

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
SOUTH CREEK SEVEN

KNOW ALL MEN BY THESE PRESENTS, that whereas McStain Enterprises, Inc., a Colorado corporation, hereinafter sometimes called "McStain" is the owner of South Creek Seven, a subdivision of the City of Boulder, County of Boulder, State of Colorado; and

WHEREAS, McStain intends to improve part of the property described above by constructing residences thereon; and

WHEREAS, McStain intends to sell the residences and to impose on the property described above mutually beneficial covenants, conditions and restrictions under a general scheme or plan of improvement and development for the benefit of the future owners and tenants of those buildings;

NOW, THEREFORE, McStain hereby declares that all of the property described above 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 said property and be binding on all parties having any right, title or interest in said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1. "Association" means South Creek Seven Homeowners' Association, its successors and assigns.
2. "Properties" means and refers to that certain real property hereinbefore described.
3. "Common Area" means Outlots A and C, South Creek Seven. Outlot B is the Viele Ditch flood Control Channel which is to be conveyed to the City of Boulder.
4. "Lot" means and refers to those plots of land as shown on the recorded subdivision map of properties which are to be used to construct residences.
5. "Owner" means and refers to the record owner whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.
6. "McStain" shall mean and refer to McStain Enterprises, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from McStain for the purposes of development.
7. "Mortgage" means mortgage or deed of trust and "Mortgagee" means the holder of a mortgage or the holder of a note secured by a deed of trust.

8. "Scenic Easement" means and refers to certain designated portions of properties as shown on the recorded subdivision map of properties and "Pedestrian Easement" means and refers to certain designated portions of properties as shown on said map.

ARTICLE II  
PROPERTY RIGHTS

1. Owners' Easements of Use, Access and Enjoyment. Every owner and his tenants shall have a righ easement of use, access and 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:

(a) The Association has the right to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Area;

(b) The Association has the right to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty days for any infraction of its published rules and regulations;

(c) The Association has the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for public purposes consistent with the intended use of the Common Area;

(d) The Association has the right to limit the number of guests of members;

(e) The Association has the right to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to encumber said property, provided that the borrowing of any money for the purpose of improving the Common Area shall require the consent of three-fourths of each class of members described in Article IV hereafter and, provided further, the rights of the holder of any encumbrance shall be subject to rights of the members of the Association while any encumbrance is current and not in default.

2. Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area to members of his family, his tenants or contract purchasers who reside on the property.

3. Use Restrictions. The use of the Common Area shall be subject to the following restrictions:

(a) No use shall be made of the Common Area which will in any manner violate the statutes, ordinances, rules or regulations of any governmental authority having jurisdiction over the Common Area.

(b) No activity shall be conducted on any part of the Common Area which will permanently deny free access to such area.

(c) Use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

4. Title to Common Area. McStain agrees to convey title to the Common Area to the Association in fee simple free and clear of all liens and encumbrances on or before conveyance of the first lot shown on South Creek Seven Plat.

ARTICLE III  
COVENANT FOR ASSESSMENTS

1. Creation of Lien and Assessment as Personal Obligation. McStain hereby covenants and each owner of any lot by acceptance of a deed therefor is deemed to covenant and agree to pay to the Association annual assessments or charges for the common expenses set forth in these covenants, and special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, if incurred, shall be a charge on the lot against which an assessment is made and if not paid when due, shall be a continuing lien upon said lot. Each such assessment, together with interest, costs, and reasonable attorney's fees, if incurred, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to an individual's successors in title unless expressly assumed by them.

2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of paying all water, sewer and other utilities that may be incurred by the Association and for the purpose of maintaining the Common Area, including the costs of mowing the grass and maintaining the landscaping, for the purpose of maintaining all parking areas, paths, walks and bikeways that may be placed in the Common Area. The Association shall further pay premiums to maintain fire and other hazard insurance for any improvements that may be placed on the Common Area and shall pay premiums to maintain a liability insurance policy insuring the Association. The Association shall further pay for maintenance and repairs of fences and any structures or other improvements placed upon the Common Area by the Association. The Association shall maintain a reserve of funds in such amount as it deems necessary to pay for expenses as they accrue.

