

but if the Association decides that such sums are not required for working capital, shall be placed in the general revenues. Furthermore, such sums shall not relieve an Owner from making the regular payment of assessments as the same, become due.

(k) Notice to Mortgagee of Default. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within 60 days.

(l) Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots shall have the right, jointly or singularly, to pay taxes or other charges or assessments which are in default and which may become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any First. Mortgagees making any such payment shall be owed immediate reimbursement therefor from the Association.

(m) Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (i) all Property dedicated to and accepted by local public authority: and (ii) the Common Area. .

(n) Management Agreements.

(i) Because of the minimal functions. contemplated for the Association, it is not anticipated that the Association will need to retain professional management services. However, the Board of Directors of the Association shall have the right to enter into such management agreements if they determine it is in the best interest of the Association and Owners to do so. Each Owner of a Lot shall be bound by the terms and conditions of all such management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the management agreement may be canceled by an affirmative vote of 60% of the votes of each class of the Members of the Association. . Any and all management agreements shall be made with a responsible party or parties having experience adequate for management of the duties of the Association. Any management agreement providing for the services of Declarant or the builder of the project may not exceed three years and must provide that it can be terminated by the Association without cause and without payment of a termination fee upon 90 days' written notice.

(ii) Each and every management agreement made between the Association and a manager, or managing agent during the period when Declarant or other developer controls the Association may be terminated no later than 30 days after the termination' of control by Declarant or other developer of the Association. In the event the contract is not so terminated, it shall become binding upon the Association for the duration of its term. The provisions of this section (ii) shall be contained, verbatim, in each and every of such management agreement.

Section 604. Maintenance.

(a) Association Maintenance. The Association will water, mow, paint, repair, keep clean and replace all the Maintenance Area to keep it in first-class condition so as to present a neat, tidy and attractive appearance for the Subdivision.

(b) Wilful or Negligent Damage. If the need for maintenance or repair described in section (a) of this Article is caused through the wilful or negligent acts or omissions of any Owner, his family, guests or invitees, the cost of such maintenance shall be added to and become part 'of the assessment to which the Lot of such Owner is subject. No Owner shall, in whole or in part, change any Maintenance' Area adjacent to his Lot by the addition or removal of any items thereon without the prior written approval of the Approving Authority.

(c) Access at Reasonable Hours. For the purpose of performing the maintenance referred to in section (a) of this Article, the board of directors of 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 day, and such entry shall not be deemed a trespass. In performing repairs or maintenance authorized under this Article, the Association will exercise due care, but shall not be liable for any loss, cost or damage caused by its action, except on account of its gross negligence or wilful misconduct.

ARTICLE VII

GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 701. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

(a) Accessory Building. Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities, separate guest houses without kitchens, separate servants' quarters without kitchens and other buildings customarily used in connection with the single family residence.

(b) Association. Windjammer Homeowner's Association, a Colorado nonprofit corporation, its successors and assigns.

(c) Building Site. A Lot as established by the recorded plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 6,000 square feet.

(d) City. The City of Colorado Springs.

(e) Common Area. Any real property designated as such on a properly recorded plat of any portion of the Subdivision. The Common Area will consist of the area within turning circles and certain other areas of land at entrances to the Subdivision or at ends of cul-de-sacs as shown on recorded plats. The total Common Area shall not exceed 100,000 square feet. Indication of any Common Area on a properly recorded plat shall automatically convey fee title to that Common Area to the Association. Upon written request of the Veteran's Administration, Federal Housing Administration, or other similar entity, Declarant will also execute and record a warranty deed conveying such Common Area to the Association free and clear of all liens and encumbrances. All Owners shall have a nonexclusive easement for use and enjoyment of the Common Area subject to the restrictions contained in these Covenants and such reasonable rules and regulations as the Association may adopt.

(f) These Covenants. This Declaration and the provisions contained in it.

(g) First Mortgage. A Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute.

(h) Lot. Each area designated as a Lot in any recorded plat of the Subdivision.

(i) Lot Lines. Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time. In the absence of such a definition, a front Lot line is each boundary line (whether one or more) between the Lot and any public street., A side Lot line is any boundary line which meets and forms an 'angle with a public street except that for a corner Lot with two front Lot lines, the side Lot line is the boundary which forms an angle with the, street which affords the principal access to the Lot.

(j) Maintenance Area. All Common Area, the standard fences referred to in section 112 above, and the landscaping adjacent to Restricted Lots referred to in section 113 above.

(k) Mortgage. Mortgage shall mean any mortgage, deed of trust or other document pledging a Lot or an interest therein as security for payment of a debt or an executory land sales contract wherein the Administrator of Veterans Affairs is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not: or any other recorded document pledging a Lot as security for the payment of a debt or obligation.

