

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
HILL POND ON SPRING CREEK, SECOND FILING,
P.U.D.**

THIS DECLARATION, made on the date hereinafter set forth by GANDALF PARTNERSHIP, a Colorado Limited Partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in the City of Fort Collins, County of Larimer, State of Colorado, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, hereinafter referred to as "the Properties."

NOW, THEREFORE, Declarant hereby publishes and declares that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, administrators, successors and assigns, and shall inure to the benefit of each of the owners thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Hill Pond on Spring Creek Homeowner's Association.

Section 2. "Board of Directors" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of 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.

Section 4. "Properties" shall mean and refer to that certain real property described on Exhibit "A" attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Common Area" shall mean and refer to all real property and the improvements presently located or subsequently constructed thereon intended for the common use and enjoyment of the Owners, which real property is described as follows: Tract A and Drainage Tract, Hill Pond on Spring Creek, Second Filing, P.U.D., County of Larimer, State of Colorado.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and the Common Easements.'

Section 7. "Common Easements" shall mean and refer to the 30-foot utility easement, including the landscaping and walkways thereon, located between Lots 12 and 13, Block 2 of Hill Pond on Spring Creek, Second Filing, P.U.D. and the 8-foot gravel easement for ingress and egress located at the rear of Lots 1 through 8, inclusive, Block 1, Hill Pond on Spring Creek, Second Filing, P.U.D.

Section 8. "Common Expenses" shall mean and refer to the cost of maintenance, repair and replacement of the irrigation system to be installed by the Declarant in the Common Area and Common Easements; maintenance, planting, landscaping and mowing of the Common Area and Common Easements; grading and/or restoring gravel on the Common Easements; the removal of trash, rubbish and debris from the Common Area and Common Easements; the general care and upkeep of the Common Area and Common Easements; repairs or renovations of any property owned by the Association and any structures located upon the Common Area and Common Easements; the cost of maintaining, repairing and replacing any entranceways to the property, including any signs or lights used in connection therewith; acquisition of casualty, public liability and

other insurance acquired by or for the benefit of the Association; taxes and special assessments imposed upon the Common Area, the Common Easements or the Association; legal and accounting fees; operational fees, expenses and liabilities incurred by the Association pursuant to or by reason of this Declaration or the Articles of Incorporation and By-Laws of the Association; payment of any deficit remaining from a previous assessment; the creation of a reasonable contingency reserve, sinking or surplus fund; other sums declared Common Expenses by the provisions of this Declaration and all other sums lawfully assessed by the Association pursuant to the Articles of Incorporation and By-Laws of the Association.

Section 9. "Declarant" shall mean and refer to Gandalf Partnership, a Colorado Limited Partnership, its successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Mortgage" shall mean and refer to any mortgage deed, deed of trust or other security instrument creating a lien against any Lot; "Mortgagee" shall mean and refer to any grantee, beneficiary or assignee of a Mortgage; "First Mortgage" shall mean the Mortgage having first and paramount priority under applicable Colorado law; "First Mortgagee" shall mean and refer to any grantee, beneficiary or assignee of a First Mortgage.

Section 11. "Architectural Committee" shall mean and refer to the Architectural Committee established by the Board of Directors of the Association pursuant to Article V hereinafter.

ARTICLE II

PROPERTY RIGHTS

Section 1. Conveyance of Common Areas. The Common Area shall be conveyed by Declarant to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Lot by the Declarant.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(1) The right of the Association to publish rules and regulations for use of the Common Area.

(2) The right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(3) The right of the Association to borrow money, and the upon assent of two-thirds (2/3) of each class of members and all First Mortgagees, to mortgage, pledge, deed in trust or hypothecate the Common Area as security for any such loan.

(4) The right of the Association to dedicate 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. No such dedication or transfer shall be effective until an instrument agreeing to such dedication or transfer signed by seventy-five percent (75%) of all of the Owners and one hundred percent (100%) of all of the First Mortgagees has been recorded.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, their guests and invitees, and his tenants or contract purchasers who reside on his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and maynot be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2)classes of voting membership:

(1) Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote or votes for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to each Lot.

