

DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND LIENS OF  
GATEWAY TOWNHOMES ASSOCIATION, INC.

BOOK 2345 PAGE 145

THIS DECLARATION, made on the date hereinafter set forth by FLEETWOOD MORTGAGE COMPANY, or assigns, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is now the owner of certain lands in Arapahoe County, State of Colorado, more particularly described as follows:

That part of the NW 1/4 of Section 19, Township 4 South, Range 66 West of the 6th P.M., City of Aurora, County of Arapahoe, State of Colorado, more particularly described as follows:

Beginning at the N 1/4 corner of said Section 19; thence North 89°53'44" West, along the North line of said Section 19, 575.06 feet to a point 1980.00 feet East of the Northwest corner of said Section 19; thence South 00°06'16" West, at right angles to said North line, 254.32 feet to a point; thence South 89°53'44" East 575.56 feet to a point on the North-South centerline of said Section 19; thence due North, along said North-South centerline, 254.32 feet to the point of beginning; EXCEPTING THEREFROM, the North 55.00 feet and the East 35.00 feet. Said property, as platted, is a part of IN THE PINES by Fredericks Bros., SUBD., according to the recorded plat thereof, filed in the Office of the Clerk and Recorder of Arapahoe County, Colorado, on March 28, 1973, Reception No. 1348040, Book 24, Page 11, such part containing and describing Lots 1 through 8 of Blocks 1, 2, 14 and 15, together with that portion of Tract A included within the above metes and bounds description.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above and any additional lands hereafter annexed and placed under this Declaration, as provided in Article V hereof, shall be held, sold and conveyed subject to the following easements, servitudes, restrictions, liens, covenants and conditions, which are established, declared and adopted for the purpose of promoting the social welfare, common good and general welfare of the people of the community, protecting the value and desirability and enhancing the safety and habitability of the said real property and to bring about civic betterments and social improvements, to run with the said lands and be binding upon all parties having any right, title or interest in and to the described real property or any part thereof, their heirs, personal representatives, successors and assigns, and to inure to the benefit of each owner thereof.



ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Gateway Townhomes Association, Inc., a Colorado non-profit corporation, and its successors and assigns. "Board of Directors" or "Board" shall mean and refer to the duly elected and qualified members of the board of directors of the Association, acting in an official capacity.

Section 2. "Owner" shall mean and refer to the record title holder, whether one or more persons or entities, of a fee simple interest in any lot which is a part of the Properties; provided, however, that upon entering into a purchase contract or option, such purchaser and not the record title holder shall be deemed to be the owner for all purposes herein. The term "owner" shall also include Declarant and its successors and assigns with respect to all lots held in the name of Declarant and which Declarant has not agreed to sell under contract or option.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought under this Declaration.

Section 4. "Common facilities" shall mean and refer to that portion of Tract A, IN THE PINES by Fredericks Bros. SUBD., according to the recorded plat thereof, Arapahoe County, Colorado, which is included within the Properties, together with any and all real and personal property hereafter owned or controlled by the Association for the common use and benefit of the owners and the community, together with all improvements thereon, if any, and any easements, fixtures or appurtenances used therewith or attached thereto, subject to rights of way, easements, liens, encumbrances, reservations and restrictions of record, if any. Every owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of said Tract A by the Association for the benefit and enjoyment of all owners in accordance with the provisions of this Declaration and the Bylaws and rules and regulations of the Association.

Section 5. "Lot" shall mean and refer to each numbered lot of the Properties, as shown on the recorded plat, and more particularly described as Lots 1 through 8 in Blocks 1, 2, 14 and 15 (a total of 32 Lots), and any lots that may hereafter be added to the Properties, excepting, however, any portion of the common facilities.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNER'S RIGHTS. Every owner shall have a right to use and to benefit from the common facilities. Such right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees and assessments to each owner for the use and enjoyment of the common facilities, for the acquisition, maintenance, repair, replacement, upkeep, operation, and improvement thereof and to establish reasonable reserves for depreciation and contingencies;

(b) the right of the Association to adopt rules and regulations governing such use and enjoyment, and to suspend the voting rights and right to use and to benefit from the common facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period of time as determined by the Association for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate, transfer or lease all or any part of the common facilities to any public agency, municipal or quasi-municipal authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by the members;

(d) the right of the Association to borrow money for the purpose of improving the common facilities and in aid thereof to mortgage said common facilities; and to take such steps as may be reasonably necessary to protect the common facilities from foreclosure; and

(e) the right of the Association to close or limit the use of the common facilities while maintaining or making replacements therein or thereto.