(l) Owner. Person having fee simple legal title to a Lot.. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

(m) Structure. Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance, including by way of illustration and not limitation, any , dwelling, building, garage, porch, shed" greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or -which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(n) The Subdivision. The area subdivided as Windjammer Subdivision Filing No.1 according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado, together with any additional land subjected ,to ,these Covenants pursuant to paragraph 712 below.

(o) Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or 'other designations and all in between.

(p) Gender and Number. . Whenever the context permits, Owner or Owners shall be deemed to refer equally to 'persons' of both sexes and to corporations, singular to include plural and plural to include singular.

(q) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least 10 days prior to the action required by the notice.

Section 702. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 703. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intentment or meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation, involving Declarant shall not be subject to this section 703.

Section 704. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 705. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference _o any other provisions dealing with the same subject matter or imposing similar Or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 706. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defence in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 707. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Association, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Association or the Approving Authority, or any combination of these. Until seven years after these Covenants were filed of record, or when Declarant owns no property within the Subdivision, whichever is sooner, Declarant may also enforce these 'Covenants in any of the manners permitted above. All costs, including reasonable attorneys' fees, incurred by the Association or the Approving Authority in connection with any successful enforcement _proceeding' initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to, post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of anyone or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 708. Duration of Restrictions. Unless sooner terminated as provided in section 709, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2011 and shall be automatically renewed for successive periods of 10 years unless before the year 2011 or before the end of any 10-year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in the Subdivision.

Section 709. Amendment and Extensions. From time to time any one section of these Covenants (except section 109) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the holders of at least two-thirds of the votes of each class of Members of the Association and filed for record _with the Clerk and Recorder of El Paso County.,

Section 710. Termination. All sections of these Covenants (except section 109) may be terminated at any time, and from time to time any two or more sections of these Covenants (except section 109) may be amended or two or more new sections may be added to these Covenants b_ an instrument signed and acknowledged by the holders of at least three-fourths of the votes of each class of Members of the Association and filed for record with the Clerk and Recorder of El Paso County. Any such termination or amendment which has the effect of terminating the use or maintenance of the Maintenance Area which is specified hereunder shall require the prior approval of the Veteran's Administration or the Federal Housing Administration.

Section 711. Partial Amendments. These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant and 100% of the then Owners of such portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendments contains at least 20 contiguous lots; and
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonably determines that the amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots.

Section 712. Additional Areas. From time to time, until December 31, 1985, Declarant may include additional areas within the real estate subject to these Covenants so long as the Veteran's Administration or Federal Housing Administration approves such addition. Such addition shall be effected by filing with the Clerk and Recorder of El Paso County, Colorado, a supplemental declaration, 'together with a map and legal description designating the additional area to be included. All areas so added shall be subject to all these Covenants, and any references to the Subdivision in these Covenants shall automatically include such additional areas upon recording the supplemental declaration. Declarant may also impose additional restrictions on areas so added. All areas so added shall be within the land bounded by Union Boulevard, Lexington Drive and a major arterial bordering the north of the Subdivision as shown by City-approved master plans, and the total number of residential building sites in the land subject to these Covenants shall not exceed 300. All Lots in such additional areas will be of approximately equal size and style to those Lots comprising the initial Subdivision.

Section 713. Master Homeowner's Association. A master homeowner's association (the "Master Association") may be created for all or portions of the Briargate area in the future to encourage a harmonious overall living and working environment. If an Association is formed, Declarant shall, until December 31, 1985, have the right by recorded document to give to the Master Association the right to enforce these Covenants in the same manner as the Association and the Approving Authority, and to require that the Master Association approve in writing all amendments to the Covenants. However, Declarant may exercise this right only if:

(a) the United States Veteran's Administration has approved the Association for purposes of making federally-insured loans on property subject to the Association's control and

(b) the Master Association has no power to modify or amend these Covenants, impose additional restrictions on the Subdivision, or assess Lots in the Subdivision in any manner for payment of fees or other monies (other than as such assessments may be required by these Covenants).

Owners of Lots platted and sold prior to formation of the Master Association may be offered the opportunity to join the Master Association, but will not be required to do so.

Section 714. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 715. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 716. Notices. Any writing described in section 715, including but not limited to any communication from the Approving Authority or the Association to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the Lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Approving Authority has a record.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 3rd day of June, 1982.



By *Louis W. Wemmer*
 Louis W. Wemmer,
 Assistant Secretary
 (Corporate Seal)

DECLARANT:

THE BRIARGATE JOINT VENTURE

By: Lew Christensen & Associates,
 Inc., its agent

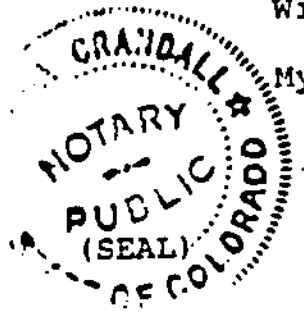
By *C. Lewis Christensen*
 C. Lewis Christensen, President

STATE OF COLORADO)
) ss.
 COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this
3rd day of June, 1982 by C. Lewis Christensen as President
 and Louis W. Wemmer as Assistant Secretary of Lew Christensen &
 Associates, Inc., agent for The Briargate Joint Venture, Declarant.

