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File 1979-0051
Date 11/14/00

Project Name: EASTGATE PLAZA

P A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the
r ISYS retrieval system. In some instances, not all entries designated to be scanned are present in the file. There
s are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been
e included.
n Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a
d quick guide for the contents of each file.
Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed
in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.

X	X	*Summary Sheet – Table of Contents
X		Application form
X		Receipts for fees paid for anything
		*Submittal checklist
X	X	*General project report
		Reduced copy of final plans or drawings
		Reduction of assessor's map
		Evidence of title, deeds
X	X	*Mailing list
		Public notice cards
		Record of certified mail
		Legal description
		Appraisal of raw land
		Reduction of any maps – final copy
		*Final reports for drainage and soils (geotechnical reports)
		Other bound or nonbound reports
		Traffic studies
		Individual review comments from agencies
		*Consolidated review comments list
		*Petitioner's response to comments
		*Staff Reports
		*Planning Commission staff report and exhibits
		*City Council staff report and exhibits
		*Summary sheet of final conditions
		*Letters and correspondence dated after the date of final approval (pertaining to change in conditions or expiration date)

DOCUMENTS SPECIFIC TO THIS DEVELOPMENT FILE:

X	X	Action Sheet	X	Certification of Plat	
X	X	Review Summary	X	X	Letter from Otha Rogers, Paragon Eng. re: detailing deficiencies in the Briargate Sewer and Water Construction – 5/14/82
X		Letter from Lori Hill to John Cadez re: approval of item – 6/28/79	X	X	Letter from Ronald Rish re: final inspection – 5/11/82
X		Petition for Road Vacation	X		Letter from Todd Deutsch, Benchmark Homes, Inc. to City re: change of engineers on project – 1/14/82
X	X	Planning Commission Minutes - ** - 6/26/79	X	X	Memo from Karl Metzner to Jim Wysocki re: application and processing of project – 5/6/80
X	X	Site Plan (to be scanned)	X		Final Plat Application
X	X	Planning Commission Minutes - ** - 9/25/79, 4/29/80	X		Power of Attorney
X	X	Letter from Stanley Anderson to Planning Dept. re: project report-4/23/80	X		Plat Certification and Record of Final Plat Recording
X		Policy of Title Ins.	X		Letter from Karl Metzner to Stanley Anderson re: revisions – 1/22/80
X	X	Easement and Agreement	X		Letter from Sue Drissel to Real Estate Inv. re: approval of item with conditions – 2/28/80
X		Power of Attorney	X	X	Letter from Stanley Anderson to Karl Metzner re: response to comments – 1/23/80

REVIEW SHEET SUMMARY

FILE # 51-79

DATE SENT TO REVIEW AGENCIES 6-12-79

ITEM: REZONE RD to PR-41 & OUTLINE DEVELOPMENT PLAN

DATE DUE 6-22-79

PC REFERRING DATE _____

ACC/OC RECEIVING DATE _____

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
6-18-79	CITY FIRE	Okay to rezone.
6-18-79	PD-VANDERTOOK	Width of North entrance off 28 1/4 Road? It looks very narrow. Otherwise okay.
6-20-79	GJ DRAINAGE	Open drain along entire south boundary of property. No removal of spoil along bank. 20' maintenance road ROW plus drain required on both sides of drain bank. If closed drain desired contact this office at 242-4343 before 3:30 p.m.
6-26-79	CITY ENGINEER (RISH)	33ft. rights of way and powers of attorney or other improvements agreements should be granted for full improvements to Elm Street and 28 1/4 road frontages. These 18.5' x 8.5' parking stalls are small. A major drain ditch exists on the south edge of this development. This drains much of the area on the north side of North Avenue. It must be maintained with whatever improvements are appropriate. I assume the street shown on the south edge is to be a public street. Appropriate right of way and partial (phased) improvements should be granted for this street. Does it align with previous portions dedicated to the West? The "intersection" at 28 1/4 Road looks "unusual".

DESIGN & DEVELOPMENT PLANNER

Recommend approval of rezone with a design density as proposed.
Ninety foot entry is in excess and inappropriate, and should not be dedicated. Subject to this consideration and review comments, recommend approval of outline development plan.

SEE REVIEW SHEETS FOR COMMENTS NOT RECEIVED IN TIME:

*MTN. BELL
PUBLIC SERVICE*

GJPC 6/26/79

MIKESELL/FLAGER/PASSED 5-0/A MOTION TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF A REZONE WITH A DESIGN DENSITY OF 41 UNITS/ACRES.

MIKESELL/FLAGER/PASSED 5-0/A MOTION TO RECOMMEND APPROVAL OF THE OUTLINE DEVELOPMENT PLAN TO THE CITY COUNCIL, SUBJECT TO STAFF AND REVIEW SHEET COMMENTS.

Acres 6.4
Units 257
Density 41/a

ACTION SHEET

File # 51-79
Zone _____
Tax Area Code _____

Activity Rezone R-1-D to P.R. 41

Phase Outline Dev. Plan

Date Neighbors Notified _____

Date Submitted 1 June 79

Date CIC/MCC Legal Ad _____

Date Mailed Out June 11, 1979

PC Hearing Date 26 June 79

Review Agencies 10 day Review Period - Return By 6-22-79

- Send
- COUNTY ROAD DEPARTMENT
 - COUNTY HEALTH DEPARTMENT
 - COUNTY SURVEYOR
 - COMTRONICS
 - GRAND VALLEY RURAL POWER
 - MOUNTAIN BELL
 - PUBLIC SERVICE
 - SOIL CONSERVATION SERVICE
 - SCHOOL DISTRICT 51
 - STATE HIGHWAY
 - STATE GEOLOGICAL
 - STATE HEALTH - RADIOLOGICAL
 - TRANSAMERICA TITLE

- Send
- FIRE _____
 - IRRIGATION G.U.
 - DRAINAGE G.V.
 - WATER (UTE, CLIFTON) _____
 - SEWER FRUITVALE
 - CITY ENGINEER/UTILITIES _____
 - MACK, LOMA, MESA, COLBRAN _____
 - FRUITA, PALISADE _____
 - P.D. Ed VanderTook

Board	Date	Comments
<u>GWPC</u>	<u>6-26-79</u>	<u>RE APP REZONE REZONE TO PR W/DESIGN DENSITY of 41 per acre; RE APP ODP SUBJ to Staff Comments</u>
<u>G.S.C.C.</u>	<u>7-18-79</u>	<u>Approved subject to P.C. conditions.</u>

Common Location S.W. Cor Elm Ave & 28 1/4 Road

Staff Comments

Original Documents

Imp. Agreement \$ _____ Appraisal x .05 = \$ _____ Open Space;

Imp. Guarantee Receipt # _____ Check # _____

Covenants _____ Open Space Dedication

Power of Attorney

Dev. Schedule

REVIEW SHEET SUMMARY

FILE # 51-79

DATE SENT TO REVIEW AGENCIES 8-3-79

ITEM EASTGATE PLAZA PR - PRELIMINARY

DATE DUE 8-17-79

PC MEETING DATE _____

NCC/CC MEETING DATE _____

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
8-13-79	CITY ENGINEER	Bunting Avenue street section looks fine. Power of Attorney and 33 ft. half rights-of-way should be granted for 28½ Road and Elm Avenue. The large ditch along Bunting which they propose to "tile" must be piped to city specs to the same size as the existing crossing under 28½ Road and should have sufficient access manholes for proper maintenance and sufficient drains into the pipe to handle all area runoff. These details should be addressed on their construction plans submittal to the City Engineer. Parking layout looks straight forward and access limitations look fine. Traffic impact on 28½ and North Avenue intersection will be significant.
8-13-79	CITY FIRE	For a complex of this size, these plans do not have enough information. The water at this location will have to be up-graded and it would be a good idea if Paragon could work closely with us on planning the fire flow requirements for the apartment hotel complex.
8-14-79	CITY UTILITY	Need locations for trash tanks. It would be good to encourage multiple use of trash tanks by townhouses and patio homes.
8-14-79	PUBLIC SERVICE	Gas: Developer should contact P.S.Co. Engineering for location of meters. May require exhibit easements on interior portion of development. Electric: Will work with developer as to line routes and meter locations. Easements will have to be delineated at time of construction with an exhibit-type easement.

DESIGN & DEVELOPMENT PLANNER

- Recommend approval subject to
- 1) ROW, POA and construction details required by city engineer.
 - 2) Upgrading of water supply to fire department standards.
 - 3) Trash locations coordinated with sanitation dept.
 - 4) Public service requirement.
 - 5) With a parking requirement of 1.7 spaces/unit for the apartment building, the plans fall 56 spaces short of the required 357 for 210 units.

GJPC 8-28-79

RIDER/FLAGER/PASSED 5-0/A MOTION TO RECOMMEND APPROVAL, SUBJECT TO STAFF COMMENTS, SUBJECT TO A TRAFFIC IMPACT ANALYSIS BEING SUBMITTED AT FINAL PLAN, AND WITH THE STIPULATION THAT THE FINAL PLAN SHOW MORE PARKING SPACES THAN ARE PRESENTLY SHOWN.

Acres 6.42
Units 235
Density 36.6

ACTION SHEET

File # 51-79
Zone PR
Tax Area Code _____

Activity Eastgate Plaza - PR

Phase Preliminary Date Neighbors Notified _____

Date Submitted 1 August 79 Date CIC/MCC Legal Ad _____

Date Mailed Out 3 August 79 PC Hearing Date 28 August 79

Review Agencies _____ 10 Review Period - Return By 17 August 79

- | Send | Send |
|--|---|
| <input type="checkbox"/> COUNTY ROAD DEPARTMENT | <input checked="" type="checkbox"/> FIRE <u>City</u> |
| <input type="checkbox"/> COUNTY HEALTH DEPARTMENT | <input checked="" type="checkbox"/> IRRIGATION <u>G.U.</u> |
| <input type="checkbox"/> COUNTY SURVEYOR | <input checked="" type="checkbox"/> DRAINAGE <u>G.J.</u> |
| <input type="checkbox"/> COMTRONICS | <input type="checkbox"/> WATER (UTE, CLIFTON) _____ |
| <input type="checkbox"/> GRAND VALLEY RURAL POWER | <input type="checkbox"/> SEWER _____ |
| <input checked="" type="checkbox"/> MOUNTAIN BELL | <input checked="" type="checkbox"/> CITY ENGINEER/UTILITIES _____ |
| <input checked="" type="checkbox"/> PUBLIC SERVICE | <input type="checkbox"/> MACK, LOMA, MESA, COLLBRAN |
| <input type="checkbox"/> SOIL CONSERVATION SERVICE | <input type="checkbox"/> FRUITA, PALISADE |
| <input type="checkbox"/> SCHOOL DISTRICT 51 | <input checked="" type="checkbox"/> <u>P.D. Ed Vander Toek</u> |
| <input checked="" type="checkbox"/> STATE HIGHWAY | <input checked="" type="checkbox"/> <u>Parks & Rec. - Adleman</u> |
| <input type="checkbox"/> STATE GEOLOGICAL | _____ |
| <input type="checkbox"/> STATE HEALTH - RADIOLOGICAL | _____ |
| <input type="checkbox"/> TRANSAMERICA TITLE | _____ |

Board	Date	Comments
<u>GRPC</u>	<u>8-20-79</u>	<u>REL APP PLAN SUB to Staff Comments including TRAFFIC IMPACT ANALYSIS TRIP GENERATION model, and that the ^{lack of} number of parking spaces be mitigated.</u>
_____	_____	_____
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_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Common Location SW corner of Elm Ave. & 28 1/4 Road

Staff Comments
OVERALL LANDSCAPE PLAN
Dev. Schedule

Original Documents
 Imp. Agreement \$ _____ Appraisal x .05 = \$ _____ Open Space;
 Imp. Guarantee Receipt # _____ Check # _____
 Covenants _____ Open Space Dedication
 Power of Attorney
 Dev. Schedule

REVIEW SHEET SUMMARY

FILE # 51-79

DATE SENT TO REVIEW AGENCIES 9-7-79

ITEM EASTGATE PLAZA FILING #1 - FINAL

LOCATION: SW CORNER OF ELM AVE. AND 28.25 ROAD

PETITIONER: Real Estate Investments, Inc. c/o Stan Anderson

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
9-25-79	CITY ENGINEER	<p>Powers of attorney for Elm Avenue and 28½ Road street improvements should be granted. Is Eastgate Place to be public access? I assumed at Preliminary Platting that it was just a private driveway. They now show a 24 ft. "Right of Way". If this is a public right of way I have the following comments:</p> <ol style="list-style-type: none"> 1. The mat should be a minimum of 22 ft. wide for two-way traffic with no on-street parking. 2. The sidewalks should be within the right of way. 3. With attached sidewalks, adequate mat width and allowing 6 inches behind the sidewalks, the resulting minimum right of way width is 35 ft. 4. The curb detail shown is not City-Standard. 5. Are the pavement calculations shown based on measured soil value? The soils report refers to subsequent tests and the calculations show R is approximately 9.
9-25-79	GJ DRAINAGE	Okay.
9-25-79	CITY UTILITIES	None.
9-25-79	DESIGN & DEVELOPMENT PLANNER	<p>Recommend approval of final for Filing #1 of Eastgate Plaza with the following considerations:</p> <ul style="list-style-type: none"> * Meet requirements of the City Engineer regarding details of mat width, sidewalk placement, ROW width of 35 feet, appropriate curb detail to City Standard. * POA for Elm Avenue and 28½ Road street improvements. * <i>INGRESS-EGRESS EASEMENT.</i> * <i>TEMPORARY TURN-AROUND (Gravel) for TRASH PICK-UP</i>
9-18-79	TRANSAMERICA	Okay
9-27-79	PUBLIC SERVICE	<p>Gas: no objections. Electric: request that "Private Road" be a dedicated utility easement. Also request a 5' utility easement adjacent to 28½ Road.</p>
9-27-79	CITY FIRE	<p>The following hydrants are needed to meet required fire flow:</p> <ol style="list-style-type: none"> 1. S.E. corner of lot 7, blk 3

51-79 EASTGATE PLAZA FILING #1 - FINAL

CITY FIRE CONT.

2. N.W. corner of lot 1, blk 2.
3. N.W. corner of lot 1, blk 1.
Minimum 8" line and not more than 1 hydrant
on a dead end line.

9-28-79

MTN BELL

Utility easements and dedication satis-
factory as shown.

GJPC 9-26-79

FLAGER/GRAHAM . . /PASSED 6--0/A MOTION TO RECOMMEND APPROVAL TO THE CITY
COUNCIL OF EASTGATE PLAZA FILING #1 WITH THE FOLLOWING CONSIDERATIONS:

1. CONSIDER POA FOR ROAD IMPROVEMENTS FOR ELM & 28 $\frac{1}{4}$ ROAD;
2. UTILITY EASEMENT AND TEMPORARY TURN--AROUND FOR UTILITY PICK--UP.

Acres _____
 Units _____
 Density _____

ACTION SHEET

File # 51-79
 Zone PR
 Tax Area Code _____

Activity REVISION TO PR - EASTGATE PLAZA FILING ONE

Phase FINAL Date ^{Per & Reg.} ~~Neighbors~~ Notified 12.10.79

Date Submitted 3 Dec 1979 Date CIC/MCC Legal Ad _____

Date Mailed Out 5 Dec 1979 PC Hearing Date 18 Dec. 79

Review Agencies 10 day Review Period - Return By 14 DEC. 79

- | | |
|---|---|
| <p><u>Send</u></p> <p>_____ COUNTY ROAD DEPARTMENT</p> <p>_____ COUNTY HEALTH DEPARTMENT</p> <p>_____ COUNTY SURVEYOR</p> <p>_____ COMTRONICS</p> <p>_____ GRAND VALLEY RURAL POWER</p> <p><input checked="" type="checkbox"/> MOUNTAIN BELL</p> <p><input checked="" type="checkbox"/> PUBLIC SERVICE</p> <p>_____ SOIL CONSERVATION SERVICE</p> <p>_____ SCHOOL DISTRICT 51</p> <p>_____ STATE HIGHWAY</p> <p>_____ STATE GEOLOGICAL</p> <p>_____ STATE HEALTH - RADIOLOGICAL</p> <p>_____ TRANSAMERICA TITLE</p> | <p><u>Send</u></p> <p><input checked="" type="checkbox"/> FIRE _____</p> <p>_____ IRRIGATION _____</p> <p>_____ DRAINAGE _____</p> <p>_____ WATER (UTE, CLIFTON) _____</p> <p>_____ SEWER _____</p> <p><input checked="" type="checkbox"/> CITY ENGINEER/UTILITIES _____</p> <p>_____ MACK, LOMA, MESA, COLLBRAN</p> <p>_____ FRUITA, PALISADE</p> <p><input checked="" type="checkbox"/> P.D. - Ed Vander Took</p> <p><input checked="" type="checkbox"/> PARKS & Rec.</p> |
|---|---|

Board	Date	Comments
<u>GPC</u>	<u>12/18/79</u>	<u>RE: REP. of MIDDLEMIST SITY to Staff Comments</u>

Common Location SW corner of Elm Ave. & 28 1/4 Road

Staff Comments

Revision in Building Locations
Only.