(2) Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon 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) On January 1, 1989.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments 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 to promote the recreation, health, safety and welfare of the residents in the Properties, for payment of Common Expenses and for the improvement and maintenance of the Common Area and Common Easements, and for any other purposes reasonably incidental to such purposes. The annual assessment levied by the Association shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area and Common Easements that must be maintained, repaired or replaced on a periodic basis.

Section 3. Base and Maximum Annual Assessment. Until January 1, 1986, the maximum annual assessment shall be Four Hundred Eighty Dollars (\$480.00) per Lot for all Lots.

(1) From and after January 1, 1986, the maximum annual assessment may be increased effective January 1 of each year thereafter without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of January.

(2) From and after January 1, 1986, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding two (2) years and at the end of each period of two (2) years, for each succeeding period of two (2) years; 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. 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.

(3) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, unbudgeted costs, payment of any deficit remaining from the previous period and the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including 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.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members personally or by mail not less than thirty (30) nor

more than sixty (60) days in advance of the meeting. If mailed, said notice shall be deemed delivered when deposited in the United States mail, postage prepaid. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Annual and special assessments for maintenance, repair and improvement of the Common Area and/or Common Easements; insurance for the Common Area and/or Common Easements; management and administration costs of the Association and payment of other Common Expenses shall be fixed at a uniform rate for all Lots. The Association's obligation to maintain and repair the sprinkler system and landscaping in the Common Area and Common Easements shall commence upon the completion of the installation thereof by the Declarant.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar 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 each Owner subject there to. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) 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 Owner's Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area and/or Common Easements or abandonment of his Lot.

Section 9. Subordination of Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a recorded First Mortgage or recorded first deed of trust, and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not. However, the lien of such assessments shall be superior to any homestead exemption as now or hereafter may be provided by Colorado law and the acceptance of a deed to land subject to this Declaration of Covenants, Conditions and Restrictions shall constitute a waiver of the homestead exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, or the cancellation or foreclosure of any executory land sales contract wherein the Administrator of Veterans' Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not, shall extinguish the lien of such assessments as to payments which became 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.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, driveway or other structure shall be constructed, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of exterior design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board, which Committee shall have the powers and duties set forth herein. Such plans and specifications shall consist of full architectural drawings, engineered foundations, exterior elevations and grading and site plans. In addition, each Owner shall submit a color board measuring two (2) feet by three (3) feet showing exterior colors and exterior siding and trim products to be utilized in the construction of dwellings upon the Lots.

In the event said Board, or its designated 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. Any improvements made by the Declarant shall be exempt from the provisions and requirements of this Article V relating to architectural control and approval.

Section 1. Use Restriction. All Lots shall be used and improved exclusively for occupancy and residence by a single family. For purposes of this section, the term "single family" shall mean and refer to an individual or two (2) or more persons related by blood or marriage or an unrelated group of not more than three (3) persons living together in a residential dwelling unit.

Section 2. Restrictions on Leasing. No Lot Owner shall lease his residential dwelling to any group of people other than a "single family" as defined in Section 1 hereinabove nor shall any

lease be for a period of less than thirty (30) days. All such leases shall be in writing and shall contain a covenant by the tenant or tenants that their use and occupancy of the dwelling pursuant to the terms of the lease are subject to the terms and conditions set forth in this Declaration and that such tenant will abide by the terms contained herein as well as any reasonable rules and regulations promulgated by the Association relative to parking, noise levels and any other activities which may unreasonably interfere with the use of Lots by the Owners of adjoining Lots.

Section 3. Home Occupations. In addition to any restrictions imposed upon Owners of Lots by the City of Fort Collins with regard to home occupations or businesses, no Owner shall, conduct any business activity or home occupation upon his Lot which shall involve the sale or storage of merchandise upon the Lot, the delivery of merchandise or materials to the Lot by commercial vehicles more often than once a month or the use of more than fifteen percent (15%) of the space within a residential dwelling for such business or home occupation. Notwithstanding the foregoing, the Architectural Committee or the Board of Directors of the Association shall have the right to authorize prohibited business activities or home occupations upon any Lot provided it shall first determine that such home occupation or business shall not unreasonably interfere with the use and enjoyment of any of the Properties by other Lot Owners and provided further that the Owner conducting such business activities or home occupations agrees to such reasonable rules and conditions as shall be imposed upon him by the Architectural Committee or the Board of Directors of the Association.

