

**AMENDED AND RESTATED DECLARATION OF AGREEMENT  
ESTABLISHING BUILDING RESTRICTIONS IN "BOW-MAR"  
IN ARAPAHOE AND JEFFERSON COUNTIES,  
STATE OF COLORADO**

This Amended and Restated Declaration of Agreement Establishing Building Restrictions in "Bow-Mar" in Arapahoe and Jefferson Counties, State of Colorado ("Amended Declaration") is executed as of the 10<sup>th</sup> day of April, 1991 by the undersigned Bow-Mar Owners, Inc. and the Town of Bow Mar.

**RECITALS**

A. A Declaration of Agreement Establishing Building Restrictions in "Bow-Mar" in Arapahoe and Jefferson Counties, State of Colorado, dated January 9, 1947, was recorded on January 13, 1947, in the records of the Clerk and Recorder of Arapahoe County in Book 567 at Page 198 as Reception No. 368119 and in the records of the Clerk and Recorder of Jefferson County in Book 556 at Page 249 as Reception No. 406485 (the "Original Declaration"). The Original Declaration established certain building and other rights and restrictions with respect to the Property for the benefit of the then current owner and his grantees in order to establish and maintain the Property as a residential subdivision.

B. The Original Declaration affects the following described real property located in Arapahoe and Jefferson Counties, Colorado:

Commencing at the Northeast Corner of Section twelve (12), Township five (5) South, Range sixty-nine (69) West of the Sixth P.M.; thence South along the East line of Section twelve (12), to the Southeast corner of said Section twelve (12); thence North 89° 54' West along the South line of Section twelve (12), a distance of 655.01 feet; thence Northerly and parallel with the East line of said Section twelve (12) a distance of 636.23 feet; thence Northeasterly at an angle of 45° 49' a distance of 013.4 feet, to a point on the East line of said Section twelve (12), which is 1267.3 feet North of the Southeast corner of said Section twelve (12); thence Northerly along the East line of said Section twelve (12) a distance of 580.3 feet; thence Northwesterly at an angle of 52° 46½' a distance of 1302.5 feet to a point on the North line of the Southeast quarter (SE¼) of said Section twelve (12) which is 1037.17 feet West of the Northeast corner of said Southeast quarter (SE¼); thence North 34° 05' West a distance of 1403.1 feet; thence Northeasterly, a distance of 1494.5 feet more or less to a point on

the North line of said Section twelve (12) which is 1036.0 feet East of the North quarter corner of said Section twelve (12); thence North 89° 48' East along the North line of said Section twelve (12) a distance of 1615.7 feet to the point of beginning.

The Southwest quarter of Section seven (7), and that part of Section eighteen (18), Township five (5) South, Range sixty-eight (68) West described as follows: Beginning at the Northeast corner of the Northwest quarter of Section eighteen (18), Township five (5) South, Range sixty-eight (68) West, thence South 0° 35' West 2646.0 feet, thence Northwesterly along the arc of a 170 foot radius curve to the right, the chord of which bears North 26° 25' West 154.4 feet, thence North 0° 35' East 776.7 feet, thence Northwesterly along the arc of a 25 foot radius curve to the left, the chord of which bears North 44° 25' West 35.35 feet, thence North 89° 25' West 375.0 feet, thence along the arc of a 205 foot radius curve to the right 286.2 feet, thence along the arc of a 925.0 foot radius curve to the left 1173.7 feet, thence along the arc of 1393.0 feet radius curve to left 482.3 feet, thence South 78° 03' West 220.3 feet, thence South 11° 57' East 99.1 feet, thence South 62° 33' West 109.3 feet thence South 72° 42' West 196.0 feet, thence North 89° 14' West 199.0 feet, thence North 0° 29' East 1113.5 feet, thence South 89° 28' East 2619.1 feet to the point of beginning.

(the "Property").

C. The Property was previously surveyed and subdivided into plots, blocks, streets, boulevards, drives, and public ways in compliance with and pursuant to the then current resolutions of the Boards of County Commissioners of Arapahoe and Jefferson Counties. A plat of the Property, dated December 23, 1946, was recorded on January 13, 1947, in the records of the Clerk and Recorder of Arapahoe County in Plat Book 7 at Page 1 as Reception No. 368118 and in the records of the Clerk and Recorder of Jefferson County in Plat Book 7 at Page 24 as Reception No. 406484 (the "Plat").

