

SUPPLEMENTAL DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE SETTLEMENT TOWNHOMES

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Exhibiting the notarized signatures is on file  
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SUPPLEMENTAL DECLARATION OF COVENANTS,  
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THE SETTLEMENT TOWNHOMES

This Supplemental Declaration of Covenants, Conditions and Restrictions is made this 17 day of June, 1976 by R-3, Ltd., a Colorado limited partnership (hereinafter "Declarant").

RECITALS

A. Declarant is the owner of the real property in the County of Jefferson, State of Colorado, which is more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein, which described real property is sometimes hereinafter referred to as First Filing.

B. This Supplemental Declaration is made and recorded by Declarant and by Ken-Caryl Ranch Corporation, a Delaware corporation, pursuant to Article II, Section 2.01 of the Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch dated April 25, 1974 and recorded on April 26, 1974 in Book 2616 at Page 163 of the real property records of Jefferson County, Colorado.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These

easements, covenants, restrictions and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the real property or any part thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

1.1 Declarant: "Declarant" shall mean R-3, Ltd., a Colorado limited partnership, and its successors and assigns.

1.2 Master Declaration: "Master Declaration" shall mean that certain Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch dated April 25, 1974 and recorded on April 26, 1974 in Book 2616 at Page 163 of the real property records of Jefferson County Colorado.

1.3 Supplemental Declaration: "Supplemental Declaration" shall mean this instrument as it may be amended from time to time.

1.4 The Settlement Townhomes: The Settlement Townhomes shall mean that certain real property hereinabove described as First Filing and any additional real property, which may be subjected to this Supplemental Declaration pursuant to Section 12.2 below.

1.5 Association: "Association" shall mean The Settlement Townhomes Association, a Colorado nonprofit corporation and its successors.

1.6 Owner: "Owner" shall mean the record owner, whether one or more persons or entities, of an aggregate fee simple title to any Lot which is part of The

Settlement Townhomes including Declarant and contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

1.7 Member: “Member” shall mean any person or entity who is a member in the Association.

1.8 Lot: “Lot” shall mean any unit of land which is designated on any recorded Subdivision plan with the exception of the Common Area.

1.9 Incorporation by Reference: Unless the context otherwise specifies or requires, words and phrases defined in Article I of the Master Declaration shall have the same meanings when used in this Supplemental Declaration.

## ARTICLE II

### LAND USE CLASSIFICATION

2.1 Multi-Family Site: The Settlement Townhomes is designated as a Multi-Family, residential, townhouse area.

2.2 Local Common Area: All of the real property now or hereafter owned by the Association is designated as Local Common Area and shall be held for the primary benefit and common use and enjoyment of the Members. The Local Common Area to be conveyed to the Association prior to the conveyance of a Lot to an Owner is described on Exhibit “B” hereto and incorporated herein by this reference.

ARTICLE III  
MEMBERSHIP

Every Owner as defined in Article I, Section 1.6 under this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment, by the Association. Ownership of such Lots shall be the sole qualification for membership.

ARTICLE IV  
VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A: Class A Members shall be all of the Owners with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot then owned in The Settlement Townhomes. When more than one person owns any Lot, all such persons shall be Members; provided, however, that the vote for such Lot shall be exercised as the several Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot which it then owns in The Settlement Townhomes, provided that the Class B membership shall cease and be converted to Class A membership on 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 voices outstanding in the Class B membership:

Or

- (b) December 31, 1980.

If the Class B membership has ceased to exist as aforesaid, and other real property is thereafter subjected to this Supplemental Declaration, the Class B membership shall be reinstated and for purposes of determining the total number of votes to which the Class B Member is entitled, and all Lots then owned by Declarant anywhere in The Settlement Townhomes shall be counted.