Original Documents

_____ Imp. Agreement \$ _____ Appraisal x .05 = \$ _____ Open Space;

_____ Imp. Guarantee Receipt # _____ Check # _____

_____ Covenants _____ Open Space Dedication

_____ Power of Attorney

_____ Dev. Schedule

Acres 6.42
Units 235
Density 36.6/ACRE

ACTION SHEET

File # 51-79
Zone P.R
Tax Area Code _____

Activity EMULATE PLAZA P.R

Phase FINAL

Date Neighbors Notified _____

Date Submitted _____

Date CIC/MCC Legal Ad _____

Date Mailed Out SEPT 7 - 1979

PC Hearing Date _____

Review Agencies 10/11 Review Period - Return By SEPT. 18 - 1979

- Send
- COUNTY ROAD DEPARTMENT
 - COUNTY HEALTH DEPARTMENT
 - COUNTY SURVEYOR
 - COMTRONICS
 - GRAND VALLEY RURAL POWER
 - MOUNTAIN BELL
 - PUBLIC SERVICE
 - SOIL CONSERVATION SERVICE
 - SCHOOL DISTRICT 51
 - STATE HIGHWAY
 - STATE GEOLOGICAL
 - STATE HEALTH - RADIOLOGICAL
 - TRANSAMERICA TITLE

- Send
- FIRE CITY
 - IRRIGATION G.V.
 - DRAINAGE G.J.
 - WATER (UTE, CLIFTON)
 - SEWER
 - CITY ENGINEER/UTILITIES
 - MACK, LOMA, MESA, COLLBRAN
 - FRUITA, PALISADE
 - P.D. EDYANDERTOOK
 - PARKS & REC. IDLEMAN

Board	Date	Comments
<u>CJPC</u>	<u>9-25-79</u>	<u>REG APP of FINAL for FILING 1 with follow. consider: POA for Road Improve for Elm 1/2 28 1/4; UTILITY EASEMENT & TEMP. TURN-AROUND for UTILITY UTILITY PICK-UP</u>
<u>C.C.</u>	<u>10-17-79</u>	<u>Approved</u>

Common Location S.W. CORNER ELM AVE. 1/2 28 1/4 ROAD

Staff Comments

Original Documents

Imp. Agreement \$ _____ Appraisal x .05 = \$ _____ Open Space;

Imp. Guarantee Receipt # _____ Check # _____

Covenants _____ Open Space Dedication

Power of Attorney _____

Dev. Schedule _____

REVIEW SHEET SUMMARY

FILE # 51-79 DATE SENT TO REVIEW AGENCIES _____
 ITEM: Amendment to Filing #1, Eastgate Plaza DATE DUE _____
 PC MEETING DATE 12-18-79
 MCC/CC MEETING DATE _____

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
12-11-79	DESIGN & DEVELOPMENT PLANNER	No objection to the amendment to Filing #1, as the final plat will remain the same, this is a revision of the final development plan for this stage of Eastgate Plaza. The building envelopes are re-defined to accomodate the proposed solar structures, as well as the revision of the landscaping. This submittal does not impact the area to any greater degree than the previous approved design, and the action is to allow review of the change and enter into record.
12-13-79	PUBLIC SERVICE	GAS: No objections on Filing #1, but developer should contact Engineering to locate service points and discuss interior easements that may be required for future filings ELECTRIC: No objections - easements shown are ok
12-12-79	MTN BELL	I cannot except any on revision of this plat. It seems we have moved Eastgate Plaza to the other side of the streets, both 28 $\frac{1}{4}$ Road and Elm.
12-17-79	CITY TRAFFIC ENGINEER	I was not involved in the original submittal, however based on these plans, I have no comments.
12-17-79	CITY UTILITIES	Eastgate Place should be constructed to city street standards to withstand traffic conditions, especially trash trucks. If it is constructed to city standards why make not make it a public street? Will utility lines be located in private street?
12-17-79	FIRE DEPT.	The following hydrants are as follows to meet required fireflow 1. S.E. corner of lot 7, blk. 3. 2. N.W. corner of lot 1, blk. 3. 3. N.W. corner of lot 1, blk. 1. Minimum 8" line and not more than 1 hydrant on a dead end line.
12-17-79	CITY ENGINEER	Same comments as on previous submittal.
12-18-79	STAFF RECOMMENDATION	Recommend approval of the amendment to Filing #1 Eastgate Plaza with the following considerations to be addressed before City Council hearing: 1. Petitioner should work with PSC re: easements. 2. Meet city engineer requirements re: details of mat width, sidewalk placement, ROW width of 35 feet, appropriate curb detail to city standard. (Get copy from staff).

GJPC 12-18-79

GRAHAM/SCHOENBECK/PASSED 4-0 TO RECOMMEND APPROVAL OF THE REQUEST SUBJECT TO STAFF COMMENTS.

Acres 6.42
Units 235
Density _____

ACTION SHEET

File # 51-79
Zone _____
Tax Area Code _____

Activity Final Plan & Plat Eastgate #2
Phase Filing One Amended & Filing #2 Date Neighbors Notified _____

Date Submitted 1.2.80 Date CIC/MCC Legal Ad _____

Date Mailed Out 1.11.80 PC Hearing Date 29 JAN. 80

Review Agencies 10 day Review Period - Return By 1.21.80

- | | |
|--|--|
| <p><u>Send</u></p> <p>____ COUNTY ROAD DEPARTMENT</p> <p>____ COUNTY HEALTH DEPARTMENT</p> <p>____ COUNTY SURVEYOR</p> <p>____ COMTRONICS</p> <p>____ GRAND VALLEY RURAL POWER</p> <p><input checked="" type="checkbox"/> MOUNTAIN BELL</p> <p><input checked="" type="checkbox"/> PUBLIC SERVICE</p> <p>____ SOIL CONSERVATION SERVICE</p> <p>____ SCHOOL DISTRICT 51</p> <p>____ STATE HIGHWAY</p> <p>____ STATE GEOLOGICAL</p> <p>____ STATE HEALTH - RADIOLOGICAL</p> <p>____ TRANSAMERICA TITLE</p> | <p><u>Send</u></p> <p><input checked="" type="checkbox"/> FIRE <u>city</u></p> <p>____ IRRIGATION</p> <p>____ DRAINAGE</p> <p>____ WATER (UTE, CLIFTON)</p> <p>____ SEWER</p> <p><input checked="" type="checkbox"/> CITY ENGINEER/UTILITIES</p> <p>____ MACK, LOMA, MESA, COLBRAN</p> <p>____ FRUITA, PALISADE</p> <p><input checked="" type="checkbox"/> <u>Jim Patterson - utilities</u></p> <p><input checked="" type="checkbox"/> <u>P.D. Ed Vandee Took</u></p> <p><input checked="" type="checkbox"/> <u>MAPPING</u></p> <p><input checked="" type="checkbox"/> <u>PARKS & Rec.</u></p> |
|--|--|

2 review sheets

<u>Board</u>	<u>Date</u>	<u>Comments</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____

Polled from ~~the~~ GSPC Agenda due to incomplete submittal see letters

Common Location S.W. CORNER Elm Ave & 28 1/4 Rd.

Staff Comments

*This submittal was put on a county receipt by mistake #14530
As per the treasurers office a warrant was sent to the city for the amount. SKD*

Original Documents

____ Imp. Agreement \$ _____ Appraisal x .05 = \$ _____ Open Space;

____ Imp. Guarantee Receipt # _____ Check # _____

____ Covenants _____ Open Space Dedication

____ Power of Attorney

____ Dev. Schedule

REVIEW SHEET SUMMARY

CITY
FILE# 51-79

ITEM FINAL PLAN & PLAT FOR EASTGATE-FILING #1-AMENDED DATE SENT TO REVIEW DEPT. 1-21-80
DATE DUE 1-21-80

PETITIONER Real Estate Investment of Grand Junction, Inc.

LOCATION SW corner Elm Avenue and 28 1/2 Road

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
1-14-80	GJ FIRE	Water main and hydrants and hydrant spacing must be brought to city code.
1-16-80	CITY ENGINEER	Is this review for filing one or two or both? Where is the plat? None provided. Please restate previous review comments of 8-10-79 and 9-17-79 (copies attached). This submittal does not have a utilities composite nor any information on the drawings concerning utilitites. This submittal is INCOMPLETE.
1-18-80	CITY TRANS. ENG.	The relationship os Filing #1, Filing #2 and the rest of the project is very confusing to me and for that reason, - I am unable to comment. An up to date overall traffic impact plan is needed.
1-14-80	CITY UTILITIES	I'm not sure if this review is for filing #1 amended or for filing #2. No location is shown on either one for trash containers. Where is the utility composite plan?
1-15-80	PARKS & REC.	Definite problems with indicating mature plant sizes. There is a need to plan ahead and use plants that will best fit at maturity unless there are plans for selective removal and thinning as the plants grown. Office Building White Birch have a bad habit of dying back in the top of the tree, due to our dry winters. Either plan on winter watering and heaving mulching or use another clump type tree species (ie) Washington Hawthorne, Sumac or large shrubs with multiple stems - Viburnum lantana, Red Osier Dogwood, Sea Buckthorn, Buffaloberry.
1-15-80	MAPPING	None.
1-25-80	PUBLIC SERVICE	Gas: No objections - will serve townhouses from front side with gas. Electric: Eastgate Plaza Filing #2: request 8' easement adjacent to North property line. Eastgate Plaza Filing #1 - Amended - will obtain an exhibit type easement from developer when actual development begins. Propose serving from the front. Need to discuss meter locations with developer.
1-21-80	MTN. BELL	Utility easements shown are not adequate for all the utilities that would need to use them. Also as a final plat I see no dedication of streets easements etc. on the plat.
3-25-80	DESIGN & DEVELOPMENT PLANNER	1. This plan is not single family residential in character as had been the original approved submittal. The large parking areas are a complete turnabout from the original carports. 2. Landscape plan is inferior to original submittal. 3. A temporary turnaround still is not shown...overall traffic impact plan is needed.

STAFF RECOMMENDATION Recommend that original submittal is far superior to this application and should be adhered to.

Acres ~~1.425~~ .425 a.
 Units N/A
 Density N/A

ACTION SHEET

File # 51-79
 Zone PR
 Tax Area Code _____

Activity EASTGATE PLAZA - FILING #2 (submittal Addendum)*

Phase FINAL Date Neighbors Notified _____

Date Submitted 1 FEB 80 Date CIC/MCC Legal Ad _____

Date Mailed Out 2-5-80 PC Hearing Date 26 Feb 80

Review Agencies _____ 10 day Review Period - Return By 2-15-80

- | Send | Send |
|----------------------------------|--------------------------------|
| ____ COUNTY ROAD DEPARTMENT | ✓ FIRE <u>city</u> |
| ____ COUNTY HEALTH DEPARTMENT | ✓ IRRIGATION <u>G.U.</u> |
| ____ COUNTY SURVEYOR | ✓ DRAINAGE <u>G.Y.</u> |
| ____ COMTRONICS | ____ WATER (UTE, CLIFTON) |
| ____ GRAND VALLEY RURAL POWER | ____ SEWER |
| ✓ MOUNTAIN BELL | ✓ CITY ENGINEER/UTILITIES |
| ✓ PUBLIC SERVICE | ____ MACK, LOMA, MESA, COLBRAN |
| ____ SOIL CONSERVATION SERVICE | ____ FRUITA, PALISADE |
| ____ SCHOOL DISTRICT 51 | ✓ <u>Jim Patterson</u> |
| ____ STATE HIGHWAY | ✓ <u>RD. Ed VanderTook</u> |
| ____ STATE GEOLOGICAL | ✓ <u>Energy Office</u> |
| ____ STATE HEALTH - RADIOLOGICAL | ✓ <u>mapping</u> |
| ____ TRANSAMERICA TITLE | |

2 review sheets

<u>Board</u>	<u>Date</u>	<u>Comments</u>

Common Location SW corner of Elm & 28 1/4 Road

Staff Comments
*** NOTE :**

This SUBMITTAL is INTENDED To complete the SUBMITTAL for Filing #2 submitted 1/2/80. Copy of previous review comment (if any) attached To these review sheets.

Legal
Final
Sam
Distric

- Original Documents
- | | | | |
|------------------------|----------|----------------------------|-------------------|
| ____ Imp. Agreement | \$ _____ | Appraisal x .05 = \$ _____ | Open Space; _____ |
| ____ Imp. Guarantee | | Receipt # _____ | Check # _____ |
| ____ Covenants | | Open Space Dedication | |
| ____ Power of Attorney | | | |
| ____ Dev. Schedule | | | |

REVIEW SHEET SUMMARY

CITY
FILE# 51-79

ITEM EASTGATE PLAZA FILING #1 -AMENDED FINAL

DATE SENT TO REVIEW DEPT. 3-5-80

DATE DUE 3-17-80

PETITIONER REAL ESTATE INVESTMENTS OF GRAND JUNCTION

LOCATION SW corner of Elm Avenue and 28 1/4 Road

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
3-11-80	GJ FIRE	As noted in previous comments, hydrant spacing min. 300' on min. 8" looped system. Depending on fire flow that is required, as determined by construction, two hydrants may be required. Nearest 8" main is in Elm Avenue. Recommend installation of hydrants prior to beginning construction.
3-11-80	CITY ENGINEER	The drawings show curb, gutter, sidewalk and widened pavement on 28 1/4 Road. Do they intend to construct these improvements now. If so, detailed plans for 28 1/4 Road improvements must be submitted to me for review and approval prior to construction. If not, a power of attorney should be granted to the City for the improvements prior to recording the plat. If the sewer is a public sewer (to be maintained by the City) those detailed plans must also be submitted to me for review and approval prior to construction.
3-11-80	CITY UTILITIES	None.
3-14-80	CITY TRANSPORTATION	The "Temp. turn around" radius scales at only 20'. This is inadequate. I assume the aisle and drive width is 24', which is okay.
3-23-80		<p>Designer for the petitioner met with staff for the first time to describe the proposed amendment to Filing #1. The following was related to the staff:</p> <ol style="list-style-type: none"> 1. Although not indicated on the plan, there will be carports installed on the north and west sides of the parking area. This would diminish the concern of staff regarding the large area of blacktop in this plan versus the previous submittal. 2. The road will be recessed and a combination of berming and landscaping will further screen the area from the adjacent properties. 3. A new plan was submitted showing a temporary turnaround and area for trash containers. Dimensions for the driveway (24') and the aisle width (26') was given. This satisfied the majority of the staff review comments. 4. Because the townhomes in the northeast corner of the property are proposed to be built over an existing easement, it was agreed by the petitioner that a replat would have to be submitted before those units were to begin construction. The configuration of the road is different than in the original submittal and would necessitate a replatting of this section of Eastgate Plaza. <p>With submittal of a revised plan showing carports, indicating the berming and recessed parking area, as well as including the requested dimensions...and the agreement of the petitioner to submit a replat prior to the construction of the townhomes in the northeast corner of the site, staff would recommend approval of this amendment to Filing #1 of Eastgate Plaza.</p>
4-29-80	GJPC -	SIMONETTI/FLAGER PASSED 6-0 A MOTION TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE FINAL PLAN, SUBJECT TO STAFF COMMENTS AND RECOMMENDATIONS.
4-29-80	GJPC -	FLAGER/GRAHAM PASSED 6-0 A MOTION TO REQUIRE THE PETITIONER TO PRESENT THE FINAL REPLAT FOR REVIEW AT SUCH TIME AS PETITIONER DESIRES TO BEGIN CONSTRUCTION ON THIS PARTICULAR PORTION OF THIS REPLAT.