Section 2. DELEGATION OF USE. Any owner may delegate his right of use and benefit from the common facilities to the members of his family, his tenants or guests who occupy his Lot.

Section 3. PERSONAL PROPERTY. The Association may acquire and hold for the use and benefit of all members of the Association tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest therein shall not be transferable except that the transfer of a Lot shall transfer to the transferee all of the transferor's beneficial interest in such personal property without any reference thereto or execution of a bill of sale. Each owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other owners, subject to the provisions hereof and the By-Laws, rules and regulations of the Association. Sale of a Lot under foreclosure or execution shall entitle the purchaser thereof to the beneficial interest in the personal property associated with the Lot and to membership in the Association.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of said Lot. When more than one person holds a beneficial interest in any Lot as joint tenant, tenant in common, partner, shareholder or otherwise, all such persons shall be members, but the vote or votes attributable to such Lot shall be cast as such persons among themselves determine, and no division of the vote or votes attributable to such Lot shall be permitted. All matters shall be decided by majority

vote, except as otherwise expressly provided herein or in the By-Laws of the Association. The By-Laws of the Association shall govern procedures and requirements for notice of meetings, quorums, voting and other matters of internal regulation. The Association shall adopt rules and regulations in the manner and to the extent authorized by its By-Laws.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all owners with the exception of Declarant. Each Class A membership shall be entitled to one vote for each Lot owned on every matter to come before the membership.

Class B. Class B members shall be Declarant and any grantees from Declarant who acquired two or more Lots for resale. Class B members shall be entitled to four votes for each Lot owned on all matters submitted to a vote of Class A members. Class B membership shall cease and automatically be converted into Class A membership on the happening of either of the following events, whichever occurs first:

(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, 1980.

#### ARTICLE IV

##### COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, for each Lot within the Properties, all of which are owned by the Declarant on the date of recording of this Declaration, hereby covenants, and each subsequent owner of any Lot, except only the Association, by acceptance of a contract or deed therefor, whether or not it shall be so expressed in such contract or deed, is deemed to covenant, that each of said Lots, except such Lots, or interests therein, as are owned by the Association, shall be and hereby is made subject to uniform assessments per Lot (assessments may vary according to the number of bedrooms, as provided by the Association's Bylaws or its rules and regulations) for the use and benefit of the Association and its members; and the Declarant and each subsequent owner do hereby covenant and agree, subject to the terms and conditions of this Declaration, to pay to the Association (1) annual assessments, for Class A or B memberships, as applicable; and (2) special assessments for capital improvements. Such assessments shall become and constitute a lien on each Lot as of January 1 following the date such assessment is established, as to annual assessments, or as of the first day of the first month following the date such assessment is established, as to special assessments. The annual and special assessments, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal obligation of each owner of a Lot at the time the assessment became a lien. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

Section 2. DECLARANT'S OBLIGATION. Declarant hereby agrees that it will assume and pay to the Association any operating deficit of the Association in excess of the Association's total annual assessments for any year in which Declarant is a Class B member of the Association for that entire year.

Section 3. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used for the purposes set forth in the preamble, including but not limited to promotion of the health, safety and welfare of the residents in the Properties and the general community, for the improvement and maintenance of the common facilities, and for the payment of taxes, utility charges and insurance premiums applicable to the Properties, as the Board of Directors of the Association shall decide from time to time.

Section 4. ANNUAL ASSESSMENTS. Until December 31, 1975, the annual Class A assessment for all Class A members and their Lots shall be established by the Board of Directors of the Association at the initial meeting thereof.

(a) On and after January 1, 1976, the annual Class A assessment may be increased or decreased each year by said Board of Directors, but shall not be increased more than 15% above the assessment for the previous year except upon approval of such action by majority vote of the entire membership of the Association.

(b) If the Board shall fail to establish an annual Class A assessment for any year commencing on or after January 1, 1976, the annual assessment for such year shall remain the same as for the year immediately preceding; except that, upon approval by majority vote of the entire membership of the Association, such assessment may be increased or decreased as of the first day of any month.

(c) The annual assessment for Lots of Class B members shall be the same as the annual assessment for Lots of Class A members as to any Lot that is occupied as of the assessment date, but shall be 20% of the Class A annual assessment for unoccupied Lots.