Section 4. Signs and Advertising. No signs (except one sign of not more than five [5] square feet per Lot advertising that the Lot is for sale or for rent), advertising, billboards, unsightly objects or nuisances shall be placed, erected or permitted to remain in or on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health, safety or life of any person or which may unreasonably disturb the other Owners. The foregoing provisions of this section shall not apply to any reasonable signs, advertising or billboards of Declarant in connection

with its sale of Lots or otherwise in connection with its development of the Properties.

Section 5. Vehicles, Boats and Campers. No trailers, motor homes, camper units, boats or similar recreational vehicles shall be stored or permitted to remain for more than three (3) continuous days on any Lot (or the street adjoining any Lot) except within enclosed garages, provided that the Architectural Committee or the Board of Directors of the Association shall have the power to grant permission to store such vehicle on a Lot under such conditions as such Committee shall deem appropriate to protect the rights of other Lot Owners in the subdivision. In addition, no trucks, mobile homes, commercial vehicles or unused vehicles shall be kept, placed, stored or maintained upon any Lot in such manner that such vehicle is visible from neighboring Lots, the Common Area, Common Easements or any road. Commercial vehicles engaged in the delivery or pick up of goods or services shall be exempt from the provisions of this section provided that they do not remain within the Properties in excess of the reasonable period of time required to perform such commercial function. For purposes of this section, a three-quarter (3/4) ton or smaller vehicle, commonly known as a "pick-up truck," shall not be deemed to be a "truck" or "commercial vehicle." The term "unused vehicle" shall mean and refer to any vehicle which has not been driven under its own propulsion for a period of four (4) days or longer.

Section 6. Household Pets. No animals, livestock, poultry, venomous reptiles or bees of any kind shall be raised, bred, kept or boarded upon any Lot, except that dogs, cats or other household pets as the same may be defined and determined by the Association may be kept on any portion of the Properties, provided the same are not kept, bred or maintained for any commercial purposes. The Association may, in its sole discretion, limit the number of household pets which may be kept upon any Lot. However, each Lot Owner shall have the right to keep a minimum of two (2) household pets on any Lot. Household pets shall be subject to any rules or regulations adopted by the Association and all governmental ordinances or laws applicable to the Properties. Each Owner of a pet shall be responsible for clean up and removal of

such pet's excrement from the Common Area, the Common Easements and any Lot.

Section 7. Radio and Television Antennae or Electrical Devices. No exterior television antenna, radio antenna or satellite transmitting or receiving devices shall be placed, allowed or maintained upon any portion of any dwelling or other structure located upon a Lot, Common Area, Common Easements or any other portion of the Properties without the express written consent of the Association or its Architectural Committee. In addition, no electronic devices or systems causing unreasonable electrical interference with radio or television receivers located within a dwelling upon any Lot shall be placed or maintained on any Lot.

Section 8. Garbage and Refuse. All rubbish, trash, garbage and other waste materials shall be disposed of in a neat and sanitary manner and shall be removed from each Lot on a regular basis and shall not be allowed to accumulate on any Lot, Common Area, Common Easements or portion of the Properties. All containers or other equipment for the storage or disposal of garbage and trash shall be kept in a clean and sanitary condition. Trash containers for each Lot shall be kept within garages or areas designated by the Association except during days designated for pickup and disposal.

Section 9. Storage. No tanks for the storage of gas, fuel, oil, chemicals or other matter shall be erected, placed or permitted above the surface of any Lot. No clothesline equipment, service yards, woodpiles or storage areas shall be permitted on any residential Lot without the approval of the Association or the Board of Directors of the Association which may require enclosure or screening, such as privacy fences, landscaping or berming, to conceal such areas from the view of neighboring Lots.