DESIGN & DEVELOPMENT PLANNER

- 1) Parking design needs to be reworked for better circulation -- and to eliminate any backing up onto Bunting.
- 2) Bunting ROW is appropriate as shown, as no additional ROW was indicated on previous submittals.
- 3) Indicate areas for trash containers on site plan.
- 4) Need landscaping time-table.

STAFF RECOMMENDATION

No objection to proposed use. However, the present parking plan must be redesigned as per the Transportation engineer's and Design and Development Planner comments (it has changed markedly from the earlier submittal). The following considerations should also be addressed:

- 1) Petitioner should contact Public Service and Mountain Bell regarding additional easements.
- 2) Meet with Transportation Engineer and Design and Development Planner regarding redesign of parking plan.
- 3) Contact City Engineer re: redesign and changes within Roadway Plan and utilities composite to meet city standards as per review sheet comments.
- 4) Indicate trash container location on site plan - contact Jim Patterson for appropriate review.
- 5) According to Grand Junction Drainage - the drainage ditch under Bunting should be tiled.

The Planning Commission should decide if the above redesign warrants their review - or if the item may go on to City Council hearing after submitting redesign to staff.

Acres _____
Units _____
Density _____

ACTION SHEET

File # 51-79
Zone PR
Tax Area Code _____

Activity Castgate Plaza Filing #1 Amended
Phase Final Date ^{pet} ~~Neighbors~~ Notified 3-17-80 4-18-80

Date Submitted 6 FEB 80 Date CIC/MCC Legal Ad _____

Date Mailed Out _____ PC Hearing Date 25 March 80

Review Agencies _____ 10 day Review Period - Return By _____

- | | |
|--|--|
| <u>Send</u> | <u>Send</u> |
| <input type="checkbox"/> COUNTY ROAD DEPARTMENT | <input checked="" type="checkbox"/> FIRE |
| <input type="checkbox"/> COUNTY HEALTH DEPARTMENT | <input type="checkbox"/> IRRIGATION |
| <input type="checkbox"/> COUNTY SURVEYOR | <input type="checkbox"/> DRAINAGE |
| <input type="checkbox"/> COMTRONICS | <input type="checkbox"/> WATER (UTE, CLIFTON) |
| <input type="checkbox"/> GRAND VALLEY RURAL POWER | <input type="checkbox"/> SEWER |
| <input checked="" type="checkbox"/> MOUNTAIN BELL | <input checked="" type="checkbox"/> CITY ENGINEER/ ^{TRAUSA} UTILITIES |
| <input checked="" type="checkbox"/> PUBLIC SERVICE | <input type="checkbox"/> MACK, LOMA, MESA, COLLBRAN |
| <input type="checkbox"/> SOIL CONSERVATION SERVICE | <input type="checkbox"/> FRUITA, PALISADE |
| <input type="checkbox"/> SCHOOL DISTRICT 51 | <input checked="" type="checkbox"/> <u>Jim Patterson</u> |
| <input type="checkbox"/> STATE HIGHWAY | _____ |
| <input type="checkbox"/> STATE GEOLOGICAL | _____ |
| <input type="checkbox"/> STATE HEALTH - RADIOLOGICAL | _____ |
| <input type="checkbox"/> TRANSAMERICA TITLE | _____ |

2 review sheets

Board	Date	Comments
63 PC	25 Mar 80	Tabled till April due to pet. not present.
65 PC	4/28/80	final plan rec app sub. & staff & review comment final plat: comm. & see final re-plot at such time that the N.E. corner is under construction
CIC	5/21/80	APPROVED (consent agenda) subj. to conditions of 65PC

Common Location SW Cooner of Elm Ave & 28 1/4 Rd

Staff Comments

NOTE

This SUBMITAL is INTENDED TO COMPLETE THE SUBMITAL FOR Filing (Amended submitted 1/2/80) Copy of previous review comment (if any) attached to these review sheets.

Original Documents

- | | | | |
|--|----------|----------------------------|-------------------|
| <input type="checkbox"/> Imp. Agreement | \$ _____ | Appraisal x .05 = \$ _____ | Open Space; _____ |
| <input type="checkbox"/> Imp. Guarantee | _____ | Receipt # _____ | Check # _____ |
| <input type="checkbox"/> Covenants | _____ | Open Space Dedication | _____ |
| <input type="checkbox"/> Power of Attorney | _____ | _____ | _____ |
| <input type="checkbox"/> Dev. Schedule | _____ | _____ | _____ |

REVISED SHEET SUMMARY

FILE # 51-79

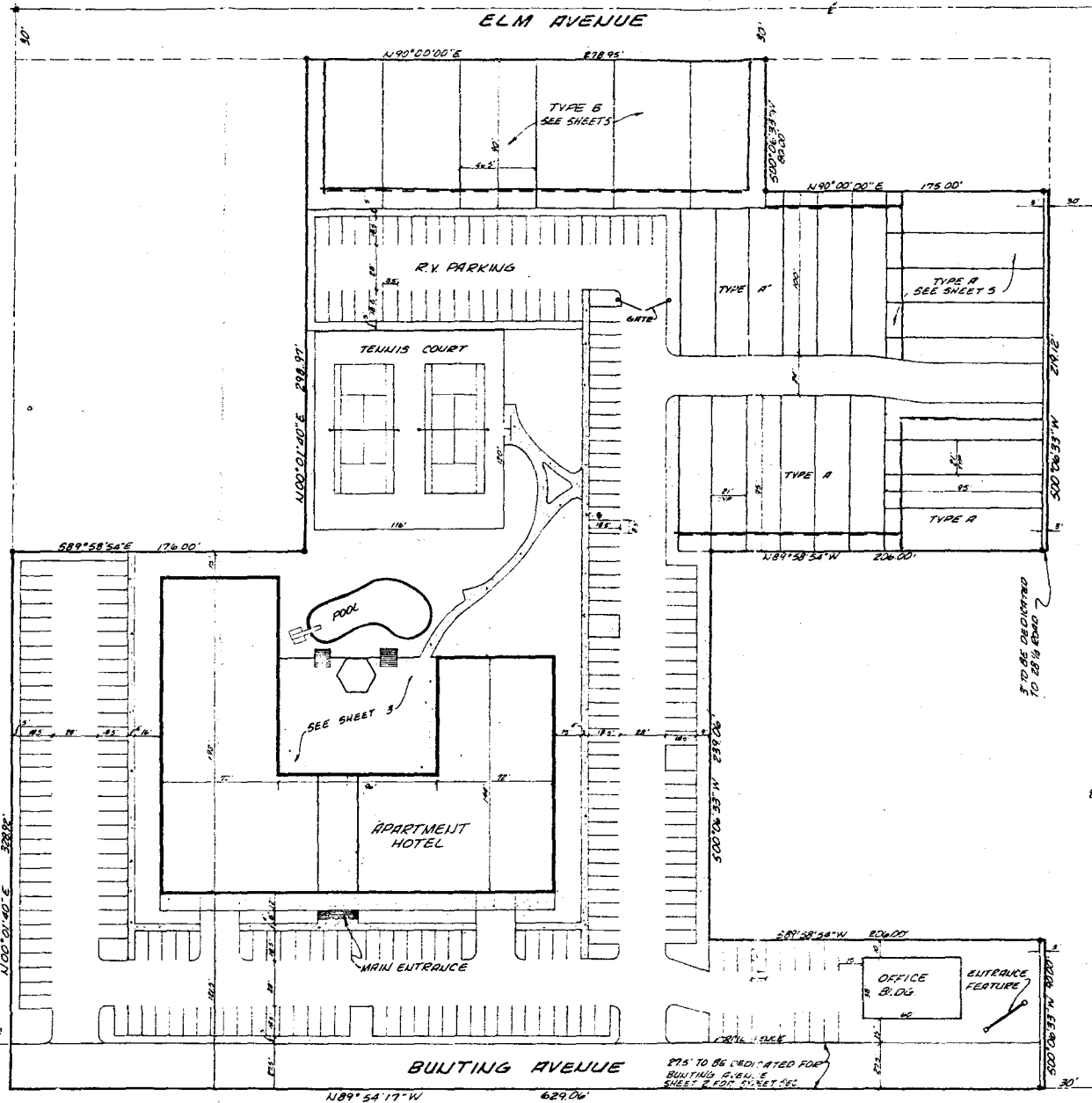
DATE SENT TO REVIEW AGENCIES 2-5-80

TITLE EASTGATE PLAZA FILING #2 - FINAL

DATE DUE 2-15-80

LOCATION: SW. corner of Elm & 28 $\frac{1}{4}$ Road

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
2-15-80	PUBLIC SERVICE	Gas: No objections. May elect to go joint trench with electric when meter locations are determined. Electric: Eastgate Filing #2. Request eight (8) foot easement adjacent to north property line as previously requested. Contractor to check with PSCO for meter and transformer locations.
2-15-80	TRANS. ENG.	Both parking lot arrangements are "dead ends". If the lots are full and a vehicle enters, there is not room to turn around, and he would be forced to back out onto Bunting. Also, vehicles parked in the parallel handicapped spaces would be forced to back out onto Bunting Avenue to exit, since the min. turning radius on some vehicles approaches 24'.
2-15-80	CITY ENGINEER	As previously stated, the right of way for Bunting is to be 66 ft. consistent with the adopted standards. The half-mat should be 20' ft. which in turn locates the north curb. Sidewalk should be 5 ft. (see standards). Right of way corner at Bunting and 28 $\frac{1}{4}$ Road should be rounded with 20 ft. radius to accommodate future intersection. Location and width of sidewalk on 28 $\frac{1}{4}$ is consistent with City Standards. How far is it to the nearest access point on the 30" drain pipe? If it exceeds 400 ft. a manhole or catch-basin should be provided for access. Utility Composite shows incorrect intersection as to locations of curb, gutter and sidewalks (including future). This may conflict with hydrant location. Power of attorney for curb, gutter and pavement widening on 28 $\frac{1}{4}$ needed. Curb detail shown is not City Standards.
2-15-80	CITY UTILITIES	If a trash tank is desired a site for its location should be shown.
2-15-80	MAPPING	No comment.
2-25-80	MOUNTAIN BELL	I find that our comments made prior are still appropriate. 1-21-80 The utility easements shown are not adequate for all the utilities that would need to use them. Also as a final plat I see no dedication of streets, easements etc. on the plat.
2-25-80	GRAND JUNCTION DRAINAGE	Drainage ditch to be tiled under Bunting avenue. Needs to be 18" diameter rather than 30". Agreement already signed for 18" size.



GENERAL NOTE

1. THIS DEVELOPMENT IS LOCATED IN PART OF THE SW 1/4 SW 1/4 SECTION 7, T15, R1E, U1M.
2. TOTAL ACRES = 6.32 AC.
3. DENSITY = 36.4 UNITS PER ACRE
4. TOTAL AREA IN ROADWAYS = 0.42 AC.
5. TOTAL AREA IN LANDSCAPING, OPEN SPACE = 1.53 AC.
6. THIS DEVELOPMENT IS LOCATED IN FRUITVAL BRU DIST.
7. THIS DEVELOPMENT IS LOCATED CITY OF GRAND JUNCTION WATER DIST.
8. THIS DEVELOPMENT IS LOCATED IN RID ZONE.

UNITS

TOTAL NO. APARTMENT UNITS	210
TOTAL NO. TOWNHOME UNITS	19
TOTAL NO. PATIO UNITS	6
TOTAL NO. UNITS	235 UNITS

PARKING

PATIO HOMES -	2/UNITS
TOWN HOMES	2/UNITS
OFFICE BUILDING	8
APARTMENT UNDER STRUCTURE	78
OUT DOOR	198
RV PARKING	25
TOTAL	301 PARKING SPACES

SITE PLAN

M.A. & N.J. Ferrari
2816 Elm Ave.
Grand Junction, CO. 81501

Helen M. Warren
1002 Bookcliff Ave.
Grand Junction, CO, 81501

Ralph S. Purcell
2817 Elm Ave.
Grand Junction, CO. 81501

H.W. & L.E. Holloway
2817½ Elm Ave.
Grand Junction, CO. 81501

R.C. & D.M. Cole
Rt. 1, Box 283 A
Palisade, CO. 81526

John A. Foster
525 28¼ Road
Grand Junction, CO. 81501

Marjorie M. Banks
524 28¼ Road
Grand Junction, CO. 81501

C.E. & M.J. Burns
522½ 28¼ Road
Grand Junction, CO. 81501

L.D. & S.R. Brewer
2601 Bookcliff Ave.
Grand Junction, CO. 81501

William Ira Clark et al
514 28¼ Road
Grand Junction, CO. 81501

M.B. & B.K. West
517 28¼ Road
Grand Junction, CO. 81501

H. & E. Miracle
510 Court Road
Grand Junction, CO. 81501

A.E. & E R. Wimer
1321 Main St.
Grand Junction, CO. 81501

Charles Herbertson Estate
511 28¼ Road
Grand Junction, CO. 81501

D.B. & R. Yost
519 18¼ Road
Grand Junction , CO. 81501

M. Johnson & M. Metzger
1024 Los Gamos Road Apt. H
San Rafael, Calif. 94903

Elizabeth Mooney
515 28¼ Road
Grand Junction, CO. 81501

Nancy D. Southers
c/o R.W. & B.R. Bacon
3038 D½ Road
Grand Junction, CO. 81501

Myrtle L. Powell
103 Canary Court
Grand Junction, CO. 81501

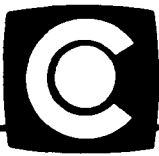
Robert G. and Joan H. Lucas
2000 N. 8th
Grand Junction, CO. 81501

Victor W. Perino Trustee
606 Viewpoint Drive
Grand Junction, CO. 81501

EES Grand Junction Assoc.
720 Main Street
Kansas City, MO. 64105

OFFICE COPY

East Gate Plaza #51-79



CENTENNIAL REALTY

January 3, 1977

Mr. Don Warner
City Planning Staff
Grand Junction City Hall
Grand Junction, Colorado 81501

Dear Don:

Several days have passed since the Planning Commission meeting. Since that time I have had occasion to review some of the comments made by the Planning Commission and in each case, I still feel that the project in the location suggested would be a viable project, economically sound, and well located for the benefit of the community and the older people who would be served by the project.

By this letter, I'd like to answer several of the comments made at the planning commission meeting. As you know, I have a vested interest in this project but in each case where I'm answering the comments of the Planning Commission, I do so with my past background in mind and my experience on the City Council has not been washed from my memory.

The comment was made that we should not inflict a high density project upon this low density neighborhood. Using this logic, no area could ever be developed because vacant ground has no density. If the site near a shopping center is not appropriate to the development for a senior citizen housing project, there is no area appropriate for the development. Lets remember that when people become older, they become less mobile and proximity to shopping is important for the residents of a senior citizen project. In several instances in the past where senior citizen housing has been developed in Grand Junction, the needs of the senior citizen were not as well served by proximity to a shopping center.

Some of the members of the planning commission also expressed a reluctance to a high rise housing project for senior citizens. Actually, what is proposed at 28 $\frac{1}{2}$ Road is a 5 story project, a low rise project when compared to other projects across the country. Again, the senior citizens who will be residents of the building are losing their mobility and an elevator building will serve the less mobile people better because they do not need to move as far to obtain home and comfort as a horizontal project. In addition, the security of the residents will not be as severe a problem as the exposure of each of the units when each has an exterior entrance door. Each home would not be exposed to cold drafts as much as where each door opens to the outside either and as you know, when people begin to get older, their tolerance to cold outside air becomes less and less.