Section 5. SPECIAL ASSESSMENTS. A special assessment for capital improvements shall be made only upon resolution of the Association's Board of Directors, followed by the approval of two-thirds of the entire membership of the Association.

Section 6. PAYMENT. The annual assessments provided for herein, whether Class A or Class B, shall be due at the beginning of each 12-month period, commencing January 1 of each year (or commencing on the date of the initial meeting of the Board of Directors of the Association as to 1975). Annual assessments may be paid and collected in monthly installments pursuant to a plan adopted by the Board of Directors of the Association. Special assessments shall be due on the date they become a lien and shall be paid and collected in such installments with such dates of delinquency as may be provided in the resolution establishing same. The annual assessment against each Lot shall be made by resolution of the Board of Directors at least thirty (30) days in advance of each January 1; provided, however, that the annual assessment for

the Association's first fiscal year, ending December 31, 1975, shall be made on the date of the initial meeting thereof. Written notice of all annual and special assessments shall be furnished to every owner. 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, and such certificate shall be binding upon the Association with respect to any purchaser or encumbrancer relying thereon.

Section 7. EFFECT OF NONPAYMENT OF ASSESSMENTS. Any assessment or monthly installment thereof not paid on or before thirty (30) days from the due date shall be delinquent and shall bear interest thereafter at the rate of 10 percent per annum until paid. The Association may bring an action to collect all delinquent assessments against the owner personally obligated to pay the same, or foreclose the assessment lien against such owner's lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common facilities or abandonment of his lot. In addition to any other remedies herein or by law provided, the lien herein established may be foreclosed by an action in the court having jurisdiction over the Properties in the manner of foreclosure of common law mortgages, pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption.

Section 8. SUBORDINATION OF THE 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 release any such assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or delivery of a deed in lieu thereof, shall extinguish the lien of such assessments as to payments thereon which become delinquent prior to such foreclosure or transfer, but shall not relieve such lot from the lien of any assessments or payments thereafter established or due. As used in this section, the term "mortgage" shall mean and include only a bona fide purchase money mortgage, purchase money deed of trust or a contract for deed and the vendor's lien thereunder, but shall not include non-purchase money mortgages or deeds of trust or involuntary liens, such as mechanic's liens and judgment liens. Nothing herein shall be deemed to release any owner from his personal obligation, as described in Section 1 of this Article IV above, to pay all assessments made hereunder.

## ARTICLE V

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. AUTHORIZATION. Annexation of additional lands to the Properties shall require only the assent of the Class B members, so long as Class B memberships are in existence. Upon extinguishment of Class B memberships, annexation shall require assent of a majority of the Class A members, at a meeting duly called in accordance with the Bylaws of the Association.

Section 2. METHOD OF ANNEXATION. The annexations authorized hereunder shall be made by filing for record a Supplementary Declaration of Covenants with respect to the annexed lands, which shall extend the scheme of these covenants to such additional property. A Supplementary Declaration may contain such additions to the covenants contained in this Declaration as may be

necessary to reflect the different character, if any, of the added properties, provided such are not inconsistent with the scheme of this Declaration. In no event shall any Supplementary Declaration revoke, modify or amend the covenants established by this Declaration or any prior Supplementary Declaration without approval of the Association pursuant to a vote of its members, as provided in Section 3, Article VIII below.

#### ARTICLE VI

##### GENERAL RESPONSIBILITIES AND RESTRICTIONS

Section 1. COMMON FACILITIES. The Association is herewith charged with the direct and continuing responsibility for maintenance, repair, replacement, operation, protection, extension and improvement of the common facilities.

##### Section 2. PARTY WALLS.

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

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

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

(d) 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.

(e) 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 other owner's successors in title.

Section 3. ARCHITECTURAL CONTROL. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition, change, decoration or alteration therein or thereto 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 external 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 owners appointed by the Board. In the event said Board 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.

Section 4. DECLARANT'S USE. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant, to maintain during the period of construction and sale upon such portion of the Properties as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 5. USE RESTRICTIONS.

(a) No planting or gardening shall be done, and no fences, hedges, walls or other improvements or structures shall be erected or maintained in or upon the common facilities except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or the Architectural Committee. Except for the right of ingress and egress, the owners are hereby prohibited and restricted from using any of the Properties outside the exterior boundary lines of their respective Lots, except as may be allowed by the Association's Board of Directors and this Declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners and is necessary for their protection.