## ARTICLE V

### PROPERTY RIGHTS

5.1 Owners' Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Local Common Area and such right and easement shall be appurtenant to and shall pass with the title to every Lot. Such right and easement of enjoyment in and to the Local Common Area shall be subject to the following:

- (a) The right of the Association to limit the number of guests of Owners on any recreational facilities situated on the Local Common Area.
- (b) The right of the Association to collect money upon a cost basis for the use of any recreational facility situated upon the Local Common Area.
- (c) The right of the Association, in accordance with its Articles and By-Laws to borrow money for the purpose of improving the Local Common Area and facilities and in aid thereof to mortgage or grant other security interests in the Local Common Areas provided, however, that the rights of any mortgagee shall be subject to the rights of the Owners of the Association while any mortgage or deed of trust is current and not in

default, and further provided that no funds may be borrowed nor shall any mortgage or deed of trust be given unless an instrument signed by persons then having two-thirds (2/3) of the votes of each class of Members and by seventy-five percent (75%) of the first mortgages of the Lots (based on one vote for each mortgage) agreeing to such action has been recorded with the Clerk and Recorder of Jefferson County. Further any such mortgage transaction while there is a Class B membership must be approved by the Veterans Administration and Federal Housing Administration.

(d) The right of individual Owners to ingress and egress across the Local Common Area to the Owner's Lot.

(e) The right of the Association to suspend the voting rights and right to use of any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and the right of the Association to suspend the voting rights and right to use of any recreational facilities by an Owner for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(f) The right of the Association to dedicate or transfer all or any part of the Local Common Area, subject to the ingress and egress requirements of this Section 5.1, to any public agency, authority, utility, or to the Master Association for such purposes and subject to such conditions as may be agreed to by the Members and by persons holding mortgages or deeds of trust on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and not less than seventy-five percent (75%) of the first mortgages of the Lots (based on one vote for each mortgage) has been recorded,

agreeing to such dedication or transfer. Declarant shall have the right at any time to use so much of the Local Common Area as it may deem reasonably necessary and advisable for the purpose of aiding in the construction and development of the unimproved Lots and Local Common Area, and the maintenance and repair of the same; provided, however, that such use may not unreasonably interfere with an Owner's use and access to the Local Common Area nor with an Owner's right of ingress and egress to his Lot.

5.2 Delegation of Use: Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Local Common Area and facilities to the members of his family or his tenants who reside on his Lot.

5.3 Title to the Local Common Area: Declarant will convey fee simple title to that part of the Local Common Area set forth on Exhibit "B" to the Association, free and clear of all encumbrances and liens, prior to conveyance of the first Lot.

5.4 Alienation of Local Common Area: Except as in this Declaration provided, the Local Common Area shall not be sold, abandoned, subdivided, hypothecated, transferred or otherwise encumbered by the Association without the prior written consent and approval of all Owners and all first mortgages of each lot within The Settlement Townhomes.

5.5 Leases: An Owner shall have the right to lease his Lot provided that such lease is in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Supplemental Declaration, and the Association's Articles of Incorporation and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments: Declarant, for each Lot owned within The Settlement Townhomes, hereby covenants and each Owner of any Lot situated therein by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements

Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot, and all improvements thereon, against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due; provided, however, that the personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.2 Purpose of Assessments: The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Settlement Townhomes; for the improvement and maintenance of the Local Common Area and of the homes situated within The Settlement Townhomes; such other maintenance or improvement obligations

which may be deemed necessary for the common benefit of the Owners and the maintenance of property values or which may be incurred by virtue of agreement with or requirement of city, county or other governmental authorities; to provide adequate insurance of any and all types and amounts deemed necessary by the Board of Directors; and to provide such reserves as may be deemed necessary in order to accomplish the objects and purposes of the Association. A portion of the annual assessments shall further be used to provide a reserve fund for the replacement and maintenance of the Local Common Area and the Board of Directors shall be obligated to establish such reserve fund.

6.3 Basis and Payment of Annual Assessments:

(a) The annual assessments with respect to each Lot shall be estimated by the Board of Directors prior to the conveyance of the first Lot and shall be payable in equal monthly installments; provided, however, that until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be four-hundred and eight Dollars (\$408.00) per Lot.

(i) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board each year by not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board above five percent (5%) by a vote of two-thirds

(2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

(b) Monthly installments of annual assessments shall be payable on or before the tenth day of each month, but shall be and become a lien as of the date of the annual assessment as hereinafter provided. Written notice of the annual assessment shall be sent to every Owner immediately following the assessment date. The Association shall upon demand of any Owner, prospective purchaser, mortgagee and prospective mortgagee at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

6.4 Special Assessment 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, the cost of any reconstruction, repair or replacement of a capital improvement upon the Local 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.