MLS

660 ROOD AVENUE (303) 243-1500
GRAND JUNCTION, COLORADO 81501




One other matter needs attention and that is the matter of parking. We are in possession of a automobile parking survey from Denver in the area of several senior citizen housing developments. The people who are residents of these developments are not as mobile physically, but they also lose their ability to drive. We can also give you some good statistics from the Grand Junction area which will justify the reduction of the parking requirements from the history of the projects catering to the needs of the senior citizen. When we get further along these statistics will be made available to you.

We have spoken several times about this matter of density in Grand Junction. I have the feeling that density is a four letter word when it's considered by the Planning Commission. Density is relative. A high density in Grand Junction would be considered an extremely low density in other areas of the country including some areas in Colorado. If we do not consider the appropriateness of high density in certain areas we will never be able to consider the luxury of transit systems to serve the people of Grand Junction. We cannot afford to provide public transit to citizens in low density areas, the economic cost will be too great. Not only is that a consideration but the cost of spreading our population over greater and greater areas to consume land is something that planning should be dealing with at this time in Grand Junction, Colorado.

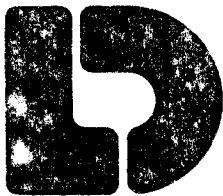
One other argument presents itself to the encouragement of higher density in some areas and that consideration is the cost of public services to people who are residents of the land. The public services I'm referring to are water, sewer, trash collection, police protection, fire protection, electric service, natural gas supply, and even in some areas transportation of students to schools. If we continue to expand the borders of the city we must continue to expand all of the facilities of the city. The cost will not be as great if we take some areas to increase density of population and plan to provide for the needs of some of our citizens in areas of higher density.

We feel this project has merit and we would like to see the project to completion. The project is economically sound from the information which we have received and we feel that it will be properly located. We would ask for your help in making provision for the development of the project.

Sincerely,



Stanley R. Anderson



Lincoln DeVore

1000 West Fillmore St.
Colorado Springs, Colorado 80907
(303) 632-3593
Home Office

August 20, 1979

Centennial Realty
660 Rood Avenue
Grand Junction, Colorado 81501

Attn: Mr. Tom Logue

Re: SUBSURFACE SOILS INVESTIGATION

EASTGATE PLAZA
PLANNED DEVELOPMENT

GRAND JUNCTION, COLORADO

Gentlemen:

Transmitted herewith is the report giving the results of a subsurface soils investigation for the proposed Eastgate Plaza Planned Development in Grand Junction, Colorado.

Respectfully submitted,

LINCOLN-DEVORE TESTING LABORATORY, INC.

By: *Robert L. Bass*
Robert L. Bass
Civil Engineer

George D. Morris
Reviewed by George D. Morris, P. E.

RLB/vfb
LDTL Job No. J-658

OFFICE COPY

2700 Highway 50 West
Pueblo, Colo 81003
(303) 546-1150

P.O. Box 1427
Greenwood Springs, Colo 81601
(303) 945-6020

109 Rosemont Plaza
Montrose, Colo 81401
(303) 249-7838

P.O. Box 1882
Grand Junction, Colo 81501
(303) 242-8968

P.O. Box 1643
Rock Springs, Wyo 82901
(307) 382-2649

ABSTRACT

The contents of this report are a subsurface soils investigation and foundation recommendations for the proposed Eastgate Plaza Planned Development located east of the city of Grand Junction, Colorado. The Laboratory has not at the present time seen a set of construction drawings for any of the structures to be constructed in this development. However, it is our understanding that the structures will include townhomes, patio homes, 7-story apartment structures and a swimming pool.

It is recommended that shallow foundation systems consisting of continuous foundations beneath bearing walls isolated spread footings beneath columns and other points of concentrated load be used to carry the weight of the proposed townhomes and patio homes. The allowable bearing capacity for shallow foundations will depend upon the depth at which the foundation rests. Foundations located in the upper 5 feet of the soil profile may be proportioned on the basis of a maximum allowable bearing capacity of 2400 psf, with a minimum dead load pressure of 800 psf being recommended. Foundations located between 5 and 8 feet below the ground surface, may be proportioned on the basis of a maximum allowable bearing capacity of 1500 psf, with a minimum dead load pressure of 500 psf being required. The bottoms of shallow foundations should be located a minimum of 2 feet below finished grade or greater if dictated by local building codes, for frost protection.

It is recommended that deep foundation systems consisting of driven piles or drilled piers be used to carry the weight of the proposed 7-story apartment structures. Piles or piers should extend through the upper lean clay and silt

materials and into the underlying alluvial gravel and cobbles. Additional deep foundation recommendations are provided in the body of this report.

It is recommended that shallow foundations be well balanced and heavily reinforced. Contact stresses beneath exterior foundation walls should be balanced to within ± 400 psf at all points. Isolated interior footings should be designed for unit loads of about 200 psf greater than the average of those selected for the exterior walls. The criteria for balancing will depend somewhat upon the nature of the structure. All foundation stem walls should be designed as grade beams capable of carrying their loads over a clear span of at least 12 feet.

Adequate drainage must be maintained at all times. Water should never be allowed to pond above the foundation material.

More complete recommendations can be found within the body of this report. All recommendations are subject to the limitations set forth herein.

GENERAL

The purpose of this investigation was to determine the general suitability of this site for construction of a series of residential units. These units include townhomes, patio homes, and 7-story apartment structures. Additionally, a swimming pool is to be constructed as part of the proposed development. Characteristics of the individual soils encountered in the test borings were examined for use in designing foundations for these structures.

The proposed construction site is located east of the city of Grand Junction, Colorado, on the southwest corner of the Intersection of Elm Avenue and 28-1/4 Road. The present course of the Colorado River is located approximately 2 miles to the south of the site. The Grand Valley Canal is located approximately 1/2 mile to the north. The site location is indicated on the enclosed General Site Location Diagram.

The topography of this site is relatively flat, being located on an alluvial plain of the Colorado River. The area in the vicinity of this site has an overall gradient to the south towards the river. The exact direction of surface runoff will be controlled to an extent by streets and buildings existing in the area and by the proposed construction and, therefore, will be variable. In general, however, surface runoff will travel to the south, eventually entering the Colorado River. Surface and subsurface drainage are poor.

The soils encountered on this site are alluvial in nature, having been deposited on the site by the action of the Colorado River in the past. The upper portion of the soil profile consisted of a layer of lean clays. These

clays were encountered from the ground surface and extended to depths in excess of 20 feet. These clay materials are somewhat stratified or layered due to their alluvial origin. Generally, the material at the ground surface was comparatively stiff and dry. With increasing depth, however, the clays increased in moisture content and decreased in density, and were noted to be quite soft and wet at a depth of 15 feet below the ground surface.

Immediately below this clay material was encountered a sandy silt. This silt is also alluvial in nature. The silt was encountered in a relatively thin layer, and was of low to moderate density. Immediately below this silt was encountered a layer of gravel and cobbles representing an ancient river terrace of the Colorado River. This gravel and cobble layer will form the primary foundation support for deep foundation systems. Bedrock beneath this site is believed to consist of the Mancos Shale of Cretaceous Age.

The Mancos Shale can broadly be described as a thin-bedded, drab, light to dark grey marine shale, with thinly interbedded fine grain sandstone and limestone layers. Some portions of the Mancos Shale are bentonitic and, therefore, are highly expansive. The majority of the shale, however, has only a moderate expansion potential. Mancos Shale was not encountered in any of the test borings placed on this site to the depths drilled. It is believed that Mancos Shale exists beneath this site at sufficient depth that it will not affect construction or performance of foundation systems.

Nine test borings were placed on this site at locations indicated on the enclosed Test Boring Location Diagram. Test Borings 1 through 4 were placed beneath the proposed locations of the 7-story apartment structures. Test Boring No. 5 was placed in the vicinity of the proposed swimming pool. Test Borings 6 and 7 were placed in the patio homes area and Test Borings 8 and 9 were placed in the area of the proposed townhomes. While some variations were noted in the soil profile encountered in these test borings, the soil profile was sufficiently uniform that no further test borings were deemed necessary. All test borings were advanced with a power driven continuous auger drill. Samples were taken with the standard split-spoon sampler, with thin-walled Shelby tubes, and by bulk methods.

The soil profile encountered can broadly be described as a three layer system. The upper layer of the system consisted of alluvial, lean clays. These materials were deposited by the action of the Colorado River in the past and are somewhat layered or stratified in nature. The clays were noted to be relatively stiff and dry near the ground surface, but gradually became softer and wetter with depth. The clays extended to depths in excess of 20 feet.

The second layer of the soil profile, which was encountered immediately below the lean clay, consisted of a sandy silt. This material was also alluvial in nature, and was of low to moderate density. The third layer of the soil profile consisted of coarse grained, alluvial gravel and cobbles, which were encountered immediately below the silt layer. The gravel and cobbles will form the primary foundation support for deep foundation systems, such as driven piles or drilled piers.

The samples obtained during our field exploration program have been grouped into two soil types. Soil Type No. 1 is representative of the overlying lean clay materials and Soil Type No. 2 is representative of the sandy silt of the second layer of the soil profile. More precise engineering characteristics of these two soil types are given on the enclosed summary sheets. The following discussion will be general in nature.

Soil Type No. 1 classified as lean clay (CL) of fine grain size. Generally, this material is plastic, of low permeability, and was encountered in a low to moderate density condition. The stiffer, drier materials of this lean clay, which were encountered near the ground surface, will have a tendency to expand upon the addition of moisture, with expansion pressures on the order of 935 psf being measured. The underlying soft, wet clay will have a distinct tendency to long-term consolidation upon loading. Therefore, it is considered important that the proper bearing capacity values be used and that balancing and reinforcing recommendations be carefully followed. The bearing capacity for this clay will depend somewhat upon the depth at which the foundation rests. Foundations located in the upper 5 feet of the soil profile may be proportioned on the basis of a maximum allowable bearing capacity of 2400 psf, with a minimum dead load pressure of 800 psf being recommended. Foundations located between 5 and 8 feet below the ground surface may be proportioned on the basis of a maximum allowable bearing capacity of 1500 psf, with a minimum dead load pressure of 500 psf being recommended. Soil Type No. 1 contains sulfates in detrimental quantities.

Soil Type No. 2 classified as silt (ML) with a considerable portion of sand-sized particles. This material is non-plastic, of low to moderate permeability, and was

encountered in low to moderate density condition. It will have no tendency to expand upon the addition of moisture but will have a tendency to long-term consolidation upon loading. This material was encountered in a relatively thin layer, at depths greater than 20 feet below the ground surface. At this depth, Soil Type No. 2 should not affect construction or performance of shallow foundation systems. Where deep foundation systems are used, however, they will of necessity penetrate this silt layer. In the case of drilled piers, difficulties with sloughing or caving of this silt can be expected and casing will probably be required during construction.

CONCLUSIONS AND RECOMMENDATIONS

Since the magnitude and nature of the proposed foundation loads are not precisely known to Lincoln-DeVore at this time, the recommendations contained herein must be quite general in nature. Any special loads or unusual design conditions should be reported to Lincoln-DeVore so that changes in recommendations can be made if necessary. However, based upon our analysis of the soil conditions and project characteristics previously outlined, the following recommendations are made.

Basically, two types of structures will be constructed in this development. The first type of structure will include the townhomes and patio homes, which are assumed to be relatively light weight structures of typical wood frame construction. Foundation loads will be low to moderate in magnitude. The second type of structure will include the 7-story buildings which presumably will have relatively high foundation loads. It is recommended that shallow foundations be used for the lighter structures of the first group and that deep foundations be used for the heavier structures of the second group. Recommendations for each group of structures will be discussed in turn.

TOWNHOMES AND PATIO HOMES

It is recommended that shallow foundation systems consisting of continuous foundations beneath bearing walls and isolated spread footings beneath columns and other points of concentrated load be used to carry the weight of the proposed townhomes and patio homes. Foundations located in the upper 5 feet of the soil profile may be proportioned on the basis of a maximum allowable bearing capacity of 2400 psf, with a minimum dead load pressure of 800 psf being required. Foundations located

between 5 and 8 feet below the ground surface may be proportioned on the basis of a maximum allowable bearing capacity of 1500 psf, with a minimum dead load pressure of 500 psf being recommended. The bottoms of shallow foundations should be located a minimum of 2 feet below finished grade, or greater if dictated by local building codes, for frost protection.

It is recommended that shallow foundations be well balanced. Contact stresses beneath exterior foundation walls should be balanced to within ± 500 psf at all points. Isolated interior footings should be designed for unit loads of about 200 psf less than the average of those selected for the exterior walls. The criteria for balancing will depend somewhat upon the nature of the structure. Single-story slab on grade structures may be balanced on the basis of dead load only. Multi-story structures or structures with basements or crawl-spaces should be balanced on the basis of dead load plus approximately one-half the live load.

All stem walls for shallow foundations should be designed as grade beams capable of carrying their loads over a clear span of at least 12 feet. Horizontal reinforcement should be placed continuously in stem walls, with no gaps or breaks in the reinforcing steel, unless specially designed. Stem walls should be reinforced at both top and bottom, with the reinforcing being approximately balanced between these two locations. Where foundation walls will retain soil in excess of 4 feet in height, vertical reinforcing may be necessary and should be designed. For use in designing this reinforcing, the equivalent fluid pressure of the soil may be taken as about 42 pcf in the active state.

As has been discussed previously in this report, the lean clay materials were noted to increase in

moisture and decrease in density with depth. Subsurface seepage can also be expected during certain times of the year. Therefore, it is recommended that half-basement foundations, if used, be well sealed. If full-basement foundations are used, they should be sealed and provided with a subsurface peripheral drain. The subsurface drain should consist of an adequate discharge pipe, gravel collector, and sand or fabric filter. The discharge pipe should be properly sloped and should be provided with a free gravity outfall to the ground surface, if at all possible. If gravity outfall is not possible, then a lined sump and pump should be used.

7-STORY STRUCTURES

It is recommended that a deep foundation system consisting of either driven piles or drilled piers be used to carry the weight of these high-rise structures. Deep foundations should extend through the upper clays and silts and into the underlying coarse grained river gravel and cobbles. There are numerous advantages and disadvantages associated with both piles and drilled piers, with respect to this site, and the final decision as to which type of deep foundation system is used, is mainly economic. Therefore, this decision will be left to the owner or his representative. Driven pile and drilled pier deep foundations will be discussed in turn.

Where driven piles are used, there are many pile types which would be suitable. Available pile types include piles of timber, steel, and precast concrete. Each kind is associated with a number of advantages and disadvantages. Timber piles are typically suitable for design loads on the order of 10 to 50 tons, which should be acceptable for this project. However, timber piles are often difficult to splice during driving and may be vulnerable to decaying, should the ground water level

be subject to frequent fluctuation. Timber piles are comparatively low in cost, however, and the problem with decomposition may be largely overcome with treatment.

Steel piles are very easy to splice, making them suitable to a site where the bearing surface may fluctuate widely in depth. Steel piles are somewhat vulnerable to corrosion, however, particularly in areas where the ground water may be rich in sulfates. The finer grained soils on this site can be expected to contain a significant amount of sulfates. Steel piles are typically suitable for design loads on the order of 40 to 120 tons, which would be more than sufficient for this site.

Precast concrete piles are suitable for a very wide range of design loads. They may also achieve a very high corrosion resistance by using sulfate resistant cement in the concrete. However, concrete piles are typically associated with a fairly high initial cost and are quite difficult to splice.

It is recommended that piles be driven into the underlying alluvial gravel and cobble layer. Specific recommendations pertaining to pile type and pile capacity cannot easily be made in a report of this nature, as such a choice depends upon the expected loads, the driving equipment to be used, the degree of resistance encountered and other factors. Therefore, this choice will be left to the structural engineer. By way of example, however, a pile driven into the gravel and cobble materials with a hammer having a rated energy of 15,000 foot pounds, which is driven to a resistance of 10 blows per inch, should have a capacity on the order of 30 to 60 tons. These estimated pile capacities are based upon static considerations of bearing

capacity and friction and often will not precisely represent true capacity obtained in the field. Therefore, when driving operations commence, pile capacities should be verified either by means of a pile load test or by the use of a suitable pile driving equation.

Piles must be used in groups to provide for eccentricities in loading. The group capacity will be less than the summation of the individual pile capacities, depending upon the relative spacing of piles. A conservative estimate of the group capacity, however, would be on the order of two-thirds of the summation of the individual pile capacities.