Witness my and official seal.

My commission expires 10-29-83



Thelma Crandall
 Notary Public
 Address: 2210 Lelaray Street
 Colorado Springs, CO 80909

WINDJAMMER SUBDIVISION

NOTICE OF ADDITIONAL AREA

Pursuant to section 712 of a Declaration of Conditions, Restrictions and Easements for Windjammer recorded in Book 3582 at Page 495, records of El Paso County, Colorado (the "Covenants"), that certain property known as Windjammer at Briargate Filing No. 2, according to the plat thereof recorded in El Paso County, Colorado, is hereby subjected to the Covenants. The parcels shown as Tract A and Tract B on the plat of Windjammer at Briargate Filing No. 2 are hereby conveyed to Windjammer Homeowner's Association as Common Area and the undersigned warrants title to the same, subject only to real property taxes for 1982, the provisions of the Covenants and any matters shown on the recorded plat thereof.

Dated this 12th day of July, 1982.



THE BRIARGATE JOINT VENTURE

By: J. V. R. C., Inc.,
managing venturer

By: John Venezia
President

By: David W. Kemmer
Its ASSISTANT SECRETARY

BOOK 3587 PAGE 639

STATE OF COLORADO)

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 12th day of July, 1982 by John Venezia as President and Louis W. Williams as Assistant Secretary, respectively, of J V R C, Inc., managing venturer of The Eriar-gate Joint Venture.

Witness my hand and official seal.

My commission expires 10-29-83



Sheila Cranball
Notary Public
Address: 2210 Lelaray Street
Colorado Springs, CO 80909

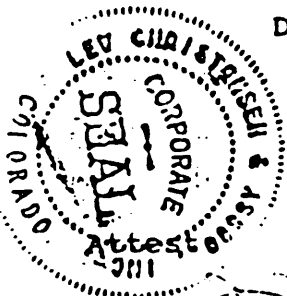
ARDIS W. SCHMITT
El Paso County Clerk & Recorder

WINDJAMMER SUBDIVISION
NOTICE OF RESTRICTED LOTS

Pursuant to a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer recorded in Book 3582 at Page 495, records of El Paso County, Colorado (the "Covenants"), notice is hereby given that the following are "Restricted Lots" as that term is defined in section 111(a) of the Covenants.

<u>Filing No.</u>	<u>Block</u>	<u>Lots</u>
Windjammer No. 1	1 2 3	1 1 through 11 and 14 1
Windjammer No. 2	2 3	4, 5 and 26 6, 7 and 14

Dated this 12th day of July, 1982.



THE BRIAPGATE JOINT VENTURE

By: Lew Christensen & Associates,
Inc., its agent

By Louis W. Wemmer
Louis W. Wemmer,
Assistant Secretary
(Corporate Seal)

By C. Lewis Christensen
C. Lewis Christensen, President

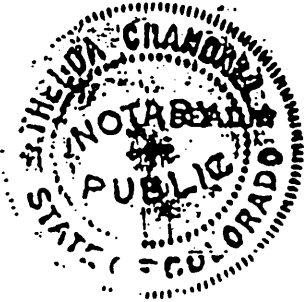
STATE OF COLORADO)

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 12th day of July, 1982 by C. Lewis Christensen as President and Louis W. Wemmer as Assistant Secretary, respectively, of Lew Christensen & Associates, Inc., agent for The Briargate Joint Venture.

Witness my hand and official seal.

My commission expires 10-28-83



Sheila Cranball
Notary Public
Address: 2210 Lelaray Street
Colorado Springs, CO 80909

ADDITION TO COVENANTS

20 LOTS IN WINDJAMMER AT BRIARGATE FILING NO. 3

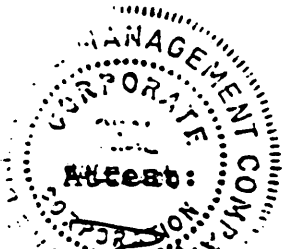
On July 2, 1982, the undersigned ("Declarant") recorded a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer in Book 3582, Page 495, records of El Paso County, Colorado. This declaration is called the "Covenants". Pursuant to section 712 of the Covenants, all that real property known as Lots 22 through 28, inclusive, Block 2, and Lots 3 through 15, inclusive, Block 3; all in Windjammer at Briargate Filing No. 3, according to the plat thereof recorded in El Paso County, Colorado is hereby subjected to the Covenants. Section 111(a) of the Covenants shall read as follows for these twenty (20) lots:

Section 111(a). Restricted Lots. Access to and from Union Boulevard is hereby denied to the Owners of the following Lots in Windjammer at Briargate Filing No. 3:

<u>Lot</u>	<u>Block</u>
3 through 10	3
12 and 13	3

All persons claiming by, through or under them and the owners of these lots are required to and shall arrange and maintain their drives, dwellings and other structures so that ingress and egress to their lots is exclusively from Navigation Drive or Schooner Court.