Section 10. Nuisances. No obnoxious or offensive activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to any other Owner. No oil drilling, oil development operations, oil refinery, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor

shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derricks or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 11. Recreational Vehicles. No automobile, pick-up truck, motorcycle, minibike, moped, snowmobile or other motor driven vehicle may be operated on any portion of the Common Area or Common Easements for recreational purposes.

Section 12. Building Location. Buildings or structures may only be constructed within the building envelope established for each Lot on file with the City of Fort Collins, Colorado.

Section 13. No Detached Structures. Other than a detached garage which shall be permissible provided it is first approved by the Architectural Committee, no detached structures, buildings or storage sheds shall be permitted on any Lot.

Section 14. Building Exterior. All residential dwellings shall utilize wood siding, wood roofing products and wood windows or approved substitutions, except that stone, brick or other approved masonry products shall be utilized on all street elevations. All chimneys utilizing metal pipe must be enclosed with the exception of the terminals.

Section 15. Building Height and Roof Pitch. No residential dwelling or other structure shall exceed thirty (30) feet in height from the finished grade of any Lot. For purposes of determining the height limitation in this Section 15, such measurement shall be taken from the highest point on the finished grade of each Lot. The pitch of the roof on any dwelling shall not be less than five (5) feet of rise (i.e., elevation) for each twelve (12) feet of span (i.e., width).

Section 16. Minimum Square Feet. No residential dwelling shall be erected, altered or permitted to remain on any Lot unless the interior finished area, exclusive of basement, open porches and garages, shall be not less than one thousand five hundred (1,500) square feet.

Section 17. Temporary Structures Prohibited. No structures of a temporary character, including by way of example and not limitation, trailers, mobile homes, tents, campers, shacks, garages, barns, out buildings or accessory buildings shall be used on any Lot for human habitation during the construction of a dwelling upon the Lot or at any other time, either temporarily or permanently.

Section 18. Lawn Ornaments Discouraged. In order to preserve a harmonious landscaping plan, all lawn ornaments shall be prohibited unless written approval is first obtained from the Architectural Committee.

Section 19. Owners' Fences. No fence shall be erected, constructed, altered or maintained on the rear twenty-five (25) feet of any Lot located on the Properties. No side Lot line fence shall be nearer to the front Lot line than the front of the dwelling or garage constructed upon such Lot and no rear Lot line fence or side Lot line fence shall be nearer to the back Lot line than twenty-five (25) feet from the back Lot line. No fences may exceed six' (6) feet in height and all fences shall be of a quality equal to or greater than a number two grade cedar fence. In addition, no fences shall be constructed upon the drainage easement shown on the Plat of the Properties or in such a manner or location as will interfere with the use of any easement shown on the Plat of the Properties or with the maintenance, repair, planting or mowing of the Common Easements and/or Common Area. The Architectural Committee or Board of Directors of the Association may grant relief from the provisions of this section for good cause shown.

Section 20. Garages. Each dwelling located on a Lot shall have a car garage for at least two (2) cars but not more than three (3) cars plus storage space. Such garage may be either attached to the dwelling unit or connected to the dwelling unit by a breezeway or similar architectural structure. In addition, each garage shall have a continuous driveway access from a public street, which driveway shall be constructed of concrete, asphalt or paving or brick approved by the Architectural Committee or Board of Directors of the Association and shall be of sufficient depth and width to provide two (2) offstreet parking spaces not including any parking spaces within the garage. Carports shall not be allowed unless specific

approval for the same is given by the Architectural Committee or the Board of Directors of the Association before any construction is commenced on said carports.

Section 21. Landscaping of Lot. The Declarant shall be responsible for the initial planting of all trees in the Common Area, the Common Easements and the rear twenty-five (25) feet on Lots 1 through 21, inclusive, Block 1, Hill Pond on Spring Creek, Second Filing, P.U.D., as required by the recorded Landscape Covenants affecting the Properties. Lot Owners shall be responsible for the initial installation of all other landscaping upon such Owner's Lot. Prior to obtaining a building permit for the construction of a dwelling upon a Lot, every Owner shall submit to the Architectural Committee or the Board of Directors of the Association, a landscaping plan for his Lot. All landscaping set forth in the landscaping plan, including, but not limited to, the planting of grass or other ground cover, must be completed not less than nine (9) months following the issuance of a Certificate of Occupancy with respect to any dwelling constructed upon the Lot. The Architectural Committee or the Board of Directors of the Association may grant extensions of time for completion of these requirements for good cause shown.