D. An Assignment of Rights in Declaration of Agreement Establishing Building Restrictions in "Bow-Mar" in Arapahoe and Jefferson Counties, Colorado and in Declaration of Agreement Establishing Building Restrictions in "Bow-Mar Second Filing" in Arapahoe County, Colorado, dated May 25, 1965, was recorded on July 23, 1965, in the records of the Clerk and Recorder of Arapahoe County in Book 1609 at Page 28 as Reception

No. 970953 and in the records of the Clerk and Recorder of Jefferson County in Book 1809 at Page 698 as Reception No. 127653 (the "Assignment"). By the Assignment, Lloyd J. King, the original declarant under the Original Declaration, assigned, conveyed, and transferred all of the easements, reservations, rights, and privileges which he reserved in the Original Declaration, including, without limitation, the right to approve all plot plans and building plans and specifications, to Bow-Mar Owners, Inc. a Colorado non-profit corporation formed as the association of all homeowners residing in the Town of Bow Mar (the "Homeowners Association").

E. The Original Declaration contains a restrictive covenant based upon race (the "Restriction") which violates the United States Constitution, the Colorado Constitution, and Colorado Revised Statute § 24-34-502, is void, illegal, and unenforceable, and is discriminatory, noxious, and offensive to the undersigned.

F. The Original Declaration was amended and restated to delete the Restriction by the majority of the current owners of fee simple title to the plots which are subject to the original Declaration in the manner prescribed by Colorado Revised Statute § 38-30-170.

#### DECLARATION

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, for themselves, their successors and assigns, their grantees, and for all present and future owners and interest holders of the Property, do hereby publish, acknowledge and declare the following restrictions, covenants and conditions, and do hereby agree with, to and for the benefit of all persons who now own or may hereafter purchase, and from time to time hold and own any portion of the Property, or any interest therein, that all of the same shall be subject to such covenants, conditions, and restrictions, and all of which shall be deemed to run with the land and to inure to the benefit of and be binding upon the owners and any interest holders, at any time of the Property, any portion thereof, or any interest therein, and upon their respective heirs, successors and assigns, as follows:

1. Amendment. This Amended Declaration shall supersede and be substituted for the Original Declaration in its entirety and the Original Declaration shall hereafter be of no further force or effect. Notwithstanding the foregoing, this Amended Declaration shall continue all covenants, conditions and restrictions which were contained in the Original Declaration and

which are also contained in this Amended Declaration in full force and effect without interruption; it being the express intent and understanding of the undersigned that all of the Property which is subject to the Original Declaration shall continue to be subject to all of the covenants, conditions and restrictions set forth in the Original Declaration as the same may be amended and restated herein.

2. Definitions. As used in this Amended Declaration:

(a) "Plot" or "Plots" means a lot or lots located on the Property, including any of those shown on the Plat.

(b) "Residential Plot" means a parcel of land which consists of not less than one Plot or an area substantially equivalent to one Plot.

(c) "Out Building" means an enclosed, covered structure which is not attached to the residence to which it is appurtenant.

3. Use of Property.

(a) No Plot shall be used for anything other than residential purposes except those designated in the Plat for some other use.

(b) No structure shall be erected, placed, or permitted to remain on any Plot not shown on the Plat.

(c) No structure shall be erected, placed, or permitted to remain on any Residential Plot except one detached, single-family residence and its appurtenant Out Buildings.

(d) No more than one family and its servants shall use any detached, single-family residence and its appurtenant Out Buildings.

(e) No sign, billboard, or other advertising matter shall be erected, placed, displayed, or permitted to remain on any Residential Plot except "For Sale" signs customarily used in connection with the sale of residential real estate.

(f) No aerial wire shall be placed or permitted to remain more than five (5) feet above the roof of any structure or over any portion of any Plot which is not occupied by a structure.

(g) No basement, garage, barn, shack, trailer, tent, or other Out Building or temporary structure shall at any time be used as a temporary or permanent residence.

(h) No offensive or obnoxious trade, activity, or other thing shall be carried on or done which is annoying or offensive or which may be or become a nuisance.

(i) No cow, horse, chicken, or other livestock or poultry shall be raised or housed.

4. Approval of Plans

(a) No building, fence, wall or other structure shall be commenced, erected, maintained or altered on the Property, or any portion thereof, until the building plans, specifications and plot plan, including, without limitation, all shrubs and trees, have been approved in writing by the Homeowners Association. In passing upon such plans, specifications and other requirements, the Homeowners Association shall take into consideration the conformity and harmony of external design with the proposed structures in the subdivision, and the location of the building, fences, shrubs, trees and other structures with respect to topography, view and finish ground elevation, and all Out Buildings erected on any of the Residential Plots shall conform in style and architecture to the residence to which they are appurtenant.

(b) Any residence erected wholly or partially on any of the Plots, or parts thereof, as hereby restricted, shall have an area of not less than 1,500 square feet, unless special permission is first obtained in writing from the Homeowners Association to erect a residence of an area less than said 1,500 square feet.