Dated this 24th day of January, 1983.



THE BRIARGATE JOINT VENTURE

By: The Briargate Management Co.

Attest:
By Rebecca A. Rhodes
Rebecca A. Rhodes

By C. Lewis Christensen
C. Lewis Christensen

Its Assistant Secretary

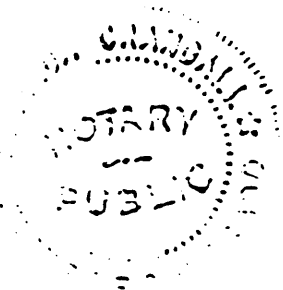
Its Vice President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing Addition to Covenants was acknowledged before me this 24th day of January, 1983 by C. Lewis Christensen as Vice President and Rebecca A. Rhodes as Assistant Secretary of The Briargate Management Company, agent for the Briargate Joint Venture.

Witness my hand and official seal.

My commission expires 10-29-83.



Thilda Crandall
Notary Public
Address 7710 North Union Blvd.
Colorado Springs, CO 80918

ADDITION TO COVENANTS
58 LOTS IN WINDJAMMER AT BRIARGATE FILING NO. 3

On July 2, 1982, the undersigned ("Declarant") recorded a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate Filing No. 1 in Book 3582, Page 495, records of El Paso County, Colorado. This declaration is called the "Covenants". Pursuant to section 612 of the Covenants, the following 58 lots in Windjammer at Briargate Filing No. 3, according to the plat thereof recorded in El Paso County, Colorado is hereby subject to the Covenants:

Lots 1 through 35, inclusive, Block 1;
Lots 1 through 21, inclusive, Block 2; and
Lots 1 and 2, Block 3.

The following statement shall be added to Section 203,

Dwelling Area Requirements:

No dwelling shall be permitted to be constructed on any lot which will sell for less than \$110,000 the first time it is sold after completion of the home thereon.

Section 205, Roofs, shall read: All roof areas shall be of wood shakes or tile, or shall be of a type of material approved by the Approving Authority. No composition shingles shall be allowed.

Dated this 19th day of January, 1983.

THE BRIARGATE JOINT VENTURE

By: The Briargate Management
Company

By: C. Lewis Christensen
Its Vice President

By: Rebecca A. Rhodes
Its: Assistant Secretary

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing Addition to Covenants was acknowledged before me this 19th day of January, 1983, by C. Lewis Christensen as Vice President and Rebecca A. Rhodes as Assistant Secretary of Briargate Management Company, agent for the Briargate Joint Venture.

Witness my hand and official seal.

My commission expires 10-29-83

Thelma Crandall
Notary Public
Address: 7710 North Union Blvd.
Colorado Springs, CO 80918

ADDITION TO COVENANTS
WINDJAMMER AT BRIARGATE FILING NO. 4

On July 2, 1982, the undersigned ("Declarant") recorded a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate Filing No. 1 in Book 3582, Page 495, records of El Paso County, Colorado. This declaration is called the "Covenants". Pursuant to section 612 of the Covenants, all that real property known as Windjammer at Briargate Filing No. 4, according to the plat thereof recorded in El Paso County, Colorado is hereby subject to the Covenants.

The following statement shall be added to Section 203,

Dwelling Area Requirements:

No dwelling shall be permitted to be constructed on any lot which will sell for less than \$110,000 the first time it is sold after completion of the home thereon.

Section 205, Roofs, shall read: All roof areas shall be of wood shakes or tile, or shall be of a type of material approved by the Approving Authority. No composition shingles shall be allowed.

Section 111 of the Covenants shall read as follows for Windjammer at Briargate Filing #4:

Section 111. No Access to Lexington Drive, Research Parkway, or Union Boulevard. Access to and from Lexington Drive, Research Parkway and Union Boulevard is hereby denied to the Owners of Lots 1 through 31, inclusive, Block 1; and Lot 1, Block 4; and all persons claiming by, through or under them and the Owners of these Lots are required to and shall arrange and maintain their drives,

AMENDMENT TO COVENANTS
WINDJAMMER AT BRIARGATE FILING NO. 4

On July 2, 1982, the undersigned ("Declarant"), recorded a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate Filing No. 1 in Book 3582, Page 495, records of El Paso County, Colorado. On June 13, 1983, Declarant recorded an Addition to Covenants for Windjammer at Briargate Filing No. 4, in Book 3738, Page 11.

Pursuant to Section 609 of the Covenants, Declarant, as sole owner of the Lots in Windjammer at Briargate Filing No. 4, hereby amends Section 112 of the Covenants to read in its entirety:

Section 112. Installation of Standard Fence.