Horizontal loads are not anticipated on this site. However, if horizontal loads exist and exceed 1000 pounds per pile, batter piles will be required. Hammer and cushioning should be matched to the chosen pile type to insure attainment of the design load capacity during driving. Minimum spacing of piles should be twice the average of pile diameter or 1.7 times the diagonal dimension of the pile cross section, but not less than 24 inches. The tops of piles should extend a minimum of 4 inches into the pile cap. No pile should be shorter than 10 feet in length. Vertical piles should not vary more than 2% from the plumb position. Eccentricity of reaction on the pile group with respect to the load resultant should not exceed a dimension that would produce overloads of more than 10% in any one pile.

As an alternative to a driven pile deep foundation system, one may wish to consider the use of drilled piers on this site. It must be noted, however, that some difficulty with soft caving soils may complicate the installation of drilled piers, and casing and dewatering equipment may be necessary for construction. Piers which extend a minimum of 4 feet into the

underlying gravel and cobbles may be proportioned on the basis of a maximum end bearing capacity of 10,000 psf with no minimum end dead load pressure required. The maximum allowable side friction for the gravel materials may be taken as about 1000 psf with no minimum dead load side friction required. Due to the relatively low density of the overlying lean clay soils, no additional contribution due to side friction through these soils should be considered in the design.

The bottoms of all piers should be thoroughly cleaned prior to the placement of concrete. Piers should be reinforced throughout their entire length. The amount of reinforcing required in each pier will depend upon the magnitude and nature of the loads involved. As a rule of thumb, a minimum of one #5 rebar for every 16 inches in pier circumference should be used, with an absolute minimum of two #5 rebars per pier.

To insure that all voids in the side walls of the pier are filled, concrete with a slump of 5 to 6 inches should be used. Piers having an extremely small diameter, on the order of 12 inches or less, may use concrete with a slump in excess of 6 inches. Piers must be dewatered prior to the placement of concrete. If dewatering is not possible, concrete should be tremmied below standing water. A free fall of concrete in excess of 5 feet should be prohibited unless the pier diameter is large enough to insure that the concrete will not contact the side walls during the fall. Any casing used during drilling should be pulled as concrete is being placed to allow the complete filling of all voids in the side walls with concrete.

A potential exists on this site for the occurrence of a phenomenon known as negative skin friction. This would affect both the driven pile and drilled pier types of foundation systems. If the low density clays are made to consolidate, either by application of a surcharge load at the surface or by a lowering of the moisture content of the soils. The consolidation of these materials can exert a drag or negative skin friction on the piles or piers penetrating them. The magnitude of negative skin friction will depend upon the amount of consolidation which occurs and this cannot be accurately ascertained. However, we do not feel that negative skin friction will exceed a value on the order of 500 psf acting on the perimeter area of the piers or piles. This load should it develop would simply be added to the loads applied by the structure. As long as there is no surcharge load applied to induce consolidation, however, and the moisture content of the soils remains relatively constant, this phenomenon is not likely to develop.

SWIMMING POOL

Since the weight of the swimming pool shell and the water contained in the pool will be less than the weight of the soils displaced by the pool, it is not felt that the pool will exceed the bearing capacity value of the soil. More important in this instance, is the expansion and consolidation characteristics of the soil in which the pool will rest. Significant amounts of expansion or settlement beneath the pool may cause cracking of the pool shell, which would permit the introduction of water into the soil and aggravate these detrimental conditions. Generally, the shallower portions of the pool will rest in stiffer soils which can be expected to expand somewhat if water is introduced. The deeper portions of the pool will rest in softer soils which may experience settlement upon the addition of loads. Therefore

it is considered important that water not be allowed to reach the soil beneath the pool.

To this end, it is recommended that an under-drain be constructed beneath the pool. This under-drain would intercept any water which might leak from the pool and carry it away before it enters the soils. The under-drain should consist of a layer of clean, coarse grained gravel, approximately 6 inches in thickness. The gravel layer should be provided with a positive gradient to the deepest point of the excavation and should carefully be graded to prevent pockets where water can stand. An impermeable membrane should be placed on the bottom of the excavation immediately below the gravel. This membrane could be made using polyethylene film, a spray on asphalt emulsion, or a bentonite seal. At the lowest portion of the excavation, a lined sump pit should be constructed which should be provided with a pump to remove water as necessary.

Additionally, it is recommended that the pool shell be heavily reinforced to provide rigidity and minimize cracking. Surface drainage in the vicinity of the pool should be positively sloped away to prevent surface water from entering the soils beneath the pool.

GENERAL RECOMMENDATIONS

Where floor slabs are used, they may be placed directly on grade or over a compacted gravel blanket of 4 to 6 inches in thickness. If the gravel blanket is chosen, however, it must be provided with a free gravity outfall to the ground surface and must not be allowed to act as a water trap beneath the slab. Floor slabs should be placed in sections no greater than 25 feet on a side. Deep construction or contraction joints could be placed at these lines to facilitate even breakage.

This will keep a minimum any unsightly cracking which would be caused by differential movement.

Adequate drainage is recommended around the structures both during and after construction to prevent the ponding of water. The ground surface around structures should be graded such that surface water will be carried quickly away. Minimum gradient within 10 feet of any structure will depend upon surface landscaping. Bare or paved areas should have a minimum gradient of 2%, while landscaped areas should have a minimum gradient of 5%. Roof drains should be carried across all backfilled areas and discharged well away from the structure. The overall drainage pattern should be such that water directed away from one structure is not directed against an adjacent structure.

Backfill around the proposed structure and in utility trenches leading to the structure should be compacted to at least 90% of the maximum standard Proctor dry density, ASTM D-698. The native soils on this site may be used for backfilling purposes. Backfill should be placed in lifts not to exceed 6 inches compacted thickness and at a moisture content approximately equal to the Proctor optimum moisture content \pm 2%. Backfill should be compacted to the required density by mechanical means and no water flooding techniques of any type should be used in the placement of fill on this site.

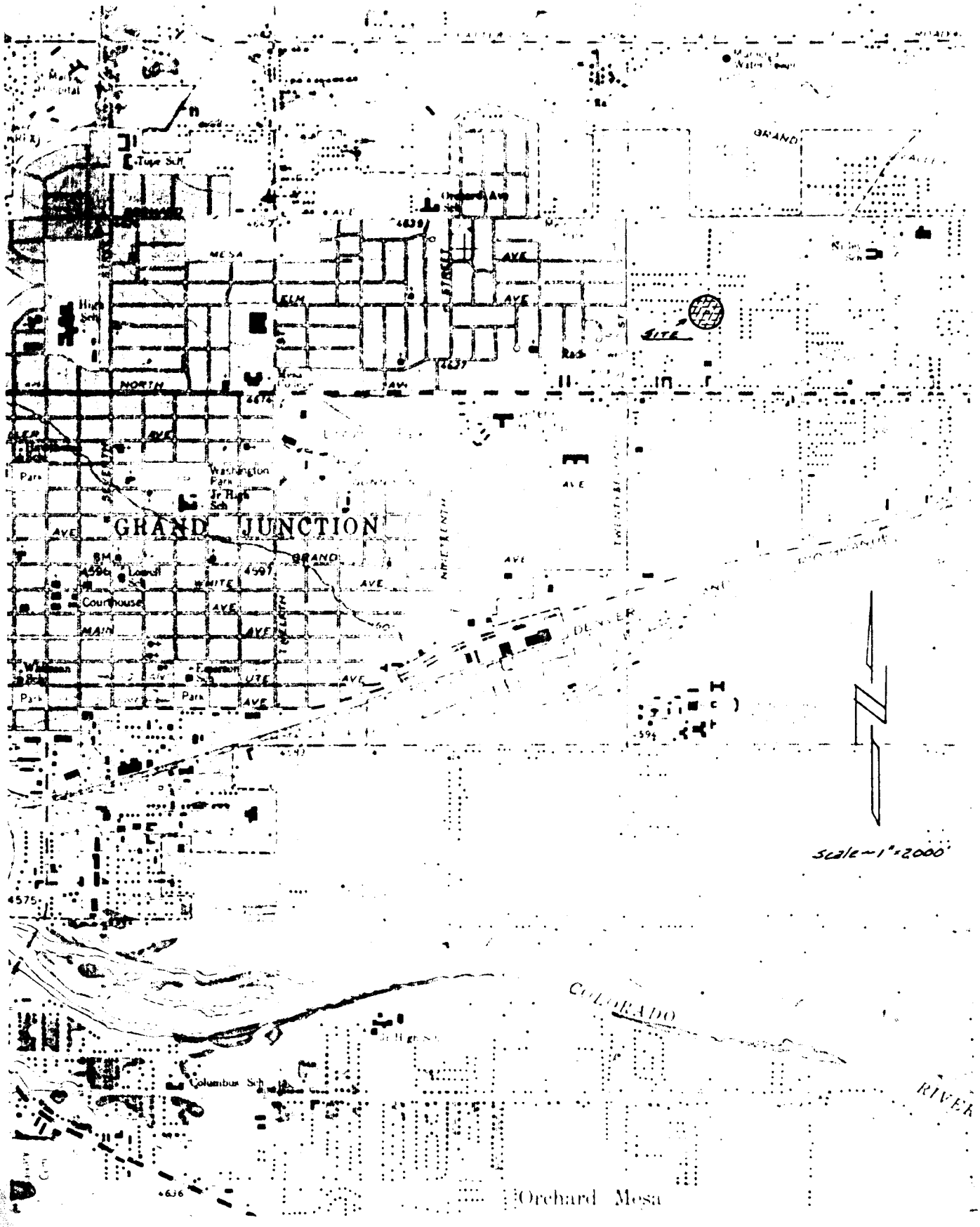
Any topsoil or debris should be removed from the construction area prior to beginning of construction of foundations. Additionally, should any pockets of debris, organic material, or otherwise unsuitable material be encountered during excavation for footings, this material should be removed and replaced with backfill compacted to 90% of the maximum standard Proctor dry density, using the procedures previously outlined.

The open foundation excavation should be inspected prior to construction of forms or placement of concrete to establish that proper design bearing material has been reached and that no debris, soft spots, or otherwise unsuitable materials are located in the foundation region.

The soils on this site contain sulfates in detrimental quantities. Therefore, a sulfate resistant cement such as Type II Cement is recommended for use in all concrete which will be in contact with the foundation soils. Under no circumstances should calcium chloride ever be added to a Type II Cement. In the event that Type II Cement is difficult to obtain, a Type I Cement may be used, providing the concrete is separated from the soils by water resistant membranes.

Samples of the surficial soils on this site have been obtained for purposes of Hveem-Carmany testing. The Hveem-Carmany test determines the properties of the soil as a pavement base and subbase. This testing is currently being performed and test results will be forwarded as soon as they become available.

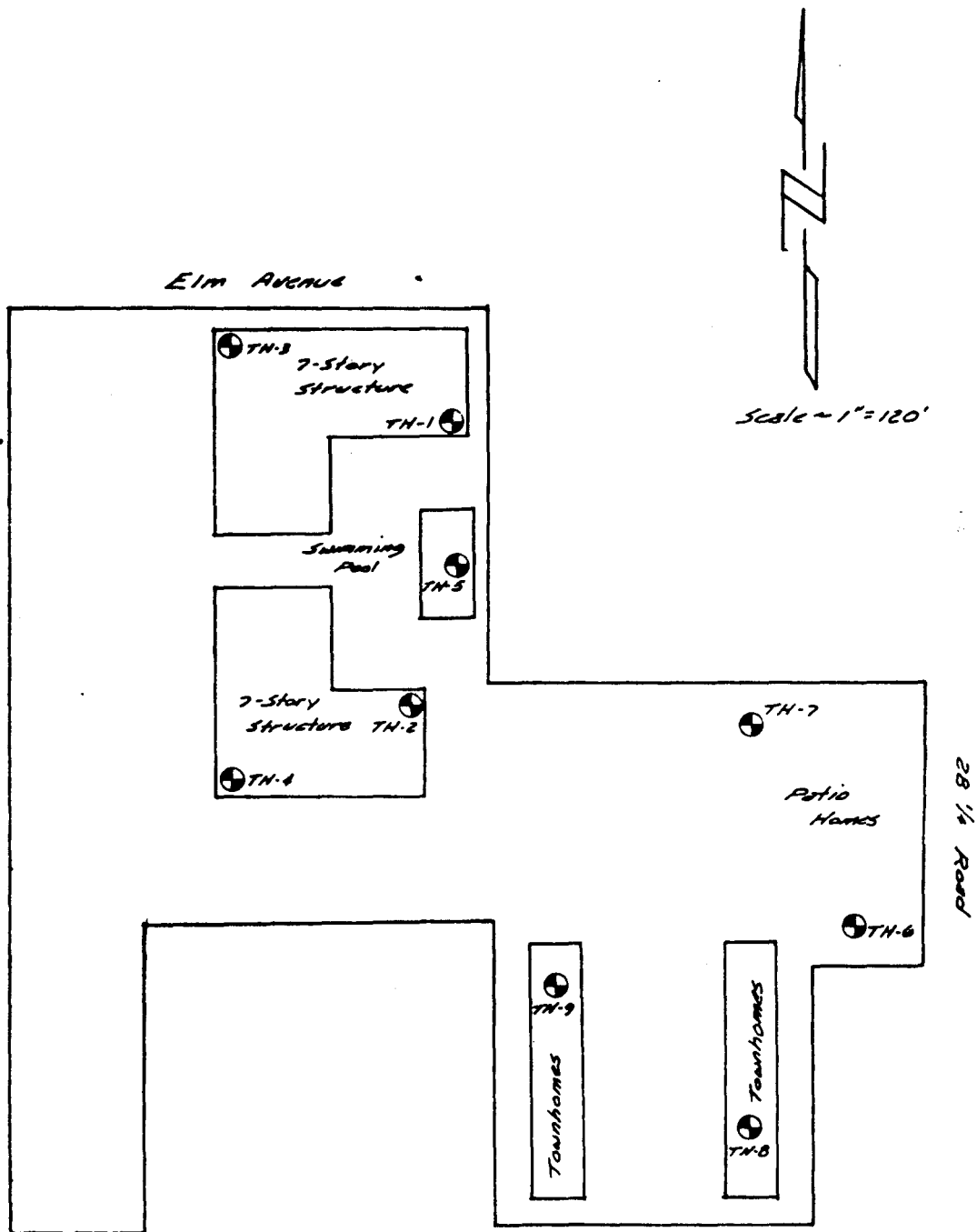
It is believed that all pertinent points concerning the subsurface soils on this site have been covered in this report. If soil types and conditions other than those outlined herein are noted during construction on this site, these should be reported to Lincoln-DeVore so that changes in recommendations can be made if necessary. Should questions arise or further information be needed, please feel free to contact our office.



