

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant",

W I T N E S S E T H:

WHEREAS, Declarant, whether one or more, is the owner of certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 1 through 8 inclusive, in Cimarron Replat, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, and

WHEREAS, Declarant desires to make all of the above said property, together with such additions thereto as may hereafter be brought within the jurisdiction of the Association, subject to the covenants, conditions and restrictions hereinafter set forth,

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

ARTICLE I.  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Cimarron Home-owners Association Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) 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, but excluding those having such interest merely as security for the performance of an obligation, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

Section 3. "Properties" shall mean and refer to Lots 1 through 8, inclusive, in Cimarron Replat, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded, together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any one of the numbered lots 1 through 8, inclusive in the Cimarron Replat.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties, upon which shall be erected a dwelling; the construction of which shall be at least 80% completed, according to the plans and specifications for construction.

ARTICLE II.  
PROPERTY RIGHTS

Section 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

Section 2. Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of Apollo Building Corp. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B. Class B Member shall be Apollo Building Corp. which shall be entitled to three votes for each Lot owned. The Class B membership shall terminate and be converted into Class A membership upon the occurrence of the first of the following dates:

(a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or

(b) January 1, 1989.

ARTICLE IV.  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each improved Lot which has 100% of the exterior construction completed and owned within the Properties, hereby covenants, and each Owner of any other Lot, by acceptance of a deed therefore, or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, is, and shall be, 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 attorney's fees, shall be a charge on the land and shall be a lien in

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the Properties and for exterior maintenance and other matters, as more fully set out in Article V herein.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first improved Lot to an Owner, the maximum annual assessment shall be \$810.00 per year payable in 12 equal monthly installments of \$67.50 per month per improved lot.

(a) From and after January 1 of the year immediately following the conveyance of the first improved Lot to an Owner, the monthly assessment may be increased by not more than the greater of: (1) Five percent (5%) or (2) the percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the month of October preceding the subject year, over the month of October one year prior to that, all without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first improved Lot to an Owner, the monthly assessment may be increased over and above the amount permitted under the preceding paragraph (a), by a vote of not less than two-thirds (2/3) of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(c) 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 monthly 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, the costs of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and for the cost of exterior maintenance, as set out in Article V herein, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of Members who shall vote, in person or by proxy, at a meeting duly called for such purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or under Section 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; and Due Dates. The annual assessments provided for herein shall commence as to each improved Lot on the first day of the month following the conveyance of such improved Lot from Apollo Building Corp. to an owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each improved Lot not less than thirty

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen (16) percent per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, and the holder of any first mortgage on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage thereon is in default, if such Board of Directors determines that such lien has no value to the Association.

ARTICLE V.  
EXTERIOR MAINTENANCE

The Association shall provide exterior maintenance upon each improved Lot which is subject to assessment hereunder as follows:

- (a) Repair, replacement and maintenance of roofs.
- (b) Maintain and repair, including painting, of all exterior walls, with the exception that the Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditioning systems. However, the Association shall assume the duty to paint the exterior surfaces of exterior doors.
- (c) Maintain, repair, and replace of gutters and downspouts.
- (d) Maintain trees and shrubs, lawns, walks, and other exterior landscaping and improvements, except such as may be within the confines of any fenced in area on any improved Lot and excluding all exterior concrete surfaces.
- (e) Operation and maintenance of an underground watering system.

Notwithstanding the foregoing, in the event the need for maintenance or repair of any of the foregoing on any improved Lot shall result from the willful or negligent acts of the Owner of any Lot, or of such Owner's family, guests, invitees, or tenants, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI.  
ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be

structures and topography, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by said Board of Directors. If said Board, or its designated architectural committee, as the case may be, shall fail to either approve or disapprove any such matter so submitted, as hereinabove provided, within thirty (30) days after such plans and specifications shall have been submitted, then the Owner submitting such plans and specifications shall be deemed to have received approval thereof, and such Owner may proceed in accordance with said plans and specifications.

**ARTICLE VII.  
PARTY WALLS**

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

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repairs and maintenance of any party wall shall be shared by the Owners who make use of such party wall in proportion to the length of each lot and party wall.

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

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

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

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

**ARTICLE VIII.  
STAGED DEVELOPMENTS**

Additional land that Apollo Building Corp. may determine contiguous and appurtenant to Cimarron Replat, a Subdivision in Douglas County, Nebraska may be annexed and made subject to this Declaration of Covenants, Conditions and Restrictions, by the Declarant, without the consent of the members, within seven (7) years of the date of this instrument, provided that the FHA and the VA determine that such annexation is in accord with the general plan of development of the area.