6.5 Notice and Quorum for any Action Authorized Under Sections 6.3 and 6.4:

Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.3 or 6.4 shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies 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 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.

6.6 Date of Commencement of Annual Assessments: Due Date: The annual assessments provided for herein shall commence not earlier than the first day of the month following the conveyance of the Local Common Area and first Lot. 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 every Owner subject thereto.

6.7 Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots.

6.8 Effect of Nonpayment of Assessments – Remedies of the Association: Any assessment installment, which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the date of delinquency at the rate of

twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the delinquent installments, or record a statement of lien in the real property records of Jefferson County, Colorado and foreclose the lien in the same manner as is provided in the laws of Colorado for the foreclosures of mortgages on real property against the Lot and the improvements thereon for the amount of the delinquent assessment, plus interest and the costs of collecting the same, including reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Local Common Area or abandonment of his Lot.

6.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust and to the Seller's rights under any executory land sales contract, including those owned, guaranteed or insured by the Veterans Administration and/or Federal Housing Administration and to any assessment of the Master Association pursuant to the Master Declaration. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot as a result of court foreclosure of a mortgage, foreclosure through the Public Trustee or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to installments thereof which became due prior to such sale or transfer, but shall not relieve any former Owner of personal liability therefore. No sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

6.10 Notice: Upon the request of a first mortgage of a Lot, the Association will report to the said mortgagee any unpaid assessments or other default of the Owner of such Lot, which has not been cured within 60 days.

## ARTICLE VII

### EXTERIOR MAINTENANCE

In addition to maintenance upon the Local Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject and shall be an addition to any annual or special assessment to which such Lot is subject, except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has waived its rights of subrogation against such Owner.

## ARTICLE VIII

### PARTY WALLS

8.1 General Rules of Law to Apply: Each wall which is built as a part of the original construction of the homes upon the Lots 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.

8.2 Sharing of Repair and Maintenance: 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.

8.3 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 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 Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

8.4 Weatherproofing: 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.

8.5 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.

8.6 Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX  
EASEMENTS

9.1 Local Common Area: The easements over and across the Local Common Area shall be those shown, or provided for, upon the recorded plots of The Settlement Townhomes and such other easements as may be established pursuant to or provided by the provisions of this Supplemental Declaration of Covenants, Conditions and Restrictions.

9.2 Encroachments: Each Lot and the Local Common Area shall be subject to an easement for encroachment of buildings on adjoining Lots or the Local Common Area, or encroachment of the Local Common Area onto any Lot, and for overhangs as designed or constructed by the Declarant, and for any encroachment occurring hereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments and overhangs and for their maintenance, repair and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of the Lots agree that minor encroachments of parts of construction onto adjacent Lots or the Local Common Area due to construction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

9.3 Utilities: Notwithstanding anything contained in Section 5.1(f) and Section 5.4 of Article V, the Board of Directors of the Association may grant easements upon, across and under the Local Common Area to the Master Association for such purposes as the Board of Directors sees fit or to Ken-Caryl Ranch Water and Sanitation District or a public agency, authority, or utility, for installation, replacing, repairing and

maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity.

9.4 Easement for Association: Each Lot and the Local Common Area shall be subject to an easement for the Association (including its agents, employees and contractors) for providing the maintenance set forth in Article VII.

## ARTICLE X

### INSURANCE

10.1 Insurance Requirements Generally: The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance shall name as insureds the Association, the Board of Directors of the Association, the Association's officers, employees and agents, and the Owners. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent possible, such casualty insurance shall (a) provide for a waiver of subrogation by the insurer as to claims against Declarant, the Association, its directors, officers, employees, and agents and against each Owner and each Owner's employees and Guests; (b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees or Guests; (c) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not

be brought into contribution with insurance maintained by any Owner or Mortgagee; (d) contain a standard mortgage clause endorsement in favor of the Mortgagee of any Lot or part of the Local Common Area, except a Mortgagee of a Lot or part of the Local Common Area who is covered by other and separate insurance; and (e) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 10 days' prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Board of Directors of the Association deems consistent with good business practice.