General Site Location Diagram
 Gate Plaza - Grand Junction, CO

L LINCOLN
 DEVORE
 ENGINEERS-
 GEOLOGISTS

COLORADO: COLORADO SPRINGS,
 PUEBLO, GLENWOOD SPRINGS,
 GRAND JUNCTION, MONTROSE,
 WYOMING: ROCK SPRINGS



Test Boring Location Diagram
 Gateway Plaza - Grand Junction, CO

L LINCOLN
 DEVORE
 ENGINEERS-
 GEOLOGISTS

COLORADO: COLORADO SPRINGS,
 PUEBLO, GLENWOOD SPRINGS,
 GRAND JUNCTION, MONTROSE,
 WYOMING: ROCK SPRINGS

SOILS DESCRIPTIONS:

SYMBOL	USCS	DESCRIPTION
		Topsoil
		Man-made Fill
	GW	Well-graded Gravel
	GP	Poorly-graded Gravel
	GM	Silty Gravel
	GC	Clayey Gravel
	SW	Well-graded Sand
	SP	Poorly-graded Sand
	SM	Silty Sand
	SC	Clayey Sand
	ML	Low-plasticity Silt
	CL	Low-plasticity Clay
	OL	Low-plasticity Organic Silt and Clay
	MH	High-plasticity Silt
	CH	High-plasticity Clay
	OH	High-plasticity Organic Clay
	Pt	Peat
	GW/GM	Well-graded Gravel, Silty
	GW/GC	Well-graded Gravel, Clayey
	GP/GM	Poorly-graded Gravel, Silty
	GP/GC	Poorly-graded Gravel, Clayey
	GM/GC	Silty Gravel, Clayey
	GC/GM	Clayey Gravel, Silty
	SW/SM	Well-graded Sand, Silty
	SW/SC	Well-graded Sand, Clayey
	SP/SM	Poorly-graded Sand, Silty
	SP/SC	Poorly-graded Sand, Clayey
	SM/SC	Silty Sand, Clayey
	SC/SM	Clayey Sand, Silty
	CL/ML	Silty Clay

ROCK DESCRIPTIONS:

SYMBOL	DESCRIPTION
<u>SEDIMENTARY ROCKS</u>	
	CONGLOMERATE
	SANDSTONE
	SILTSTONE
	SHALE
	CLAYSTONE
	COAL
	LIMESTONE
	DOLOMITE
	MARLSTONE
	GYPSUM
	Other Sedimentary Rocks
<u>IGNEOUS ROCKS</u>	
	GRANITIC ROCKS
	DIORITIC ROCKS
	GABBRO
	RHYOLITE
	ANDESITE
	BASALT
	TUFF & ASH FLOWS
	BRECCIA & Other Volcanics
	Other Igneous Rocks
<u>METAMORPHIC ROCKS</u>	
	GNEISS
	SCHIST
	PHYLLITE
	SLATE
	METAQUARTZITE
	MARBLE
	HORNFELS
	SERPENTINE
	Other Metamorphic Rocks

L LINCOLN DeVORE TESTING LABORATORY
 COLORADO: Colorado Springs, Pueblo, Glenwood Springs, Montrose, Gunnison, Grand Junction. - WYO. - Rock Springs

SYMBOLS & NOTES:

SYMBOL	DESCRIPTION
	9/12 Standard penetration drive Numbers indicate 9 blows to drive the spoon 12" into ground.
	ST 2-1/2" Shelby thin wall sample
W_0	Natural Moisture Content
W_x	Weathered Material
	Free water table
γ^0	Natural dry density
T.B.	Disturbed Bulk Sample
②	Soil type related to samples in report
15' W_x Form.	Top of formation
	Test Boring Location
	Test Pit Location
	Seismic or Resistivity Station. Lincation indicates approx. length & orientation of spread (S = Seismic, R = Resistivity)

Standard Penetration Drives are made by driving a standard 1.4" split spoon sampler into the ground by dropping a 140 lb. weight 30". ASTM test des. D-1586.

Samples may be bulk, standard split spoon (both disturbed) or 2-1/2" I.D. thin wall ("undisturbed") Shelby tube samples. See log for type.

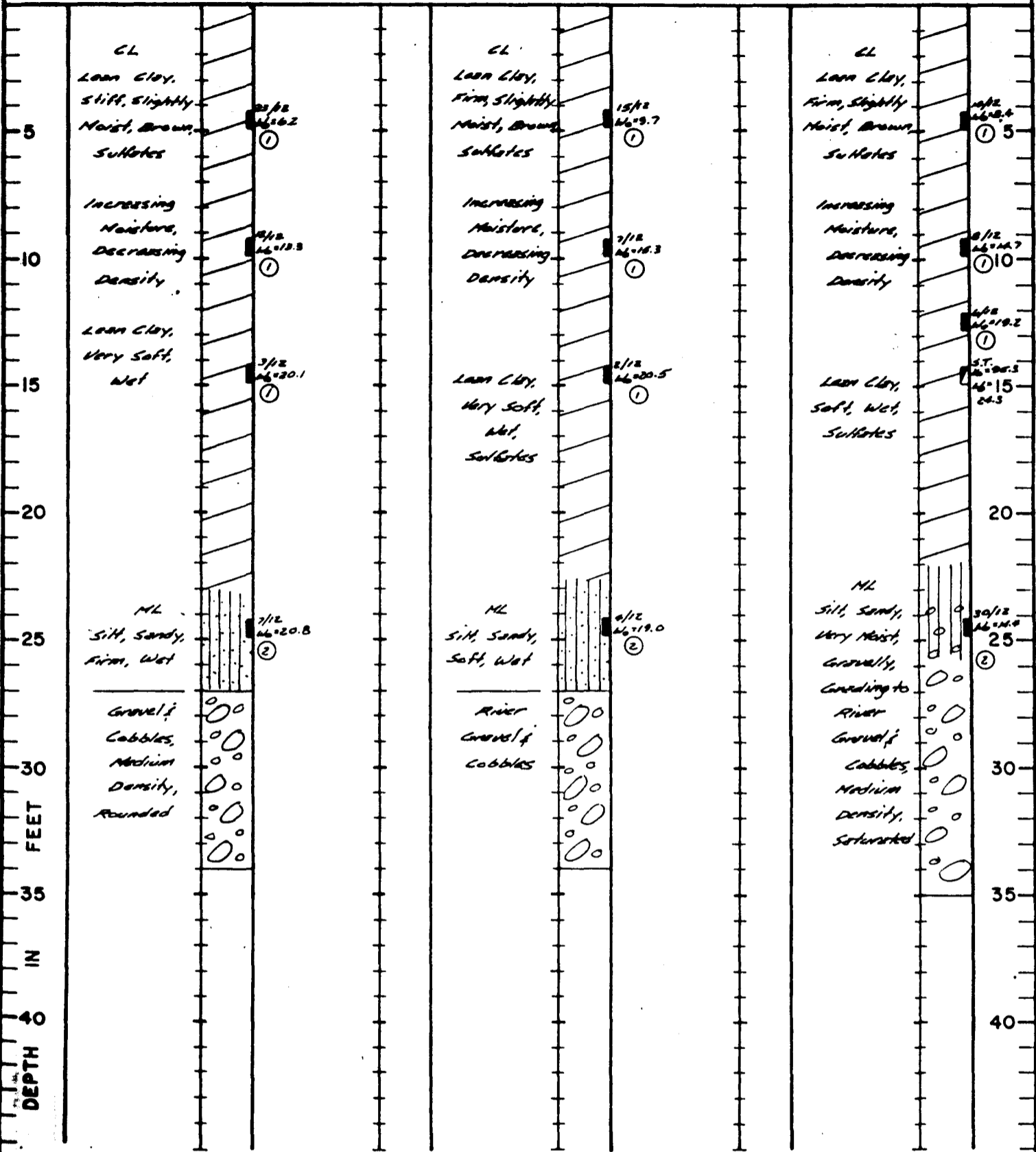
The boring logs show subsurface conditions at the dates and locations shown, and it is not warranted that they are representative of subsurface conditions at other locations and times.

EXPLANATION OF BOREHOLE LOGS AND LOCATION DIAGRAMS

TEST HOLE NO. 1
TOP ELEVATION

2

3



DRILLING LOGS

LD LINCOLN
DeVORE
ENGINEERS-
GEOLOGISTS

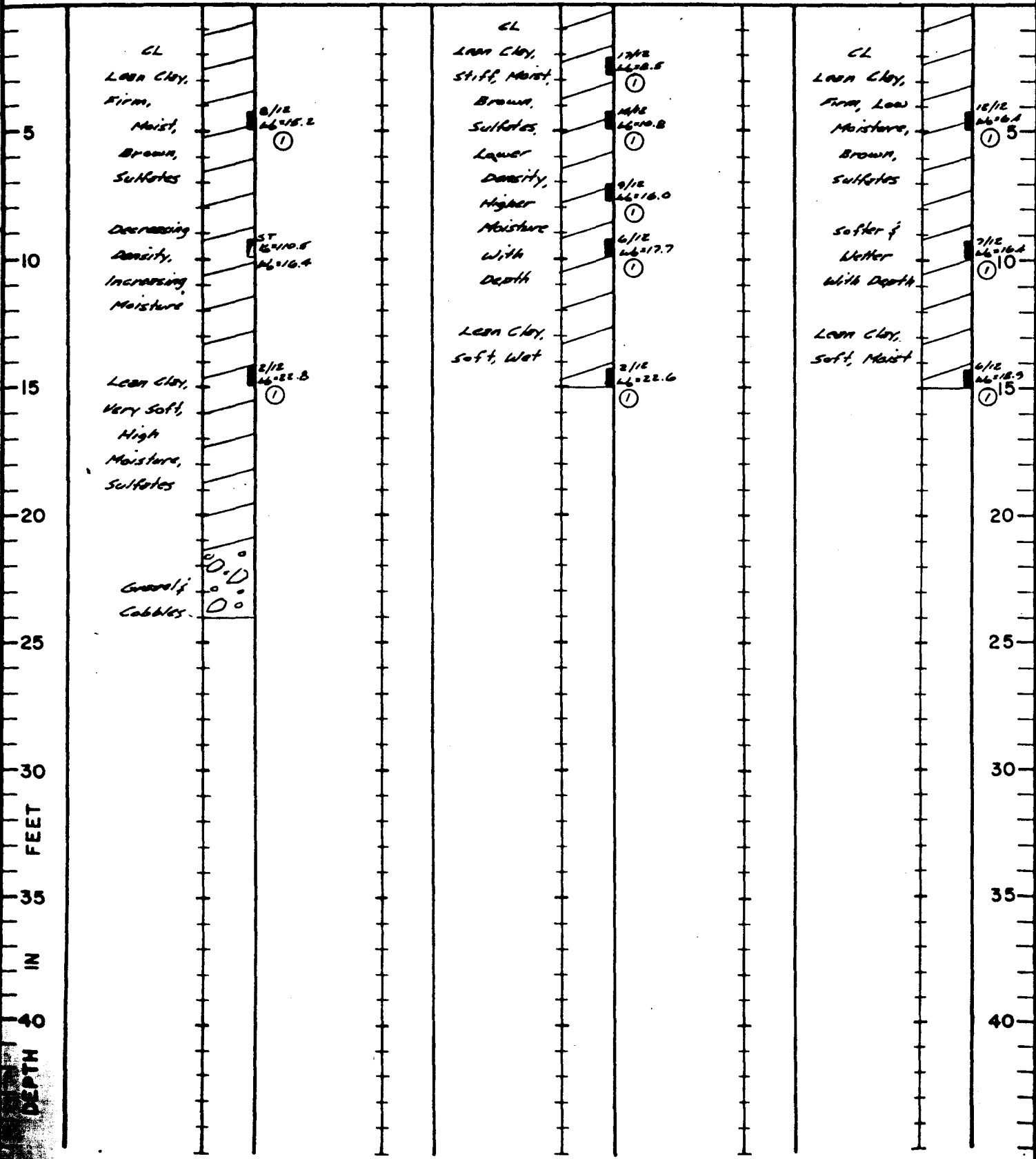
COLORADO: COLORADO SPRINGS,
PUEBLO, GLENWOOD SPRINGS,
GRAND JUNCTION, MONTROSE,
WYOMING: ROCK SPRINGS

TEST HOLE NO. 4
TOP ELEVATION

4

5

6



DRILLING LOGS



LINCOLN
DeVORE
ENGINEERS-
GEOLOGISTS

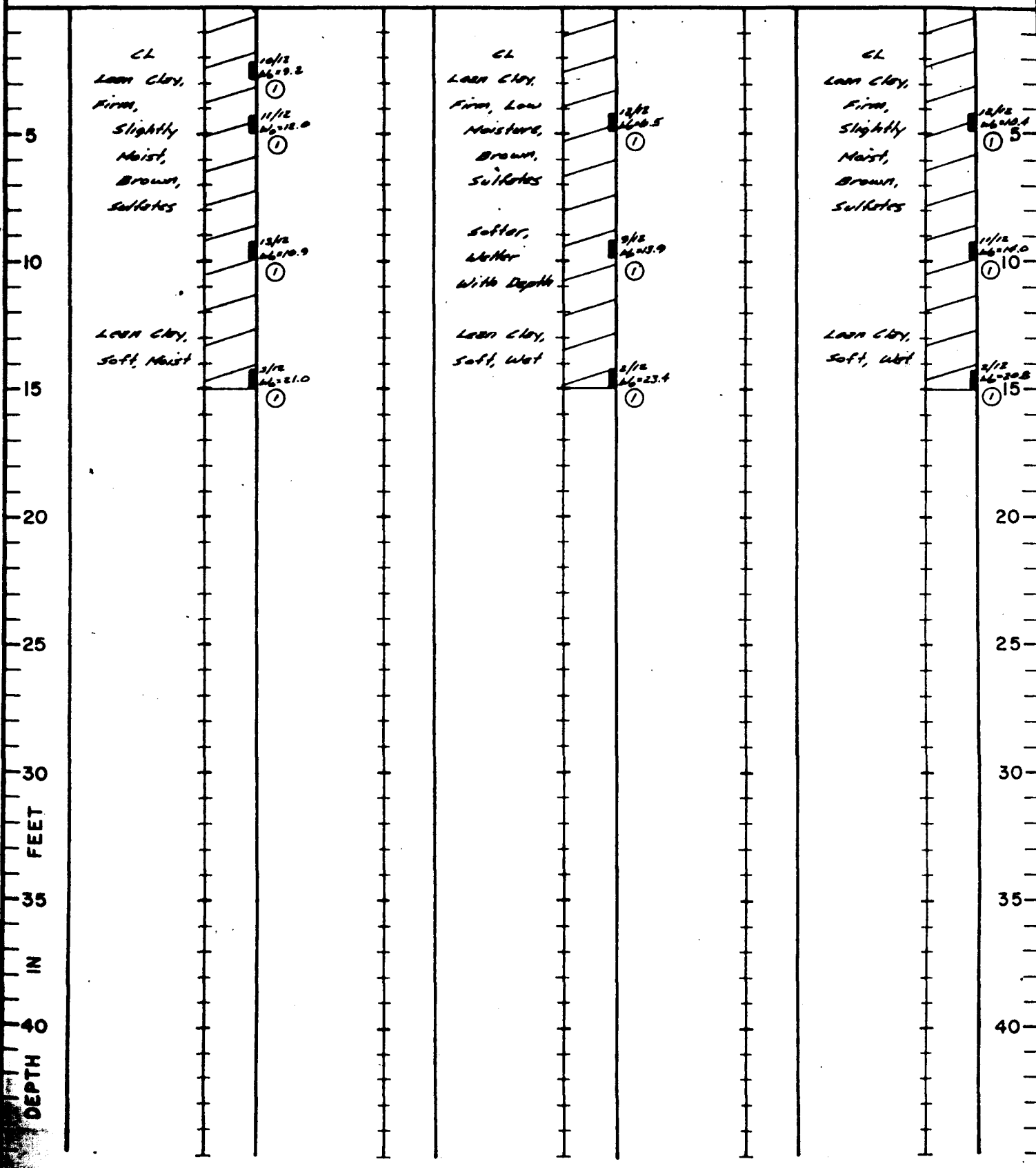
COLORADO: COLORADO SPRINGS,
PUEBLO, GLENWOOD SPRINGS,
GRAND JUNCTION, MONTROSE,
WYOMING: ROCK SPRINGS

TEST HOLE NO. 7
TOP ELEVATION

7

8

9



DRILLING LOGS

L LINCOLN
DeVORE
ENGINEERS-
GEOLOGISTS

COLORADO: COLORADO SPRINGS,
PUEBLO, GLENWOOD SPRINGS,
GRAND JUNCTION, MONTROSE,
WYOMING: ROCK SPRINGS

SUMMARY SHEET

Soil Sample Lean Clay (CL)
 Location Eastgate Plaza
 Boring No. 2 Depth 5'
 Sample No. 1

Test No. V-65B
 Date 8/7/79
 Test by TDH

Natural Water Content (w) 18.0 %
 Specific Gravity (Gs) 2.64

In Place Density (γ_o) _____ pcf

SIEVE ANALYSIS:

Sieve No.	% Passing
1 1/2"	
1"	
3/4"	
1/2"	
4	100
10	99.9
20	99.6
40	99.4
100	98.1
200	96.3

Plastic Limit P.L. 12.8 %
 Liquid Limit L.L. 22.3 %
 Plasticity Index P.I. 9.5 %
 Shrinkage Limit 15.4 %
 Flow Index _____ %
 Shrinkage Ratio _____ %
 Volumetric Change _____ %
 Lineal Shrinkage _____ %

MOISTURE DENSITY: ASTM METHOD

Optimum Moisture Content - w_o _____ %
 Maximum Dry Density - γ_d _____ pcf
 California Bearing Ratio (av) _____ %
 Swell: _____ Days 3.8 %
 Swell against 255 psf w_o gain 8.8 %

HYDROMETER ANALYSIS:

Grain size (mm)	%
<u>.02</u>	<u>69.5</u>
<u>.005</u>	<u>39.8</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BEARING:

Housel Penetrometer (av) 2400 psf
 Unconfined Compression (qu) _____ psf
 Plate Bearing: _____ psf
 Inches Settlement _____
 Consolidation % under _____ psf

PERMEABILITY:

K (at 20°C) _____
 Void Ratio _____
 Sulfates 1000 ppm.