On each of the Restricted Lots, Declarant reserves the right to construct a standard fence and to install and landscape the public planting area between the fence and the street. In order to provide adequate privacy and still maintain sight distances at intersections, this fence will be installed on the boundaries or within 20 feet of the property line of Restricted Lots which are adjacent to the arterial streets referred to in Section 111, except that on such Lots bordering the intersection of two or more public streets, the fence will angle into the Lot at approximately 45 degrees between points on the Lot's boundary no more than 25 feet along each side from the corner of the Lot forming the intersection. Declarant also reserves the right to extend this standard fence along the side street boundary of any such corner Lot to the point of the side yard setback. There

AMENDMENT TO COVENANTS
El Paso County Clerk & Recorder

AMENDMENT TO COVENANTS
WINDJAMMER AT BRIARGATE FILING NO. 4

On July 2, 1982, the undersigned ("Declarant"), recorded a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate Filing No. 1 in Book 3582, Page 495, records of El Paso County, Colorado. On June 13, 1983, Declarant recorded an Addition to Covenants for Windjammer at Briargate Filing No. 4, in Book 3738, Page 11.

Pursuant to Section 609 of the Covenants, Declarant, as owner of the Lots in Windjammer at Briargate Filing No. 4, hereby amends Section 203 of the Covenants to read in its entirety:

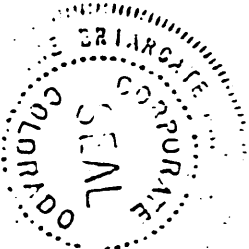
Section 203. Dwelling Area Requirements. No dwelling shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable floor area of less than 1,000 square feet if a single story dwelling or less than 1,400 square feet if a multilevel dwelling.

Dated this 23rd day of January, 1984.

DECLARANT:

THE BRIARGATE JOINT VENTURE

By: The Briargate Management
Company, agent



Attest:

By: Rebecca A. Rhodes
Rebecca A. Rhodes
Assistant Secretary

By: C. Lewis Christensen
C. Lewis Christensen
President

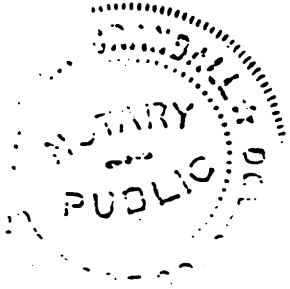
STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 23rd day of January, 1984 by C. Lewis Christensen as

President and Rebecca A. Rhodes as Assistant Secretary of the Briargate Management Company, agent for the Briargate Joint Venture.

Witness my hand and official seal.

My commission expires 10-29-87



Thilda Cranball
Notary Public
Address: 7710 North Union Blvd.
Colorado Springs, CO 80918

CORRECTION AND
SECOND AMENDMENT TO COVENANTS
WINDJAMMER AT BRIARGATE FILING NO. 4

On June 3, 1982, The Briargate Joint Venture (hereinafter referred to as "Declarant") executed a Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer, which was recorded in Book 3582 at Page 495 of the records of El Paso County, Colorado (the "Covenants"). Additional real property platted as Windjammer at Briargate Filing No. 4 was made subject to the Covenants by an Addition to the Covenants recorded June 13, 1983 in Book 3738 at Page 011 (the "Addition") and subsequently amended by Amendment to Covenants for Windjammer at Briargate Filing No. 4, recorded January 26, 1985 in Book 3828 at Page 1055 (the "Amendment"), of the records of El Paso County, Colorado. (The Covenants, Addition and Amendment are collectively referred to as the "Covenants").

Paragraph one of the Addition refers to section 612 of the Covenants, which does not exist. Declarant hereby corrects the Addition to refer to section 712 of the Covenants, which provides for the additional real estate to be made subject to the Covenants.

Paragraph two of the Amendment refers to section 609 of the Covenants, which also does not exist. Declarant hereby corrects the Amendment to refer to section 709 of the Covenants, which provides for the amendment of the Covenants.

Declarant is the owner of at least two-thirds of the lots in Windjammer at Briargate Filing No. 4 and, pursuant to section 709 of the Covenants, hereby adds section 114 as follows:

Section 114. Encroachment of Standard Fence.

Notwithstanding anything to the contrary provided in section 112 and section 113 above, Declarant has installed the standard fence along the boundaries of the Restricted Lots referred to in section 111. The standard fence, however, encroaches onto some of the Restricted Lots. Declarant hereby reserves an easement on, over and across the westerly twenty feet (20') of Lots 1 through 10, inclusive, and Lots 27 and 28, all in Block 1; the easterly fifteen feet (15') of Lots 29 and 30 in Block 1; and the easterly twenty-five feet (25') of Lot 31 in Block 1 and Lot 1 in Block 4, for the purpose of maintaining the standard fence and landscaping between the standard fence and the adjacent street in accordance with section 113. Declarant may convey such easement to the Association or any other party.