Section 22. Maintenance of Lots. Each Owner shall cut and control all grass and other vegetation growing on his Lot, whether vacant, occupied, under construction or fully improved, and shall otherwise maintain and care for all landscaping on his Lot, including maintenance, repair and replacement of any landscaping initially installed upon such Lot by the Declarant.

Section 23. Use of Common Areas. There shall be no unreasonable obstruction of the Common Area and/or Common Easements, nor shall anything be kept or stored on any part of the Common Area and/or Common Easements without the approval of the Association. Nothing shall be altered on, constructed in or removed from the Common Area and/or the Common Easements by any Owner without the approval of the Association.

Section 24. Planting or Gardening. No planting or gardening shall be permitted on any portion of the Common Area and/or Common Easements except as approved by the Architectural Committee.

Section 25. Prohibitions. All use and occupancy of the Common Area and/or Common Easements shall be subject to and governed by the rules and regulations adopted by the Association. No damage or waste shall be committed on the Common Area.

Section 26. Resubdivision. No Lot shall be resubdivided into smaller Lots nor conveyed or encumbered in any less than the full original dimensions as conveyed by the Declarant unless the owner of such Lot has first obtained the prior written consent of the Architectural Committee to such proposed action. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for additional easements for public utilities, nor prevent the Declarant from replatting all or a portion of the Properties.

Section 27. Easements. All easements for ingress, egress and the installation and maintenance of utilities and drainage facilities are reserved and shown on the Plat. All such utilities shall be underground. No building or other structure shall be constructed, erected or placed upon any easement reserved for utilities, except fences. However, such fences shall not in any way interfere with drainage easements as set forth on the Plat and all such fences shall be subject to the prior approval of the Architectural Committee.

Section 28. Drainage and Irrigation. No Owner shall modify or change the topography or contour of any drainage areas or easements, including swales, constructed on the Lots and other portions of the Properties from the shape and outline established by the Declarant or persons or entities acting on behalf of Declarant; provided, however, that an Owner shall be permitted to modify the drainage areas on his Lot upon receiving written approval therefor from the Architectural Committee or the Board of Directors of the Association. Any Owner who in any way materially modifies the drainage pattern of the land without such consent shall be subject to sanctions contained herein for violations of this Declaration.

Section 29. Declarant's Use. Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible and proper for Declarant and Declarant's employees, agents, independent contractors, successors and assigns involved in the construction of dwellings upon the Lots or development of the Properties, to perform such activities and to maintain upon such portions of the Properties as is necessary, such facilities as may be reasonably required, necessary or incidental to the construction and sale of Lots and to the development of the Properties, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards, construction trailers and equipment, signs, model units and sales offices; provided, however, that neither Declarant nor Declarant's employees, agents, independent contractors, successors or assigns, nor any of them shall perform any activity or maintain any facility on any portion of the Properties in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use; enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot, his parking areas and to public ways.

ARTICLE VI

INSTALLATION OF LANDSCAPING

The Declarant shall be responsible for the initial planting of trees in the back twenty-five (25) feet of Lots 1 through 21, Block 1, Hill Pond on Spring Creek, Second Filing, P.U.D. as required by the recorded Landscape Covenants affecting the Properties. Thereafter, the individual Lot Owners shall be responsible for the care, maintenance and upkeep of such landscaping. The Declarant shall be responsible for landscaping and the installation of sprinkler systems in the Common Area and Common Easements. Thereafter, the Association shall be responsible for the repair, replacement and maintenance of the sprinkler system and landscaping on the Common Area and Common Easements, which expenses shall be deemed "Common Expenses."