SOIL ANALYSIS

**LINCOLN-DeVORE TESTING LABORATORY
 COLORADO SPRINGS, COLORADO**

SUMMARY SHEET

Soil Sample Silt (ML), Sandy
 Location Eastgate Plaza
 Boring No. 2 Depth 25'
 Sample No. 2

Test No. J-658
 Date 8/2/79
 Test by EDT

Natural Water Content (w) 10.0 %
 Specific Gravity (Gs) 2.51

In Place Density (ρ_o) _____ pcf

SIEVE ANALYSIS:

Sieve No.	% Passing
1 1/2"	
1"	
3/4"	
1/2"	100
4	98.1
10	97.6
20	97.3
40	96.7
100	78.7
200	53.4

HYDROMETER ANALYSIS:

Grain size (mm)	%
.02	27.1
.005	9.7

Plastic Limit P.L. _____ %
 Liquid Limit L.L. _____ %
 Plasticity Index P.I. NP %
 Shrinkage Limit 12.9 %
 Flow Index _____ %
 Shrinkage Ratio _____ %
 Volumetric Change _____ %
 Lineal Shrinkage _____ %

MOISTURE DENSITY: ASTM METHOD

Optimum Moisture Content - w_o _____ %
 Maximum Dry Density - ρ_d _____ pcf
 California Bearing Ratio (av) _____ %
 Swell: _____ Days _____ %
 Swell against _____ psf w_o gain _____ %

BEARING:

Housel Penetrometer (av) _____ psf
 Unconfined Compression (qu) _____ psf
 Plate Bearing: _____ psf
 Inches Settlement _____
 Consolidation % under psf

PERMEABILITY:

K (at 20°C) _____
 Void Ratio _____
 Sulfates 500' ppm.

SOIL ANALYSIS

LINCOLN-DeVORE TESTING LABORATORY
 COLORADO SPRINGS, COLORADO

jack m. walls architect aspen, colorado

p.o. box 28 / zip code 81611 / phone 303-925-3218

November 26, 1979

City of Grand Junction Planning Commission
and
Grand Junction City Council
c/o City/County Development Department
P.O. Box 897
Grand Junction, Colorado 81501

Dear Sirs:

I would like to formally request a revision of the Final Development Plan for Eastgate Plaza Filing 1, Block 1, Lots 1 through 6. I am enclosing with this letter your completed application form, two mylars of the revised Development Plan, and one set of prints showing the revised building design for these six lots.

The Revised Final Development Plan covers only the Revised building design for the six lots. There have not been any changes of density, traffic, setbacks, utilities, drainage, etc., from the original development plans as previously approved by the City of Grand Junction Planning Commission and City Council. I respectfully submit these drawings for your consideration and approval.

Since I will be out of the country until January 15, if you have any questions concerning this application I would appreciate it if you would contact Mr. Walt Smith and/or Mr. Stan Anderson of Centennial Realty in your city.

Additional information on this proposal is as follows:

Title of Development: Eastgate Plaza Filing 1, Block 1
Zoning of property: Planned Development-39
Legal description: Eastgate Plaza Filing 1, Block 1, Lots 1 through 6.

Enclosed you will find a check in the amount of \$210.00 to cover the required fees for this application.

Thank you.

Sincerely,


Jack M. Walls

JMW/cw

City
County
Development
Department

CITY OF GRAND JUNCTION—MESA COUNTY—COLORADO 81501
359 WHITE AVE.—ROOM 60—DIAL (303) 243-9200 EXT. 343

January 22, 1980

Mr. Stanley R. Anderson
Real Estate Investments of Grand Junction, Inc.
660 Road Avenue
Grand Junction, Colorado 81501

Dear Stan,

Review of your submittal for an amendment to Filing #1 Eastgate Plaza has indicated that the application is incomplete and cannot be scheduled for hearing. From the material submitted it is somewhat unclear as to what is proposed. It appears that a Filing #2 is proposed along with the amendment of filing one although this is not reflected on the application form. The following is a list of incomplete items: (ref. G.J. planned development and subdivision regulations).

A. Revision to Filing One

- ① For the plan require revised construction plans for private roads;
2. Require utilities composite;
3. Comply with conditions of previous approval regarding turn around and location of trash containers; elevations for proposed townhomes; development schedule including the landscaping;
- ~~4. Need a revised final plat;~~
5. Proof of title.

B. Filing # Two

1. Need proof of title;
2. With the plan we need elevations, tiling agreement, radiation survey, roadway plan and subsurface soils investigation.
3. Comply with conditions of previous plan approval or submit a letter why the revisions weren't made.
4. Development schedule and a final plat for Filing #2.

*will be done
BY HEALTH DEPT.
KMU*

As soon as a complete submittal is made and reviewed we will schedule this item for hearing.

Sincerely,

Karl Metzner

Karl Metzner
Design & Development Planner

EASEMENT AND AGREEMENT

THIS AGREEMENT, made this 23rd day of January, 1980, by and between the GRAND JUNCTION SANITATION DISTRICT, hereinafter referred to as "District", whose address for the purpose of this Agreement is 201 Highway 10, Grand Junction, Colorado, and Real Estate Investments of Grand Junction, Inc. hereinafter referred to as "Owners", whose address for the purpose of this Agreement is 28 1/2 Road and Bunting Ave., Grand Junction, Colorado.

WITNESSETH:

WHEREAS, the parties hereto agree that the installation hereinafter described is for the mutual benefit of the parties; and

WHEREAS, the Owners desire to secure the assistance of the District in installing a drain pipe-line approximately 210 feet in length through the premises of the Owners and in installing said line, the District shall use those materials as described in EXHIBIT "A" attached hereto and made a part hereof. Said line shall be constructed across the Owner's property, which is more particularly described in said Exhibit "A".

IT IS THEREFORE AGREED AS FOLLOWS:

1. Owners agree, at their sole expense, upon receipt of invoices to promptly pay when due for all materials as ordered by the District and as described in said Exhibit "A".
2. District agrees to install in a workmanlike manner said drain tile line and pervious materials and to backfill same to the extent of the immediately available spoil.
3. Owners agree to assume the responsibility of further backfilling and landscaping and replacing the soil to its former condition. Such restoration shall be so accomplished so as not to hinder in any way the District's obligation hereunder.
4. Owners shall replace or repair all fences, head ditches, laterals, waste ditches or other structures which may have been destroyed, damaged or interfered with because of the construction of said line.
5. After the completion thereof, the District shall have the responsibility of the upkeep and maintenance of said line EXCEPT if any act or omission of the Owners causes said upkeep or maintenance to be increased over and above that which would normally be expected, then Owners shall be responsible for the cost of any additional upkeep or maintenance.
6. Owners agree to operate their premises in such a manner as not to cause damage to said line. Any such damage so caused by the Owners shall be the Owners' sole responsibility to repair or replace said line.
7. In consideration of the foregoing and in order to accomplish the construction of said line, the Owners hereby grant unto the District, an easement through, over and across the Owners' premises for the installation of said line together with such area as is reasonably necessary for the cleaning, maintenance, replacement, adjustment or deepening of said line. Owners hereby grant unto the District reasonable right of ingress and egress to accomplish the above, including the right to bring the necessary equipment upon the premises to accomplish same. It is agreed by the Owners that said easement shall not be burdened or over-burdened by erection or placing of any improvement thereon.
8. Owners agree that they will indemnify and save harmless the District from any and all damages or claims arising out of the construction of said line or the operation and maintenance thereof after it has been constructed.

9. Should either party fail or refuse to comply with the terms of this Agreement, after having received ten (10) days written notice specifying the matter complained of, the complaining party may take whatever legal action is necessary to cancel this Agreement and to recover the damages as a result thereof, or to perform or correct the complaints thereunder and collect the cost thereof plus damages from the offending party. The prevailing party shall, in addition to the above, be entitled to collect all cost incurred as a result of said breach including their reasonable attorneys' fees.

10. If there is more than one owner as a party to this Agreement, then and in that event the cost is allocated to the Owners hereunder and shall be borne equally between them.

11. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties.

12. The Recitals are a part of this Agreement.

IN WITNESS WHEREOF, the parties have affixed their signatures, the day and year above mentioned.

GRAND JUNCTION DRAINAGE DISTRICT

OWNERS

Real Estate Investments of
Grand Junction, Inc.
Stanley Anderson
President

STATE OF COLORADO }
COUNTY OF MESA } SS

The foregoing instrument was acknowledged before me this 23rd day of January, 19 80, by Stanley Anderson President for Real Estate Investments of Grand Junction, Inc.

as owners.

My Commission Expires:
March 6, 1980

Stanley Anderson

Notary Public

STATE OF COLORADO }
COUNTY OF MESA } SS

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____, by _____

as Owners.

My Commission Expires:

Notary Public

EXHIBIT "A"

AUTHORIZATION

TO WHOM IT MAY CONCERN:

We, the undersigned, hereby authorize Grand Junction Drainage District to order and accept delivery for whatever materials are necessary to install approximately 210 feet of 18 inch Bell & Spigot concrete pipe on our property at 28 1/2 Road and Bunting Ave., Grand Junction, Colorado, as authorized by the Board of Directors or their duly authorized agent.

We hereby accept the responsibility for the expenditures involved for the above mentioned materials.

- Approximately 210 feet 18", Bell & Spigot Concrete Pipe
- Approximately 210 Yards pit run gravel
- Approximately -0- Manhole (s) with rings and lid (s)
- Approximately -0- Yard (s) concrete mix
- Other as specified Fill if needed

Further, Owners, their heirs, assigns and successors, hereby grant unto the District, an easement 20 feet in width, the centerline of which is described as follows:

Dated this 23rd day of January, 1980.

Real Estate Investments of
Grand Junction, Inc.
D. Stanley Anderson
President

State of Colorado)
) ss
County of Mesa)

The foregoing instrument was acknowledged before me this 23rd day of January, 1980 by Stanley Anderson As President for Real Estate Investments of Grand Junction, C Inc.

My Commission Expires:
March 6, 1980

[Signature]
Notary Public

City
County
Development
Department

CITY OF GRAND JUNCTION—MESA COUNTY—COLORADO 81501
539 WHITE AVE.—ROOM 60—DIAL (303) 243-9200 EXT 343

December 21, 1979

Jack Walls
Box 29
Aspen, Co

Dear Sir:

On December 18, 1979 the Grand Junction Planning Commission voted to recommend approval of the revision in building locations on Eastgate Plaza.

This recommendation carries the following stipulations:

- a) the revision is for building locations only
- b) staff comments on enclosed review sheets must be addressed before City Council Public Hearing

This item has been scheduled for City Council on January 16, 1980, at 7:30 p.m.

Please be present or have a representative in attendance.

Failure to comply with the above shall constitute the item being deleted from the agenda.

Sincerely,

Sue Drissel

Sue Drissel,
Planning Tech I

file #51-79

Fred W. Heitman Jr.
3985 Milwaukee Ave.
Chicago, Ill 60641

Scott Heitmann
3985 Milwaukee Ave.
Chicago, Ill 60641

Stanley R Anderson
660 Rood Ave.
City

Paragon

REAL ESTATE INVESTMENTS OF GRAND JUNCTION, INC.
660 Rood Avenue
Grand Junction, Colorado 81501
January 23, 1980

Mr. Karl Metzner
Design & Development Planner
539 White Avenue
Grand Junction, Colorado 81501

Dear Mr. Metzner:

We have received your letter concerning the submittal for Filing #1 Eastgate Plaza amendment and the Filing #2. The points you raise have been surprising to me because of the late date upon which the point has been raised that items were lacking. Since I last talked to you I have contacted Tom Logue of Paragon Engineering and Jerry Gardner of Design Centre for their comments on the letter. They were aware that the final plat was lacking for Filing #2 and that item has now been discussed with you by Tom Logue, but they were not aware of the lack of other items. In fact, Jerry called the planning office to specifically ask what was lacking and was assured that everything was in order. This call was placed at my request.

I believe that you have a good deal of the information already in your file as to both item A and item B of your letter but we'll speak to each point in order to clarify the situation.

Item A point 1:

It appears to me that we could use the same plans that were approved by the City Council for the private road. No changes are contemplated but rather the contemplated change was in the location of the building on the platted lots. We were advised that it would be necessary to have specific approval of the change because we were adding one additional dwelling unit to the plan. In fact, the turnaround was a request of the City Council and I told that body that I would install the turnaround on a temporary basis. The real purpose of the change in the plan is to eliminate the driveways opening onto 28½ Road as was indicated in the original plan, and to change the type of building in order that a more economically viable project could be initiated.

Item A point 2:

I believe the utilities composite is already on file with your office.

Item A point 3:

We will comply with the request of the Council regarding the turnaround. The location of trash containers is a new wrinkle that has first come to my attention with your letter. That need will be addressed as it needs to be addressed to provide convenience for occupants and thus provide for saleability of the dwellings.

A copy of the elevations for the proposed townhomes was delivered to you and another copy was delivered to you today. This information has been available since the filing.

*AS AS POSS. AFTER APPROVAL.
KUM*

As far as the development schedule is concerned, it is our intent to have this constructed as quickly as possible as a completed, well planned, completely executed project which will have sales appeal to a buyer, and will have livable comfortable surroundings for the occupant. We expect the landscaping to be an important part of these surroundings. The plan for the landscaping is included with the plans delivered to you.

Item A point 4:

We discussed the revision of the final plat. I don't think that is necessary and I feel that you are also convinced that no purpose would be served by a revision of a plat.

Item A point 5:

The proof of title was furnished to you early in the project when the first application was made for the first filing. In order to bring you up to date I am attaching a copy of the title insurance policy which indicates that title is in the name of the Corporation which is requesting the consideration on the planning commission agenda.

Item B point 1:

Same answer as Item A point 5.

Item B point 2:

Elevations of the building were furnished to you at the time of the filing. If you have misplaced the elevation plan we will furnish additional copies, in fact, Tom Logue had a copy today when he had a conversation with you. The tiling agreement copy is enclosed with this filing in order that you will have the information. We can proceed with work on the tiling immediately and in fact may begin tomorrow with the tiling in accordance to the schedule which will be prepared by the Drainage District.

If we provide a radiation survey today it will be necessary to provide another when the building permit is requested. Why is it necessary to put that office to twice the work necessary. We are all familiar with that need and we'll take care of that at the proper time.

The roadway plan will be approved by the City Engineer and I believe that Tom Logue has spoken to you about that matter. There is only right of way for $\frac{1}{2}$ the road available at the present time. I believe you are familiar with that situation.

I know of no conditions of the previous plan approval which have not been met. The conditions on the preliminary plan approval were to mitigate the parking situation but that had nothing to do with the request submitted at this time.

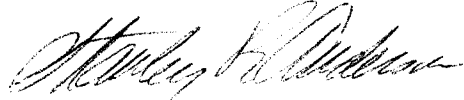
It is our intent to begin the construction as soon as approval is granted with occupancy in the summer of 1980. Of course this will be subject to your approval and it will be subject to financing and general economic conditions. Tighter than that we cannot be!!!