(a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon, except in patio areas. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Association, one or more master television antenna towers may be erected for the benefit and use of all or part of the Owners of the Properties.

(b) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than household pets, which shall be limited to one (i) per household. All pets shall be leashed when outside of the residential structure and patio area. No such pet shall be kept, bred or maintained for commercial purposes.

(c) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.

(d) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size. Nothing herein contained shall prevent the use of any Lot by Apollo Building Corp. as a sales and rental office, or as a model home or both, and while any Lot is so used, it shall have the right, for itself, or its nominee, to place signs on the premises advertising such office or model home, or both.

(e) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.

(f) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot shall be subject to written regulation, restriction or exclusion by the Association.

(g) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

**ARTICLE X.**  
**INSURANCE**

Section 1. The Association shall purchase and provide insurance with respect to the improvements (residential structures and related structures) in an amount equal to at least eighty percent (80%) of the full replacement value of said improvements or in such an amount as shall be required, from time to time, by any Mortgage holder, whichever is higher, against losses by fire, lightning, wind storm and other perils covered by standard extended coverage endorsements, and insurance against such other hazards and in such amounts as shall be determined from time to time by the Board of Directors of the Association. Such insurance, however, shall exclude all glass, garage doors and entrance doors. Such insurance shall not cover personal property of any Owner of any Lot, it being the Owner's sole responsibility to provide such insurance coverage. The Association, in addition to the foregoing, shall provide liability and errors and omissions insurance for the Association.

Section 2. The Association is hereby irrevocably appointed as agent for each Owner of each and every Lot in the Properties and for the holder of any Mortgage on any Lot in the Properties, to adjust all claims arising under insurance policies purchased by the Association on the improvements on the Properties, and to execute and deliver releases upon payment of claims without joinder by any such Owner or mortgagee. All insurance proceeds shall be applied by the Association toward repairing the damage covered by such insurance, provided that reconstruction or repair shall not be compulsory where the damage exceeds two-thirds (2/3) of the value of all the buildings and improvements on all of the Lots covered by such insurance. The deductible portion of the applicable master insurance policy shall be borne by those lost which suffered the loss as determined by the Board of Directors. In such case, should the Owners so elect not to rebuild, the proceeds, along with the insurance indemnity, if any, shall be credited to each Owner in accordance with such Owner's prorata share of the loss sustained from the casualty for which the proceeds shall be payable and such sums shall be first applied toward satisfaction of any recorded first mortgage against such Lots, next toward satisfaction of junior recorded liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said properties, and the filling and leveling of any of said Lots, as needed, and the remainder shall then be paid to such Owner of such razed properties on a prorata basis. In case the insurance proceeds do not equal the cost of repairs or rebuilding, the excess cost shall be considered a maintenance expense to be assessed and collected by the Association from the Owner of the damaged improvements. In any cases of over insurance, any excess proceeds of insurance received shall be credited to the working fund of the Association.

Section 3. Each Lot Owner may obtain additional insurance for such Lot Owner's benefit and at such Lot Owner's own expense.

ARTICLE XI.

ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

ARTICLE XII.

UTILITY METERS AND SERVICE LINES

In order to facilitate the installation and operation, maintenance and repair of an underground watering system, such Lots as shall be designated from time to time by the Association shall have a dual metering system for water, so as to permit the drawing of water for watering of the lawns, shrubs, trees and other vegetation located upon the Lots. It is understood that the amount of water metered for such purposes shall be paid for by the Association. The water metered for the residential structure on any such Lot being paid for by the Owner of such Lot.

Each Lot shall have a separate water, electric, gas and/or other applicable utility meter, and shall be serviced by separate utility service lines.

ARTICLE XIII.

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or

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Section 3. Amendment. These Declarations may be amended at any time by the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

Section 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration (FHA) or the Veterans Administration (VA):

- (a) Annexation of additional lands to the properties covered by this Declaration;
- (b) Amendment of this Declaration of Covenants, Conditions and Restrictions

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed these Declarations of Covenants, Conditions and Restrictions this 30 day of December, 1985.

ATTEST:

APOLLO BUILDING CORP.,  
a Nebraska corporation.

Karen E. Jones Secretary  
 By: Lee H. ...  
 Its President

STATE OF NEBRASKA )  
 ) ss.  
 COUNTY OF DOUGLAS )

Before me the undersigned, a notary public, personally came, TERENCE J. FICENEC, to me personally known to be the President of Apollo Building, Corp., a Nebraska corporation, and he acknowledged the execution of the above to be his voluntary act and deed as such officer and that the execution of this document was duly authorized by said corporation.

WITNESS my hand and notarial seal the day and year last above written.

Steven M. Watson  
Notary Public



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 OF DEEDS  
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