3. Special Assessments for Capital Improvements. In addition to the assessments authorized herein, the Association may levy, in any year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction 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 three-fourths of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose of authorizing construction of such a capital improvement.

4. Notice and Quorum for any Act Authorized Under Paragraph 3. Written notice of any meeting called for the purpose of taking any action described in paragraph 3 above shall be sent not less than 30 days nor more than 60 days in advance to all members of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent of all 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 presence of members or of proxies entitled to cast fifty per cent of all the votes of each class of membership shall constitute a quorum. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5. Uniformity of Assessments. Annual assessments shall be fixed at a uniform rate for all lots.

6. Date of Commencement of Annual Assessments. 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 and shall be payable in equal monthly installments. The annual assessment period shall commence with the first day of the Association's fiscal year as established by the Board of Directors and shall terminate on the last day of such year. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year and the Board of Directors shall fix the amount of the first assessment against each lot on or before the 15th day of the month following the conveyance of the Common Area. Thereafter the annual assessment shall be determined as provided in paragraph 7 of this Article. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive and the Association shall not be permitted to deny any facts set forth in such certificate.

7. Determination of Amount of Annual Assessments. Within 30 days prior to the end of a fiscal year, the Board of Directors shall determine by estimate the amount of the assessment necessary to pay those expenses required to be paid by the Association pursuant to the provisions of these covenants, provided, however, the assessment in any one year may not be increased by more than fifteen per cent over the preceding year's assessment without approval of three-fourths of each class of members of the Association. Within 15 days after making such determination, the Board of Directors shall give written notice to each owner of the amount of his estimated annual assessment.

Within 30 days after the beginning of the fiscal year, the Board of Directors shall calculate the total expenditures made during the preceding fiscal year for expenses paid through the assessments provided for by this Article and shall compute the exact amount owed by each owner. The Board of Directors shall thereupon notify each owner of the amount of any excess payment made by such owner during the preceding year and give the owner credit for such excess payments on monthly payments remaining to be made by the owner during that year. If the payments made during the preceding year were insufficient to pay each owner's share, the amount of such deficiency shall be added on to the monthly payments remaining to be made by owner during that year. Any deficiency shall be paid in full on or before the end of the fiscal year following the year in which it occurred.

8. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of eight per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for

herein by nonuse of the Common Area or abandonment of his lot. The Association shall give notice in writing to the first mortgagee of any owner who is in default in the payment of any assessment hereunder or is otherwise in default hereunder and who has not cured such default within thirty days after the due date, provided that such first mortgagee has previously given notice in writing to the Association of the existence of such mortgage.

9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall release a lot from liability for any assessment thereafter becoming due or from the lien thereof.

10. Records of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the owners and others with an interest such as mortgage holders or prospective lenders from 8 a.m. to 5 p.m. on any regular working day not a legal holiday.

#### ARTICLE IV MEMBERSHIP

1. Members. Every owner as defined in Article I above shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot and ownership of such lot shall be the sole qualification for membership.

2. Classes of Membership. The Association shall have two classes of voting members whose designations are as follows:

Class A. Class A members shall be all owners as defined in Article I above with the exception of McStain. Each Class A member shall be entitled to one vote for each lot in which he holds the interest required for membership as prescribed by paragraph 1 of this Article. When more than one person owns an interest in such lot, all such persons shall be members and the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than one vote be cast with respect to each lot.

Class B. The only Class B member shall be McStain which shall be entitled to four votes for each lot in which it holds the interest required for membership as prescribed by paragraph 1 of this Article. Class B membership shall cease to exist and be converted to Class A membership on the happening of either of the following events:

(a) When the total number of votes outstanding in Class A membership equals the total number of votes outstanding in Class B membership, or

(b) On January 1, 1983.

ARTICLE V  
RESTRICTIVE COVENANTS

1. No structures of a temporary character, trailer, basement, tent, shack, barn, or other outbuilding shall be erected or used on any portion of the premises at any time either temporarily or permanently.

2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for McStain to maintain during the period of construction of buildings on properties, upon such portion of the properties as McStain may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the development of properties including, but not limited to a business office, storage area, construction yards, signs, model units and sales office.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept, except that dogs, cats or other household pets may be kept subject to such rules and regulations as may be enacted by the Board of Directors of the Association.

4. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any building, nor shall any building be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any building or any resident thereof, provided, however, "For Rent" or "For Sale" signs may be placed upon a building when such building is for sale or for rent. No such sign shall be more than five square feet. No business activities of any kind whatever shall be conducted in any building on any portion of the properties. The foregoing covenants, however, shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns in furtherance of its powers and purposes as herein set forth. Signs indicating public pedestrian access shall be located in such a way as to be readily visible but shall be designed in such a manner as to be in character with the general architecture of the development.

5. All clotheslines, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

6. All exterior materials shall be wood or simulated wood and masonry only and all roofs shall consist of tan asphalt shingles, wood shingles, shake shingles or earthtone metal. Windows shall be framed in brown metal or earthtone painted wood. Exterior colors shall be limited to earthtones from tans to dark browns with changes in hues towards gray, olive or rust, except for accent colors, unless the architectural control committee grants a variance. Solar collectors must be approved by the architectural control committee as to material and location.

7. The owner shall not paint or otherwise decorate the exterior part of any building and shall promptly report to the Association any defects or need for repairs the responsibility for which is that of the Association pursuant to the provisions

of these covenants. No exterior additions, or alterations to any building or erection of or changes in hedges, walls, fences and other structures shall be commenced, erected, or maintained until the plans and specifications showing the nature, kind, shape, heights, materials and location shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures on the property described above by an architectural control committee composed of the Board of Directors of the Association unless other provisions for composition of the architectural control committee are contained in the By-laws of the Association. The members of the architectural control committee shall not be entitled to compensation for services performed pursuant to the terms of this paragraph. If the architectural control committee fails to approve any matter submitted to it within thirty days after such submission, approval will not be required and this paragraph will be deemed to have been fully complied with. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of buildings and tenants and is necessary for their protection.

8. No external radio or television antennas shall be installed.

9. Two rail split rail fences may be placed anywhere on site. Privacy fences may be placed on the site so long as they conform to the following requirements:

(a) They shall be located so as to be either perpendicular or parallel to the walls of the house, and may enclose no more than 600 square feet of yard.

(b) They shall be built to a maximum height of 6 feet and the material shall be cedar grapestake as shown in detail on PUD plan.

No privacy fences shall be permitted within scenic easements, nor within 3 feet of any public or homeowners' association sidewalk, nor within 20 feet of public park land or Outlot C.

10. Any variance or adjustment of these conditions and restrictions granted by the architectural control committee pursuant to any of the paragraphs of these covenants or any acquiescence in or failure to enforce any violation of the conditions and restrictions herein shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

11. No trailers, detached campers, boats or mobile homes shall be parked or stored on any site unless parked or stored in a closed garage.

12. No structure or fence other than two rail split rail shall be placed or erected on scenic easements and no plant fences materials that will exceed 8 feet in height at maturity shall be planted in scenic easements. No structure or fence shall be placed or erected on pedestrian easements and no plant materials that will obstruct the movements of pedestrians or bicycles shall be planted in pedestrian easements.

13. In the event that any one or more of the provisions, conditions, restrictions and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions and restrictions and covenants herein set forth shall continue unimpaired and in full force and effect.

ARTICLE VI  
EASEMENTS

The owners agree that if any portion of the Common Area and facilities encroaches upon any lot, or if any residence encroaches on any portion of the Common Area, a valid easement for the encroachment and for the maintenance of same shall and does exist. If a structure is partially or totally destroyed and then rebuilt, the owners agree that minor encroachment upon parts of the Common Area and facilities due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

There is hereby created a blanket easement upon, across, over and under Outlots A, B and C for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the companies providing electrical and telephone service to erect and maintain the necessary equipment on said property and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of structures on said outlots. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by said builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

Scenic easements are created to protect the views from certain lots and pedestrian easements are created to provide for pedestrian and bicycle movement in South Creek Seven.

ARTICLE VII  
GENERAL PROVISIONS

1. Enforcement. The Association, McStain 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, McStain or 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.

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

3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty year period by an instrument signed by the owners of not less than ninety per cent of the lots and ninety per cent of the owners of recorded first mortgages and thereafter by an instrument signed by the owners of not less than seventy-five per cent of the lots and seventy-five percent of the holders of recorded first mortgages. Any amendment must be recorded.