Dated this 9th day of August, 1985.

THE BRIARGATE JOINT VENTURE

By: The Briargate Management
Company, as managing agent

Attest:

By: Thelda Fillerup
Thelda Fillerup
Assistant Secretary

By: C. Lewis Christensen
C. Lewis Christensen
President

[CORPORATE SEAL]

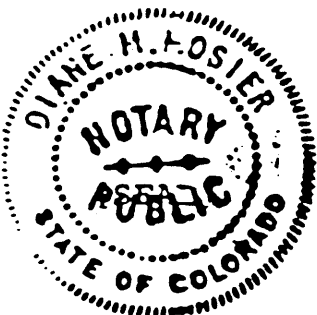
STATE OF COLORADO)
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 9th day of August, 1985 by C. Lewis Christensen as President and by Thelda Fillerup as Assistant Secretary of The Briargate Management Company, managing agent of The Briargate Joint Venture.

Witness my hand and official seal.

My commission expires 2/11/89

Diane M. Osier
Notary Public



AMENDMENT TO COVENANTS
FOR WINDJAMMER HOMEOWNERS ASSOCIATION

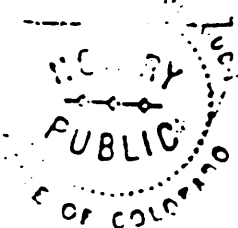
Pursuant to Section 603 of the Declarations of Conditions, Covenants, Restrictions, and Easements for Windjammer ("Covenants"), recorded in the office of the Clerk and Recorder of El Paso County, Colorado, on July 2, 1982, in Book 3582 at Page 504, the Windjammer Homeowners Association hereby amends Section 603 B to read in its entirety:

SECTION 603 B Purpose of Assessments. The assessment levied by the Association shall be used exclusively to maintain and replace or repair, as necessary, the Maintenance Area; provide for uniform trash pickup; and pay for all expenses or charges reasonably determined by the Association's board of directors to be necessary or desirable in carrying out these purposes. The Association may also levy assessments for any other purposes provided at least two-thirds of each class of Members consents to such additional assessments.

Signed Linda Ramstine
Linda Ramstine, President
Windjammer Homeowners Association

STATE OF COLORADO)
COUNTY OF EL PASO) ss

5th The foregoing Amendment to Covenants was acknowledged before me this day of August, 1993 by Linda Ramstine as President of the Windjammer Homeowners Association. Linda Ramstine declares to the undersigned authority that she is President of the Windjammer Homeowners Association.



Don J. McLaughlin
Notary Public

My commission expires: 29 Dec 96

AMENDMENT TO COVENANTS
EL PASO COUNTY CLERK & RECORDERAMENDMENT TO COVENANTS
FOR WINDJAMMER HOMEOWNERS ASSOCIATION

Pursuant to Section 603 of the Declarations of Conditions, Covenants, Restrictions, and Easements for Windjammer ("Covenants"), recorded in the office of the Clerk and Recorder of El Paso County, Colorado, on July 2, 1982, in Book 3582 at Page 506, the Windjammer Homeowners Association hereby amends Section 603 H to read in its entirety:

SECTION 603 H Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of 12% per annum. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot involved. Any assessment not paid within 60 days after the due date will result in suspension of trash collection until assessment and any late fees are paid in full. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, non-use of uniform trash pickup, or abandonment of his Lot.

Signed Linda Ramstine
Linda Ramstine, President
Windjammer Homeowners Association

STATE OF COLORADO)
COUNTY OF EL PASO) ss

The foregoing Amendment to Covenants was acknowledged before me this 5th day of August, 1993 by Linda Ramstine as President of the Windjammer Homeowners Association. Linda Ramstine declares to the undersigned authority that she is President of the Windjammer Homeowners Association.



[Signature]
Notary Public

My commission expires: 29 Dec 96

ARIZONA COUNTY
EL PASO COUNTY CLERK & RECORDERADDITION TO COVENANTS
FOR WINDJAMMER HOMEOWNERS ASSOCIATION

On July 2, 1982, the Declaration of Conditions, Covenants, Restrictions, and Easements for Windjammer ("Covenants") was recorded in the office of the Clerk and Recorder of El Paso County, Colorado, in Book 3582 at Page 495. The Windjammer Homeowners Association hereby adds the following Section 605 to read in its entirety:

SECTION 605 Trash Pickup. The Association will provide for uniform trash pickup throughout the Windjammer Subdivision. The Association board of directors will select a single contractor through a bid process to perform this service.

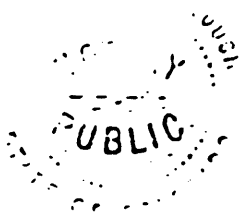
Signed Linda Ramstine
Linda Ramstine, President
Windjammer Homeowners Association

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

5th The foregoing Amendment to Covenants was acknowledged before me this day of August, 1993 by Linda Ramstine as President of the Windjammer Homeowners Association. Linda Ramstine declares to the undersigned authority that she is President of the Windjammer Homeowners Association.