5. Easements Reserved. Easements and rights of way have previously been and are hereby further reserved on, over and under all of the plots in the subdivision for wells, poles, wires, pipes and conduits for heating, lighting, electricity, gas, telephone, sewer, water or any other public or quasi-public utility service purposes, together with the right of ingress and egress at any time for the purpose of further construction and repair.

6. Term: Amendment. All covenants, conditions and restrictions herein set forth shall continue and be binding upon all persons and entities now or hereafter owning any portion of the Property, or any interest therein, and upon all of their respective heirs, successors and assigns, and all persons claiming by, through or under the same, until January 1, 2000, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Unless by vote of a majority of the then owners of the fee simple title to the Plots shown on the recorded Plat, it is agreed to release, change or amend said covenants, conditions and

restrictions in whole or in part, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments.

7. Run With the Land. The covenants, conditions and restrictions herein set forth shall run with the land and shall bind all persons now or hereafter owning any portion of the Property, or any interest therein, and all of their respective heirs, successors and assigns and all parties claiming by, through or under any of the foregoing, and all of the same shall be deemed to hold and to agree and covenant with all of the other parties who are subject to this Amended Declaration and their respective heirs, successors and assigns in title and with each of them, to conform to and observe all of the covenants, conditions and restrictions as to the use of said Plots and the construction of improvements thereon, but no covenants, conditions or restrictions herein set forth shall be personally binding upon any corporation, person or persons except in respect to breaches committed during his or their seisin of or title to said land, and the owner or owners and interest holders of any of the above land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the covenants, conditions and restrictions herein set forth, in addition to the ordinary legal action for damages and failure of the applicable owner or owners or interest holders of any of the Plot or Plots shown on the recorded Plat, to enforce any of the covenants, conditions or restrictions herein set forth at the time of such violation, which in no event shall be deemed to be a waiver of the right to do so at any time thereafter.

8. Transfer. The Homeowners Association, by appropriate instrument, may assign or convey to any persons, organization, association or corporation, any or all of the rights, easements, reservations and privileges herein reserved to it and upon such assignment or conveyance being made, such successors or assigns, or grantees, may, at their option, exercise, transfer or assign such rights, easements, reservations and privileges or any one or more of them at any time or times in the same way and manner as though directly reserved by him, it or them, in this instrument; provided, however, that if the Homeowners Association, or any of its successors hereunder, shall withdraw, without having assigned or conveyed some or all of the rights, easements, reservations and privileges hereinbefore reserved to it, then all of such rights, easements, reservations, and privileges as have not been assigned or conveyed shall, upon the withdrawal of the Homeowners Association or any of its successors, pass to and vest in the then owners of the Plots contained in the Property, to be held, exercised and enforced for the protection of the rights of all parties hereto. In addition to the foregoing, any action taken in the exercise and enforce-

ment of such rights, easements, reservations and privileges by said owner shall be sufficient if taken by the owners at that time of a majority of the fee simple title to the Plots shown on the recorded Plat.

9. Effect of Amendment. This Amended Declaration shall continue in full force and effect until released, changed, or amended as provided herein.

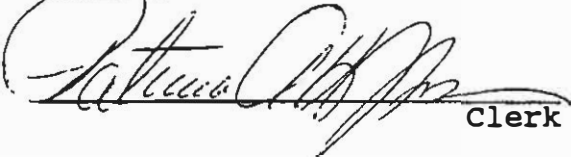
10. Counterparts. This Amended Declaration may be executed and acknowledged in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

11. Recording. The legal counsel or any other authorized representative of the Town of Bow Mar is hereby authorized and directed to record an original of this Amended Declaration in the records of the Clerk and Records of Arapahoe and Jefferson Counties, Colorado.

IN WITNESS WHEREOF, the undersigned have executed and acknowledged this Amended and Restated Declaration of Agreement Establishing Building Restrictions in "Bow-Mar" in Arapahoe and Jefferson Counties, State of Colorado on the dates set forth below.

TOWN OF BOW MAR

ATTEST:

  
Clerk

By: Mary H. Carter  
Mayor

BOW-MAR OWNERS, INC.

ATTEST:

  
Secretary

By: M. Christina Podoluk  
President

STATE OF COLORADO     )  
                                  ) ss:  
COUNTY OF DENVER     )

The foregoing was acknowledged before me this 10<sup>th</sup> day of April, 1991, by Mary D. Carter as Mayor of the Town of Bow Mar.

Witness my hand and official seal.

My Commission expires: 3/11/92

Dorothy J. Jamison  
Notary Public

STATE OF COLORADO     )  
                                  ) ss:  
COUNTY OF DENVER     )

The foregoing was acknowledged before me this 10<sup>th</sup> day of April, 1991, by M. Cristy as President of Bow-Mar Owners, Inc. Podolak

Witness my hand and official seal.

My Commission expires: 3/11/92

Dorothy J. Jamison  
Notary Public