ARTICLE VII

INSURANCE

Section 1. Casualty Insurance on Insurable Common Area and Common Easements. The Association shall keep all insurable improvements and fixtures of the Common Area and Common Easements insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area and/or Common Easements shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any of the improvements owned by the Association and located on the Common Area and/or Common Easements, the Association shall repair or replace the same from insurance proceeds available. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make an assessment against all Lot Owners to cover the additional cost of repair or replacement of such damaged property not covered by the insurance proceeds, in addition to any other assessments made against such Lot Owner for the payment of Common Expenses.

Section 3. Liability Insurance. The Association shall obtain a comprehensive policy of public liability insurance covering all of the Common Area and/or Common Easements in an amount not less than One Million Dollars (\$1,000,000.00) per injury, per person, per occurrence covering all claims for bodily injury or property

damage. Such coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance and other use of the Common Area and/or Common Easements.

Section 4. Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling funds of the Association.

Section 5. Workmen's Compensation Insurance. The Association shall obtain Workmen's Compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 6. Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of Declarant nor any officer, director, employee or agent of any professional manager or managing agent heretofore or hereafter employed by the Association.

Section 7. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8. Insurance Premiums. Except as otherwise set forth herein, insurance premiums for the above insurance shall be a Common Expense to be included as part of the monthly assessments levied by the Association. Such payment shall be held in a separate account of the Association and used solely for the payment of the premiums for insurance hereinabove provided as such premiums become due. First Mortgagees shall have the right,

jointly or severally, to pay all overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of such a policy, for the Common Area and/or Common Easements; and any such First Mortgagee making such payment shall be owed immediate reimbursement therefor from the Association.

Section 9. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make necessary repairs or replacement of the Properties which may have been damaged or destroyed.

ARTICLE VIII

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 covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these 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 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and one hundred percent (100%) of the First Mortgagees of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots and seventy-five percent

(75%) of the First Mortgagees of the Lots. Mortgagees shall be entitled to one (1) vote for each Lot on which they hold a First Mortgage. Any amendment must be recorded.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Authority or the Veterans Administration: Annexation of additional Properties, dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Limitations on the Association. Unless ninety percent (90%) of the Owners and, all First Mortgagees of the individual Lots have given their written approval, the Association shall not be entitled to:

(1) Fail to maintain fire and extended coverage insurance on insurable Common Area and/or Common Easements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon current replacement cost).

(2) Use hazard insurance proceeds for losses to any Common Area and/or Common Easements for other than the repair, replacement or reconstruction of such Common Area and/or Common Easements.

(3) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area (the granting of easements for public utilities and for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this clause).

(4) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(5) By act or omission change, waive or abandon any scheme of regulations, by enforcement thereof, pertaining to the architectural design or exterior appearance of any building or other structures, the maintenance of the Common Area and/or Common Easements or the upkeep of lawns and planting within the Properties.

Section 6. Management of the Common Areas and Common Easements. The Association must obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent it deems advisable as well as such other personnel as the Association shall determine to be necessary or desirable for the proper management, operation and maintenance of the Common Areas and Common Easements; provided, however, that any contract in regard to the hiring or employing of such a managing agent, or other personnel, shall not be for a term in excess of three (3) years and shall provide that the same shall terminate on sixty (60) days written notice, with or without cause, and without payment of any termination fee. When the Class B membership ceases, any management agreement in existence that pertains to the Association shall automatically expire thirty (30) days thereafter unless the Class A members vote to continue the same.

Section 7. Condemnation of the Common Areas. If at any time, or times, during the continuation of this Declaration, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of, in lieu of, or in advance thereof, all compensation, damages or other proceeds therefrom, shall be payable to the Association. The Association shall give written notice to all Owners of the commencement of any condemnation action affecting any portion of the Common Area within ten (10) days of the date the Association receives notice of such action. The Association shall use such proceeds for restoration of the remaining Common Area, if possible, or if not possible, may distribute such proceeds to the Owners. If an allocation of any condemnation award is established in negotiations, judicial decree or otherwise, then the Association shall employ such allocation to the extent it is relevant and applicable. Distributions of any apportioned proceeds to the Owners shall be made by checks payable jointly to the Owners and their respective First Mortgagees.