The Association shall obtain an independent appraisal of The Settlement Townhomes every three years; provided, however, that said appraisal may be performed by an appraiser employed by an insurance company.

Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and each Mortgagee who makes written request to the Association for any such certificate or copy of an insurance policy.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alternations or improvements made to a Lot by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be an expense of the Association.

10.2 Casualty Insurance: The Association shall obtain and maintain casualty insurance covering the Local Common Area and each Lot covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the The Settlement Townhomes, including each Lot and the improvements thereon. At the option of the Association, such insurance may also cover additions, alterations or improvements to a Lot made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Lot to a condition better than the conditions existing prior to the making of additions, alterations or improvements by an Owner in the absence of insurance covering such additions, alterations or improvements as aforesaid.

10.3 Public Liability and Property Damage Insurance: The Association shall obtain and maintain comprehensive public liability and property damage insurance covering personal liability, property damage liability and automobile personal and property damage liability of the Association, its officers, directors, employees and agents and of each Owner and each Owner's employees and Guests, arising in connection with ownership, operations, maintenance, occupancy or use of the Local Common Area, or of any Lot with limits of not less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability.

10.4 Workmen's Compensation and Employers Liability Insurance: The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

10.5 Insurance by Owners: Except to the extent coverage therefore may be obtained by the Association and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance he deems desirable, including, without limitation, casualty insurance covering furnishings and personal property belonging to that Owner and insurance covering personal liability of that Owner and that Owner's employees and Guests. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent possible, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees and Guests. A copy of any insurance policy obtained by an Owner shall be furnished to the Association.

10.6 Receipt and Application of Insurance Proceeds: Except as some particular person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association: first, as expressly provided elsewhere in this Declaration; second, to the Owners and their mortgages jointly or persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to the Owners in equal proportions.

10.7 Other Insurance by Association: The Association shall have the power of authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, and insurance indemnifying officers, directors, employees and agents of the Association. The Association shall maintain fidelity bonds or insurance covering employees and agents of the Association in an amount, which is equal to at least one and one-half times the Association's estimated annual operating expenses and reserves.

10.8 Owner-Increased Premiums: In the event that, as a consequence of the hazardous use of any Lot, or of any Owner-installed improvements to any Lot, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be payable by the Owner of such Lot.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

11.1 Destruction of Improvements on Lot: In the event of damage or destruction to the improvements on a Lot due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be deposited into a bank account which requires, for withdrawals, the signatures of the Owner and an officer of the Association. The Owner and the Association shall then promptly authorize the necessary repair and reconstruction work, and the insurance proceeds will be applied by the Association and the Owner to defray the cost thereof. "Repair and Reconstruction" of the improvements, as used herein, means restoring the improvements to substantially the

same condition in which they existed prior to the damage, with each improvement having the same boundaries as before.

11.2 Assessment for Reconstruction: If the insurance proceeds are insufficient to repair and reconstruct any damaged improvement, such damage or destruction shall be promptly repaired and reconstructed by the Owner and Association, using the insurance proceeds and the proceeds of a special assessment against the Owners. The total of such assessments shall be equal to the amount by which the cost of reconstruction or repair of the improvements exceeds the sum of the insurance proceeds allocable to such improvements. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The special assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon and may be enforced and collected by foreclosure proceedings in the courts.

11.3 Determination by Owners: Notwithstanding the above, the Owners and first mortgagees of any or all of the destroyed or damaged improvements may agree that the destroyed or damaged improvements shall forthwith be demolished and all debris and rubble caused by such demolition be removed and the Lot(s) regarded and landscaped to the satisfaction of the Association. The cost of such landscaping and demolition work shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds shall then be disbursed to such Owner and their first mortgages jointly and said Owner shall convey his Lot to the Association and the same shall become part of the Local Common Area.

