change in the monthly assessment must be fixed by the Board of Directors at least 30 days in advance of the commencement of the changed assessment amount. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of the facts stated therein.

SECTION 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 8 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within 30 days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

SECTION 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and to any executory land sales contract owned by the Veterans Administration or its assigns, wherein the named seller is the Administrator of Veterans Affairs, whether such contract is recorded or not. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the Laws of the State of Colorado. Sale or transfer of any Lot shall not affect the assessment liens. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 11. Exempt Property. The following property subject to the Declaration shall be exempt from the assessments, charges and liens created herein:

(A) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(B) All Common Properties as defined in Article I, Section I, hereof.

SECTION 12. Special Water Charges. Certain Lots within the Properties are served with domestic water, under a master meter, and as a result thereof, the use of said water is not individually metered nor billed to the Lot by the governmental entity supplying said water, but is billed, pursuant to a reading of the master meter, to the Association. Owners of all of said Lots shall be individually charged by the Association a monthly pro rata portion of the total domestic water used by Owners of said Lots plus 3% for collection and administration. All monies received by the Association for this water charge shall be deposited in a separate Association Account to be held and disbursed only for payment of water billings to the appropriate governmental entity.

SECTION 13. Special Maintenance Charges. Certain Lots within the properties have ingress and egress access on streets that are privately owned by the Association and are not public streets. Maintenance of these streets is the obligation of the Association; however, the

Owners of said Lots shall be charged by the Association a quarterly charge not exceeding \$30.00 per quarter for the maintenance of said streets. All monies received by the Association for this maintenance charge shall be deposited in a separate Association Account to be held and disbursed only for the maintenance of said private streets.

SECTION 14. Creation of Lien and Personal Obligation for Charges. Each Owner of any Lot mentioned in Sections 12 and 13 above, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association all charges set forth in Sections 12 and 13 above, together with such interest thereon and costs of collection thereof as hereinafter provided, and said amounts shall be a charge on the land and shall be a continuing lien upon the property against which each of said charges is made. Each said charge, together with interest thereon, cost of collection and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the said charges fell due. The personal obligation for delinquent charges shall not pass to his successors in title unless expressly assumed by them.

If the said charges are not paid within 10 days from the statement date, then such charge shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such charges, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the said charges are not paid within 10 days after the statement date, the charges shall bear interest from the statement date at the rate of eight per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of said charges the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

No owner may waive or otherwise escape liability for the charges provided in said Sections 12 and 13 by abandonment of his Lot.

SECTION 15. Subordination of the Lien to Mortgages. The lien of the charges provided for in Section 14 above shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the liens for said charges. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such charges as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any such charges thereafter becoming due or from the lien thereof.

SECTION 16. Exempt Property. All Lots owned by the Developer shall be exempt from the charges set forth in Sections 12 and 13 above and the liens created by Section 14.

SECTION 17. Special Maintenance Charge Increases. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the quarterly dollar limit of the special maintenance charge provided for in Section 13 above shall be adjusted in conformance with the Consumer Price Index (CPI) published by the U.S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, unadjusted for seasonal variation. The maximum charge for any year shall be the amount determined by (A) Taking the dollar amount

specified in Section 13 above, (B) Multiplying that amount by the published CPI number for the fourth month prior to the beginning of the subject year and (C) Dividing that resultant by the published CPI number for the fourth month prior to the month in which this declaration was signed by the Declarant.

ARTICLE VII PARTY WALLS

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

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

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

SECTION 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

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

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

SECTION 1. Review by Committee. No structure, whether residence, accessory building, tennis court, swimming pool, antennae (on a structure or on a Lot), flagpoles, fences, walls, exterior lighting, or other improvements, shall be constructed or maintained upon any Lot and no alteration or repainting to the exterior of a structure, with other than the original house paint colors, shall be made and no landscaping performed unless complete plans, specifications, and Lot plans therefore, showing the exterior design, height, building material and color scheme thereof, including paint manufacture and paint chip, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee, and a copy of such plans, specifications, and Lot plans as finally approved deposited with the Architectural Control Committee. When furnished, only those house numbers and mail boxes which are installed by the Developer shall be used and maintained in the properties. The Architectural

Control Committee shall be composed of three or more representatives appointed by the Board of Directors of the Association.

SECTION 2. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the Properties conform to and harmonize with existing surroundings and structures.

SECTION 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with.

SECTION 4. A Majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

SECTION 5. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

SECTION 6. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any owner within the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

ARTICLE IX EXTERIOR MAINTENANCE

SECTION 1. The Structures and grounds of each Lot shall be maintained in a neat and attractive manner. Upon the Owner's failure so to do the Architectural Control Committee may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, have the grass, weeds, and vegetation cut when, and as often as, the same is necessary in its judgment, and have dead trees, shrubs and plants removed from any Lot.

SECTION 2. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance or to fail to landscape and maintain the grounds of any Lot in a neat and attractive manner, the Architectural Control Committee may, at its option, after giving Owner six (6) months' written notice, make repairs, improve the appearance and landscape in a reasonable and workmanlike manner.

SECTION 3. Assessment of Cost. The cost of such maintenance referred to in Sections 1 and 2 of this Article shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the monthly maintenance assessment or charge to which such Lot is subject under Article VI hereof.

SECTION 4. Access at Reasonable Hours. For the purpose solely of performing the maintenance referred to in Sections 1 and 2 of this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any business day.

ARTICLE X COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon Lot and Common Properties for the benefit of each other Lot and Common Properties, and may be introduced by any Owner of Lot or of the Common Properties.