Section 8. Rights of First Mortgagees. First Mortgagees or deed of trust holders of Lots, may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, and/or other Association property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance on the lapse of such a policy for such Association property and First Mortgagees or deed of trust holders making such payments shall be owed immediate reimbursement therefor from the Association.

Section 9. Evidence of Lien. Upon request of a First Mortgagee, the Association shall provide each First Mortgagee with written notice on any default in the performance of any obligations under these covenants by its mortgagor which is not cured within thirty (30) days and shall send to each First Mortgagee a copy of any notice of lien provided for herein. Any encumbrancer holding a lien on a Lot may, but shall not be required to, pay any unpaid assessments due and owing with respect thereof; and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of his or its encumbrance.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 25th day of January, 1985, and effective as of November 29, 1984 at 7:00 AM local time,

GANDALF PARTNERSHIP, a Colorado
Limited Partnership

By Jack E. Trigg
Jack E. Trigg, General Partner

By Jon Dan Trigg
Jon Dan Trigg, General Partner

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

The above and foregoing instrument was acknowledged before me this 25th day of January, 1985, by Jack E. Trigg as a General Partner of GANDALF PARTNERSHIP, a Colorado Limited Partnership.

WITNESS my hand and official seal.

My commission expires: 3/2/86



Diane F. Miller
Notary Public

My Commission Expires March 2, 1986
718 W. 21, Suite 212 Aspen
Denver, Colorado 80002

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

The above and foregoing instrument was acknowledged before me this 7th day of February, 1985, by Joe Dan Trigg as a General Partner of GANDALF PARTNERSHIP, a Colorado Limited Partnership.

WITNESS my hand and official seal.



My commission expires: 3-5-88

Frank D. [Signature]
Notary Public

RATIFICATION AND CONFIRMATION

The undersigned, having a security interest in all or a portion of HILL POND ON SPRING CREEK, Second Filing, P.U.D., hereby approves, ratifies, confirms and consents to the foregoing Declaration of Protective Covenants for Hill Pond on Spring Creek, Second Filing, P.U.D.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunder subscribed by its Vice President and its corporate seal to be hereunto affixed, attested by its Exec. Vice President this 19th day of February, 1985



FIRST INTERSTATE BANK OF
PORT COLLINS, N.A.

Attest:
By [Signature] Title EXECUTIVE VICE PRESIDENT
Name Mark Driscoll Title VICE PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 19 day of February, 1985 by Mark Driscoll as Vice President and D.A. Verkuy as Exec. Vice Pres. of FIRST INTERSTATE BANK OF PORT COLLINS, N.A.

WITNESS my hand and official seal.

My commission expires:

My Commission Expires October 1, 1985
Notary Public, Fort Collins, CO 80521

[Signature]
Notary Public



RATIFICATION AND CONFIRMATION

The undersigned, having a security interest in all or a portion of HILL POND ON SPRING CREEK, Second Filing, P.U.D., hereby approves, ratifies, confirms and consents to the foregoing Declaration of Protective Covenants for Hill Pond on Spring Creek, Second Filing, P.U.D.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunder subscribed by its VICE PRESIDENT and its corporate seal to be hereunto affixed, attested by its Cashier this 30th day of November, 1984. January, 1985

NATIONAL BANK OF THE ROCKIES

Attest:

James C. Leason Cashier By Robert W. Collins Vice President
Name Title Name Title

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 30th day of November, 1984, by Robert W. Collins as Vice President and James C. Leason as Cashier of NATIONAL BANK OF THE ROCKIES.

WITNESS my hand and official seal.

My commission expires: May 25, 1987

Colene C. Pfeiffer
Notary Public



EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HILL POND ON SPRING CREEK, SECOND FILING, P.U.D.

Legal Description

All of Hill Pond on Spring Creek, Second Filing, a Planned Unit Development situate in the NW $\frac{1}{4}$ of Section 23, Township 7 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado.

Note... These covenants were signed and recorded in 1984.