11.4 Damage to Local Common Area: In the event of damage or destruction to all or a portion of the Local Common Area due to fire or other disaster, the insurance proceeds if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Local Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Local Common Areas, the Association shall present to the Members a notice of a special assessment for approval by the membership. If such assessment is approved, the Association shall make such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by majority vote, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the first mortgagee of their respective lots, if any. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon and may be enforced and collected by foreclosure proceedings in the courts.

In the event of damage or destruction to all or a portion of the Local Common Area which is caused by the willful or negligent act of an Owner, or by the willful or negligent act of the family, guests or invitees of an Owner, the cost of repairing and reconstructing the damaged or destroyed Local Common Area shall be assessed to such Owner and shall be added to and become part of the assessment to which such Owner's

Lot is subject and shall be an addition to any annual or special assessments to which such Owner's Lot is subject.

ARTICLE XII  
CONDEMNATION

12.1 Condemnation: If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Local Common Areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(a) Proceeds. All compensation, damages or other proceeds therefrom the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association.

(b) Complete Taking.

(1) in the event that all of the Local Common Areas are taken or condemned, or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said apportioned amounts shall be made payable to the Owner and the first mortgagee of his Lot jointly.

(2) on the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.

(c) Partial Taking. In the event that less than the entire Local Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in

avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Local Common Area damaged or taken by the condemning public authority, unless seventy-five percent (75%) of the Owners and the first mortgages of each lot agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement of such improvements shall be apportioned between the Owner and the first mortgagee of his Lot jointly.

### ARTICLE XIII

#### GENERAL PROVISIONS

13.1 Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding 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 rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

13.2 Annexation: Additional property may be annexed by Declarant without the consent of the Members at any time or times prior to December 1, 1990, provided that the Federal Housing Administration (FDH) or Veterans Administration (VA) determine the annexation is in accordance with the general plan heretofore approved by them. Said annexation shall occur when Declarant records a Certificate of Annexation, describing the real property to be annexed and on the date of recording said Certification said real property shall be deemed a part of The Settlement Townhomes, defined herein, and shall be subject to all of the terms and conditions of this Declaration.

13.3 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and the Owner of every lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners (based upon one vote for each Lot), and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners (based upon one vote for each Lot) and at all times by not less than seventy-five percent (75%) of the first mortgages (based upon one vote for each mortgagee). Any amendment must be recorded.

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

13.5 Severability: Invalidation of any one of these covenants or restrictions by statute, judgment or court order shall in no wise affect any other provisions, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17 day of June, 1976.

R-3, LTD., a Colorado limited partnership,  
by COTTER-ORR DEVELOPMENT CO., a  
Colorado corporation, its General Partner  
By \_\_\_\_\_  
Dennis M. Orr

ATTEST

By \_\_\_\_\_  
Joseph W. Cotter

CONSENT TO SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE SETTLEMENT TOWNHOMES

The undersigned consents to the execution of this Supplemental Declaration pursuant to Section 2.03 of the Master Declaration.

KEN-CARYL RANCH CORPORATION

By \_\_\_\_\_  
Vice President

ATTEST:

By \_\_\_\_\_  
Assistant Secretary

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF JEFFERSON    )

The above and foregoing Supplemental Declaration of Covenants, Conditions and Restrictions for THE SETTLEMENT TOWNHOMES, was acknowledged before me this 17 day of June, 1976 by DENNIS M. ORR and JOSEPH W. COTTER, as President and Secretary, respectively of COTTER-ORR DEVELOPMENT CO., a Colorado corporation, the General Partner of R-3, Ltd., a Colorado limited partnership.

Witness my hand and official seal.

My commission expires: 10-31-77

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Notary Public

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF JEFFERSON    )

The above and foregoing Consent to Supplemental Declaration of Covenants, Conditions and Restrictions for THE SETTLEMENT TOWNHOMES, was acknowledged before me this 17 day of June, 1976 by \_\_\_\_\_ as Vice President.  
and \_\_\_\_\_ as Assistant Secretary of KEN-CARYL RANCH CORPORATION, a Delaware corporation.

Witness my hand and official seal.

My commission expires: 03-25-80

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Notary Public

EXHIBIT A

Block 1, Ken-Caryl Ranch “Plains” Phase II, First Filing, County of Jefferson, State of Colorado.