(b) Maintenance, upkeep and repairs of any residence or other improvements on each Lot shall be the sole responsibility of the individual owner thereof and not of the Association; however, any cooperative action appropriate to the proper maintenance, utilization, beautification or upkeep of said residences and improvements may be taken and assessments therefor may be made by the Board of Directors, at the discretion thereof.

(c) All utilities, fixtures and equipment installed within a residence on any Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the building, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect the other residences or their owners.

(d) Without prior written approval and authorization of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Properties, nor upon any structure situated thereon other than a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

(e) Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the Properties. The Association shall have the right to enter upon said lands and remove such refuse piles or other unsightly objects or materials at the expense of the owner responsible therefor, and such entry shall not be deemed a trespass provided three (3) days' prior notice has been given to the owner and failure of owner to remove same.

(f) No commercial type vehicles and no trucks shall be parked on the Properties except while engaged in transport. For the purposes of this covenant, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.



(g) No free-standing mailbox shall be erected unless approved by the Architectural Committee.

(h) No Lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be disposed of in a sanitary manner, pursuant to rules and regulations adopted by the Association.

(i) The Board of Directors is authorized to adopt rules and regulations relating to the parking of vehicles on the common facilities. Such rules shall assure the utilization of parking spaces by all owners in a fair and equitable manner and shall prohibit the use of parking areas for storage of motor vehicles, boats, trailers, campers, house trailers or any other object, vehicle or equipment.

Section 6. EASEMENTS. Each Lot and the common facilities shall be subject to an easement for encroachments created by construction, settling and overhangs, and for utilities and utility services, as designed or constructed by the Declarant, and for the maintenance of same.

Section 7. ENFORCEMENT OF COVENANTS. The Association is herewith vested with authority by Declarant and is assigned the rights of Declarant to enforce, to the same extent as Declarant might, any and all covenants running with the Properties, or with other lands in which Declarant, its successors and assigns, has an interest or right of enforcement, including but not limited to all covenants contained herein, or in protective covenants recorded against the Properties, if any; provided that the authority and rights herein granted and assigned shall not preclude Declarant from proceeding to enforce any or all of said covenants, whether or not the Association is acting in that regard.

#### ARTICLE VII

##### INSURANCE AND INDEMNIFICATION

Section 1. INSURANCE. The Association shall maintain at all times insurance policies for such coverages, and in such amounts as the Board of Directors deems necessary.

Section 2. INDEMNIFICATION. Each officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement thereof, whether or not he is an officer or director of the Association at the time such expenses are incurred, except in such cases wherein such officer or director is adjudged guilty of willful malfeasance in the performance of his duties.

#### 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, servitudes, reservations, liens or charges now or hereafter imposed by the

provisions of this Declaration. Failure by the Association or by any owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY. Invalidity of any one or more of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. AMENDMENT. The covenants, conditions and restrictions in this Declaration shall run with the land and be binding upon all owners for a term of ten years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years each; provided, however, that the owners of three-fourths of the Lots in the Properties subject hereto (including Properties hereafter annexed, if any) may amend, modify or terminate any portion of this Declaration, effective as of the end of any such ten-year period, by executing and acknowledging an appropriate agreement in writing for such purpose and recording same in the Office of the County Clerk and Recorder of Arapahoe County, Colorado, at least six months prior to the expiration of such ten-year period.

Section 4. REGISTRATION BY OWNER OF MAILING ADDRESS. Each owner shall register his mailing address with the Association, and all notices, statements or demands intended to be served upon an owner shall be deemed delivered when deposited in the United States mail, postage prepaid, addressed in the name of the owner to such registered mailing address.

IN WITNESS WHEREOF, Declarant has caused its corporate name and seal to be hereunto signed and affixed by its duly authorized officers this 16th day of June, 1975.

FLEETWOOD MORTGAGE COMPANY, INC.

Attest:

[Signature]  
Secretary

By [Signature]  
G. W. Colby  
Senior Vice President

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

The foregoing instrument was acknowledged before me this 16th day of June, 1975, by G. W. Colby as Senior Vice President of Fleetwood Mortgage Company, a Rhode Island corporation.



Witness my hand and official seal.

My commission expires September 8, 1978

[Signature]  
Notary Public