Don Gonschubert
Notary Public

My commission expires: 29 Dec 96



01615717

1987 SEP -3 PM 2: 50

ARDIS W. SCHMITT
El Paso County Clerk & Recorder

BK 5417
Pg 711

INTERPRETATION OF THE COVENANTS
OF THE WINDJAMMER HOMEOWNERS ASSOCIATION

Pursuant to Section 703 of the Declarations of Conditions, Covenants, Restrictions and Easements for Windjammer ("Covenants"), recorded in the office of the Clerk and Recorder of El Paso County, Colorado, on July 2, 1982, in Book 3582 at Page 495, the Approving Authority has determined that the following interpretation applies to Sections 101, 302, 304, 306, 308, 313, 314, 315, and 317 of the Covenants:

It is not the intent of this section to place undue hardship on individual homeowners or to require strict literal enforcement of this section for unique or unforeseen circumstances. Permission for easing strict literal enforcement of this section may be granted by the Approving Authority providing the intent of the Covenants is maintained. Each permission must assure that the effects on neighboring sites are those that can reasonably be expected in a quality urban residential area from considerate neighbors, and that the desires of the majority of the homeowners are respected. A record of all permissions granted under this interpretation shall be maintained with the Approving Authority.

THE WINDJAMMER HOMEOWNERS ASSOCIATION
APPROVING AUTHORITY

Signed



ROGER SMITH, Chairman
Approving Authority of the
Windjammer Homeowners Association

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

SUBSCRIBED AND SWORN to before me this 28th day of August, 1987, by ROGER M. SMITH, Chairman of the Approving Authority of the Windjammer Homeowners Association.

Witness my hand and official seal.

My Commission Expires: MARCH 27, 1991



Notary Public

CERTIFICATE

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

JEFFREY A. GAUCH, being first duly sworn, declares to the undersigned authority that he is Secretary of The Windjammer Homeowners Association. That ROGER M. SMITH is Chairman of the Approving Authority of The Windjammer Homeowners Association and has been duly appointed to that position pursuant to Section 501 of the Covenants of the Association and is currently serving that position.

DATED in Colorado Springs, Colorado, this 31st day of August, 1987.

(CORPORATE
SEAL)



JEFFREY A. GAUCH, Secretary
WINDJAMMER HOMEOWNERS ASSOCIATION

SUBSCRIBED AND SWORN to before me this 31st day of August, 1987, by JEFFREY A. GAUCH, Secretary of THE WINDJAMMER HOMEOWNERS ASSOCIATION.



Notary Public

My Commission Expires: 12-28-88

01615718

1987 SEP -3 PM 2: 50

ARDIS WILDMITT
El Paso County Clerk & Recorder

Bk 5417
Pg 713

INTERPRETATION OF THE COVENANTS
OF THE WINDJAMMER HOMEOWNERS ASSOCIATION

Pursuant to Section 703 of the Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer ("Covenants"), recorded in the office of the Clerk and Recorder of El Paso County, Colorado, on July 2, 1982, in Book 3582 at Page 495, the Approving Authority has determined that the true intedment of the phrase "any successful enforcement proceeding" contained in Section 707 Enforcement of the Covenants is as follows:

A successful enforcement proceeding is any course of action by the Windjammer Homeowners Association Approving Authority, their officers, employees, attorneys or agents, that results in covenant compliance, either voluntary or otherwise, by a property owner in Windjammer. The determination of whether or not the act results in covenant compliance shall be in the sole discretion of the Windjammer Homeowners Association Approving Authority in which discretion shall not be disturbed unless it is arbitrary and capricious.

THE WINDJAMMER HOMEOWNERS ASSOCIATION
APPROVING AUTHORITY

Signed Roger Smith
ROGER SMITH, Chairman
Approving Authority of the
Windjammer Homeowners Association

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

SUBSCRIBED AND SWORN to before me this 28 day
of August, 1987, by ROGER SMITH, Chairman of the Approving
Authority of The Windjammer Homeowners Association.

Witness my hand and official seal.

My Commission Expires: MARCH 27, 1991

Larry S. Howell
Notary Public

CERTIFICATE

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

JEFFREY GAUCH, being first duly sworn, declares to the
undersigned authority that he is Secretary of The Windjammer
Homeowners Association. That ROGER SMITH is Chairman of the
Approva Authority of The Windjammer Homeowners Association
and has been duly appointed to that position pursuant to
Section 501 of the Covenants of the Association and is
currently serving in that position.

DATED in Colorado Springs, Colorado, this 31 day
of August, 1987.

(CORPORATE
SEAL)

Jeffrey A. Gauch
JEFFREY GAUCH, Secretary
WINDJAMMER HOMEOWNERS ASSOCIATION

SUBSCRIBED AND SWORN to before me this 31st day of
August, 1987, by JEFFREY GAUCH, Secretary of THE WINDJAMMER
HOMEOWNERS ASSOCIATION.

Carol M. Harvey
Notary Public

My Commission Expires: 12-28-88

01642480

87 NOV 16 PM 4:28

ARDIS W. SCHMITT
EL PASO COUNTY
CLERK & RECORDER

BK 5445
Pg 638

INTERPRETATION OF THE COVENANTS
OF THE WINDJAMMER HOMEOWNERS ASSOCIATION

Pursuant to Section 703 of the Declarations of Conditions, Covenants, Restrictions and Easements for Windjammer ("Covenants"), recorded in the office of the Clerk and Recorder of El Paso County, Colorado, on July 2, 1982, in Book 3582 at Page 495, the Approving Authority has determined that the following interpretation applies to Section 311, Grading Patterns, of the Covenants:

Any change made to the ground level, slope, pitch or drainage pattern of any lot that results in damage to neighboring property, whether intentional or unintentional, is considered to be a material change and is prohibited. Approval of Application by the Approving Authority does not transfer liability for damage from the homeowner to the Approving Authority of the Windjammer Homeowners Association.

THE WINDJAMMER HOMEOWNERS ASSOCIATION
APPROVING AUTHORITY

Signed Roger M. Smith
ROGER M. SMITH, Chairman
Approving Authority of the
Windjammer Homeowners Association

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

SUBSCRIBED AND SWORN to before me this 3rd day of November, 1987, by ROGER M. SMITH, Chairman of the Approving Authority of the Windjammer Homeowners Association.

Witness my hand and official seal.

My Commission Expires: MARCH 27, 1991



Notary Public

CERTIFICATE

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

JEFFREY A. GAUCH, being first duly sworn, declares to the undersigned authority that he is Secretary of The Windjammer Homeowners Association. That ROGER M. SMITH is Chairman of the Approving Authority of The Windjammer Homeowners Association and has been duly appointed to that position pursuant to Section 501 of the Covenants of the Association and is currently serving that position.

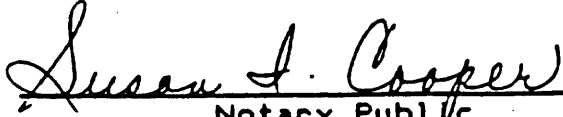
DATED in Colorado Springs, Colorado, this 5th day of November, 1987.

(CORPORATE
SEAL)



JEFFREY A. GAUCH, Secretary
WINDJAMMER HOMEOWNERS ASSOCIATION

SUBSCRIBED AND SWORN to before me this 5th day of November, 1987, by JEFFREY A. GAUCH, Secretary of THE WINDJAMMER HOMEOWNERS ASSOCIATION.



Notary Public

My Commission Expires: 8-30-88

AMENDMENTS TO COVENANTS
WINDJAMMER AT BRIARGATE FILING NO. 3 AND FILING NO. 4

WHEREAS, on January 19, 1983, the Briargate Joint Venture ("Declarant") recorded an Addition to Covenants, 58 Lots in Windjammer at Briargate Filing No. 3 in Book 3667, Pages 25 and 26, in the records of El Paso County, Colorado, and on June 10, 1983, the Declarant recorded an Addition to Covenants, Windjammer at Briargate Filing No. 4 in Book 3738, Pages 11 and 12, in the records of El Paso County, Colorado; and

WHEREAS, Section 709 of the Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate ("Covenants") authorizes amendment of the Covenants through an instrument signed and acknowledged by holders of at least 2/3 of the votes of members in the Association.

WHEREAS, the undersigned hereby certifies, on behalf of the Windjammer Homeowner's Association ("Association"), that the holders of at least two-thirds (2/3) of the votes in the Association have signed and acknowledged their approval of the following amendment, the signed documents are filed in the records of El Paso County, Colorado as 203148207 through 203148389 inclusive, and the Declaration of Conditions, Covenants, Restrictions and Easements for Windjammer at Briargate is hereby amended as follows:

Section 205 of the Covenants, but only as to the property in Windjammer at Briargate Filing No. 4; and Lots 1 through 35, inclusive, Block 1; Lots 1 through 21, inclusive, Block 2; and Lots 1 and 2, Block 3, in Windjammer at Briargate Filing No. 3, shall be amended to read in its entirety as follows:

Section 205. Roofs. All roof areas shall be of a type of material approved by the Approving Authority in its sole discretion. Asphalt composition shingles or tiles shall only be allowed if they are of a thick premium design, and architecturally compatible with the house on which they are to be used. The Approving Authority shall approve all types of material to be used on all roof areas prior to installation.

Signed this 20th day of September 2003.

Windjammer Homeowner's Association

By: 
Ladis W. Amatulli, President