Page 3
Karl Metzner

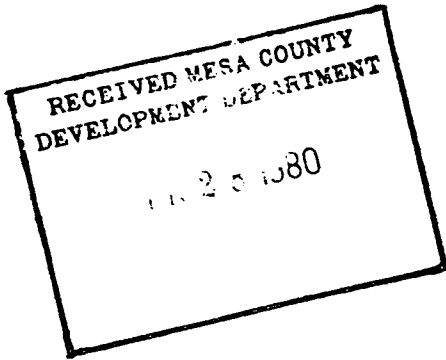
Every month of delay means additional cost for the construction of the building and delay for the move of my proposed tenant. The delays are of great cost and in fact if delay is allowed, my tenant may back away from the project as time is of the essence with him. I'm sure that you understand about the problems which can be caused by those delays.

We would appreciate very much if you could reinstate consideration to the agenda for the month of January. Thus the delays would be no more than first anticipated. Thank you.

Sincerely,
REAL ESTATE INVESTMENTS OF GRAND JUNCTION, INC.



Stanley R. Anderson
President



April 23, 1980

City County Development Department
P.O. Box 897
Grand Junction, CO 81502

Attention Karl Metzner

RE: Eastgate Plaza Filing I Townhomes

Dear Carl:

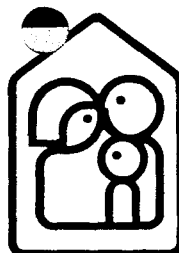
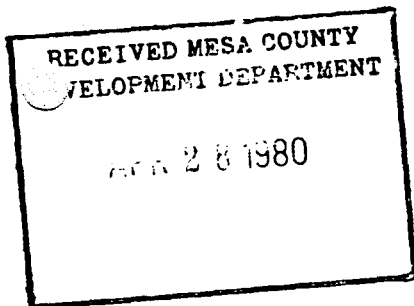
It is our intent to replat the above mentioned project to accommodate the building positions as shown on the development plan. This replat would necessarily have to be done after the construction of the foot print of the building to avoid still another replat. Such a change would be minor and would occur before the sales of any units.

If this intended change will in any way delay the approval process for the project, we will address it at a later date as the existing plat does not interfere with construction plans.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stanley R. Anderson".

Stanley R. Anderson



design centre
p.o. box 2008
grand junction, colo. 81501

April 28, 1980

City County Development Department
P.O. Box 897
Grand Junction, CO 81502

RE: Eastgate Plaza Filing I Townhomes
Development Plan Amendment

Dear Sirs:

The amended development plan for the above project accomplishes the following:

1. It increases the side yard setbacks to give better separation from neighboring homes.
2. It removes the driveways from 28 1/4 Road making for safer traffic situations.
3. The removal of the drives creates a much better street-front appearance.
4. The amended plans makes services (water, sewer, electricity, telephone, etc.) much easier and less expensive to install and for the City to maintain.
5. The increased building separation and setbacks remove the possibility of conflict with the builder code.
6. The open green space areas are increased by 25 percent.
7. These larger areas become usable outside space.
8. The lowering of the grade of the private roadway removes the parking areas from street view.
9. The berm effect caused by the building elevations will further screen the parking.
10. The proposed covered parking structure will also block any street view of the parking areas.
11. The heavier landscaping called for will better screen and define the outside areas.
12. The heavy grouping of plants will give an established look to the project and make it blend with the neighborhood.
13. These improvements will give the project a much better overall appearance and make building and marketing much more viable.

City County Development Department

Page 2

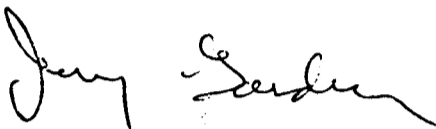
April 28, 1980

14. Both the original and the amended plans contain 4 buildings. The new plan has only one more unit, a change of less than 5 percent in the overall.
15. The project itself will provide needed affordable housing and will have an upgrading effect on the neighborhood.

In summary, we have changed the project by eliminating some traffic problems, solving some technical problems, increasing the open space and improving the landscape plan. We have not substantially increased the density or changed the use or character of the project.

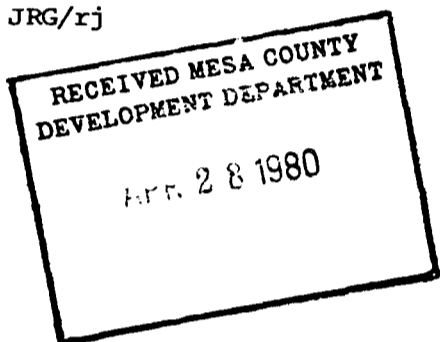
We respectfully request your recommendation for approval of these changes.

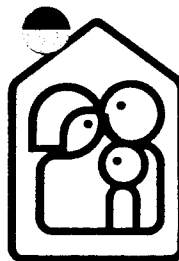
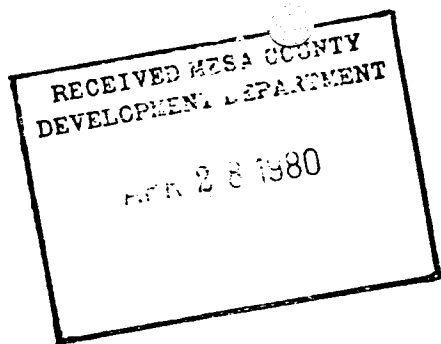
Respectfully,



Jerald R. Gardner

JRG/rj





design centre
p.o. box 2008
grand junction, colo. 81501

April 28, 1980

City/County Development Department
P.O. Box 897
Grand Junction, CO 81502

Attention Karl Metzner


Dear Karl:

Attached is a revised utility composite showing the change from 6" to 8" on the water main of at the request of the Fire Department from a meeting on April 25, 1980. This, when tied to the future line, will upgrade the water service in the entire area.

Also attached is a revised development plan showing the carport locations and the additional dimensions that you requested.

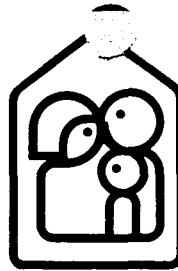
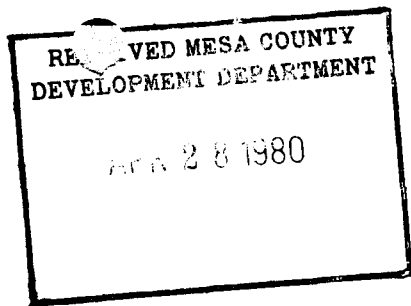
If you need attional information, please call.

Sincerely,


Jerald R. Gardner

JRG/rj

Enclosures



design centre
p.o. box 2008
grand junction, colo. 81501

April 28, 1980

City County Development Department
P.O. Box 897
Grand Junction, CO 81502

RE: Eastgate Plaza Filing I Townhomes
Development Plan Amendment

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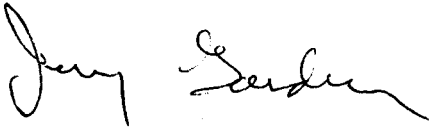
City County Development Department
Page 2
April 28, 1980

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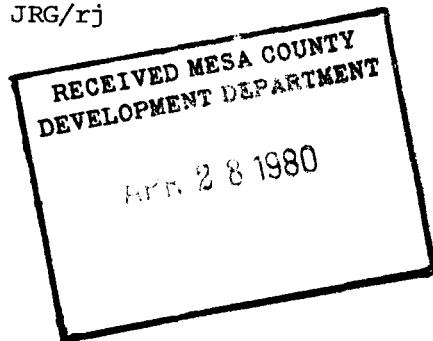
We respectfully request your recommendation for approval of these changes.

Respectfully,



Jerald R. Gardner

JRG/rj



City
County
Development
Department

CITY OF GRAND JUNCTION—MESA COUNTY—COLORADO 81501
359 WHITE AVE.—ROOM 60—DIAL (303) 243-9200 EXT. 343

M E M O R A N D U M

TO: Jim Wysocki
FROM: Karl Metzner *KM*
DATE: May 6, 1980
SUBJECT: Eastgate Plaza

* * * * *

The application and processing for Eastgate Plaza has occurred as follows:

I. REZONE, OUTLINE DEVELOPMENT PLAN, PRELIMINARY, FILING I (FINAL)

June 1979 - September 1979:

Eastgate Plaza submittals for rezone, outline development plan, preliminary and final, for Filing #1 (patio homes and townhomes) were processed and heard before the Grand Junction Planning Commission and City Council and approved with conditions as listed in the review sheet comments. Paragon Engineering was responsible for the design and processing and met with staff on a regular basis to work out any problems with the submittals. The conditions of the final approval for Filing #1 were Power of Attorney for improvements for 28 $\frac{1}{2}$ and Elm and some design considerations in the townhome section.

II. FILING #1 - AMENDMENT FOR PATIO HOMES

December 1979:

Submittal occurred of an amendment to Filing #1 for the patio homes by Jack W. Walls, architect from Aspen. The firm met with staff before the time of submittal to review and clarify all con-

ditions of previous approval and to get input on the proposed new design. A new site plan, replat of the patio homes, and landscape plan were received by the Grand Junction Planning Commission and approved by the City Council in January 1980. Mr. Walls worked with staff to assure minimum problems in processing this amendment to Filing #1.

III. FILING #1 - AMENDMENT FOR TOWNHOMES (FILING #2 - OFFICE STRUCTURE)

Afternoon Formal Meeting of Tom Logue (Paragon Engineering) and Conni McDonough, Planning Director:

It was determined that the new design for the Filing #1 for the townhomes would require an amendment and complete review by staff, Planning Commission, and City Council. At this time, Paragon Engineering indicated that they were no longer the designers for this project. From this point, the contact for this development has been Stan Anderson.

The application for this amendment to Filing #1 was taken over the counter by staff with a quick review to ensure that the major requirements for application were submitted. This review indicated some deficiencies in the plan in regard to dimensions and landscaping. In a telephone conversation, staff related this to Stan Anderson, and later in a call from Jerry Gardner, the same information was related. This information was submitted prior to the design and development team processing the submittal. At the time of processing of this item, a detailed review was done by the design and development team, and the submittal was discovered to be actually two different submittals--an amendment to Filing #1 for the townhomes, and a final plan and plat for Filing #2 for the office structure. There was no indication on the plan who the design firm was and no indication on the application form that this was, in fact, two applications.

Through the review process, several review agencies indicated that they did not have adequate information to review the project.

The deficiencies were listed in a letter sent to Mr. Anderson by me in January 1980, and both items were held back from the Grand Junction Planning Commission agenda because the required information was not submitted, and the conditions of the previous approval had not been met.

I should note, at this point, that staff had not met with the petitioner in regard to the submittal prior to the actual application. I feel that this situation compounded the difficulty of communication, which resulted in the processing problems that occurred. We have found, through past experience, that most designers prefer to meet with us prior to actually making an

application to discuss what the requirements for the application might be and find any previous conditions which might affect the application. If this had been done in this circumstance, then I am sure the application that was submitted would have been more complete.

As a result of the letter I wrote to Stan Anderson notifying him of the deficiencies, I received a letter from him, which essentially tried to justify why the application was, in his opinion, complete. I responded with another letter to him specifying the section in the regulations where the various applications' requirements were stated, and specifically, exactly what was, and what was not, submitted.

February 1980:

The application for Filing #2 (the office building) was completed in February at the normal application date and came before the Planning Commission for review and was approved with conditions to be met before the item was heard by the City Council. The application for Filing #1 - amendment (the townhomes) was completed after the deadline for applications and was delayed to the March hearing because of that fact.

At the February hearing, the staff responsible for the review (Diane Smucny and myself) were absent due to illness, and Don Warner presented the item. Because the information necessary for review of the townhomes was not received in time for distribution, and Filing #2 was heard by itself, there was some confusion because the agenda listed both Filing #1 and #2. Only Filing #2 was legally advertised and could be heard, and because of the staff illness and substitution of Don Warner, there was more confusion at the hearing.

IV. FILING #2

March 1980:

Diane Smucny had attempted to reach Mr. Anderson several times after the February hearing, leaving messages for return phone calls. After failing to contact the petitioner, and having received no response to the conditions for approval as stipulated by the Planning Commission, and as part of the standard office procedure, the item was dropped from the City Council agenda for March. The item was tentatively scheduled for the Council hearing in April.

V. FILING #1 - AMENDMENT TO TOWNHOMES

March 1980:

The petitioner was sent an agenda that the amendment to Filing

#1 would be heard at the March Planning Commission hearing. The petitioner did not show at this hearing. As part of the Planning Commission's policy, the item was dropped from the agenda due to absence of the petitioner.

VI. FILING #2

April 1980:

Stan Anderson was contacted prior to the City Council hearing by Diane Smucny regarding the conditions stipulated by the Grand Junction Planning Commission. The petitioner said he had a verbal agreement to the conditions with me. Again, a letter or a new plan for the file would have to be submitted to confirm this, and the petitioner was told the item would be delayed again if this was not done. The petitioner was upset and felt he was being unfairly dealt with.

The item was heard by the City Council, with approval conditional to the lacking information being submitted for the file. It is noted that, as of this date, this information still has not been received by this department.

At the City Council hearing, staff again asked Mr. Anderson to bring his designer in to meet with staff to assure that Filing #1 could be heard.

VII. FILING #1 - AMENDMENT TO TOWNHOMES

April 1980:

A few days prior to the Grand Junction Planning Commission hearing, Mr. Anderson brought Jerry Gardner to meet with staff regarding the negative review sheet comments concerning this plan. This was the first time we were informed that he was the designer for the project. After clarification of several design details, which had not been indicated on the submitted plan, it was agreed that after submittal of a revised plan incorporating all of these necessary details and a letter agreeing to a replat of the subdivision plat, the staff would change their recommendation to one of approval. The following day, Mr. Anderson and Jerry and Bob Gardner returned to the office to pick up the revised staff recommendation, which listed what transpired at the meeting of the previous day, and the aforementioned changed to staff approval with the submittal of a plan and a letter. The plan was received and, in a few days, a letter of agreement to replat and a two-page narrative (as suggested by staff to further explain the positive design changes of the new plan) were received.

At the Grand Junction Planning Commission hearing, the Planning

Commission was given a copy of this correspondence (as it was not available for distribution in their packets a week earlier), and were assured that the designer had met with staff (for the first time), where concerns had been discussed and the changes made to get the staff recommendation. Had this first meeting with the designer occurred prior to the submittal, as had been done in previous amendments in this development, all of this delay could have been eliminated. This project has taken much more time than normal, and I feel that most of this delay is the responsibility of the developer in 1) not corresponding with staff prior to an application, 2) not revealing the designer until, essentially, the last minute, and 3) not submitting a complete application, which explained the details of the project. If we had been able to discuss this project with the project designer and been able to keep communications open with the petitioner, I am sure that this project would have proceeded in the normal time sequence.

It was also very obvious that neither the petitioner, nor the designer, had read or understood the development regulations presently adopted by the City. If this had been the case, the application that was submitted would have been more complete and in compliance with these regulations.

In the past, we have had many problems with commitments or agreements that were made verbally and never documented on our files. It is, therefore, now our policy that all agreements or commitments between staff, Planning Commission, or elected officials, and a petitioner must be in the form of written material or revised plans. This is for the protection of the petitioner, as well as for the staff and the Planning Commission or elected officials.

The petitioner, consistently throughout this process, has not documented agreements or discussions, which has contributed to the confusion.

The letter you received from Jerry Gardner seems to intimate that our department has deliberately tried to hold up this project. If Mr. Gardner has proof of this allegation, then I would suggest he take appropriate legal action. If he does not have proof, then I would suggest he refrain from making unsubstantiated charges. I believe the record will show that staff has supported the concept of the whole Eastgate Plaza project from the start. It is, however, our responsibility to adhere to the development regulations of the City and evaluate all phases of a project in light of those regulations.

dh

May 11, 1982

Mr. Jack Rogers
Paragon Engineering, Inc.
2784 Crossroads Blvd.
Suite 104
Grand Junction, CO 81501

Dear Jack:

Re: Briargate-Sanitary Sewer and Waterline

As requested by Tim Patty on May 7, 1982, we "final-inspected" the above and found the following:

1. Manhole 6 has over 1½ ft. of grade rings.
2. The sanitary sewers are in use and contain live sewage.
3. Manhole 4 to Manhole 3 - sewage is blocking flow. Could not lamp at Manhole 3.
4. Manhole 3 to Manhole 2 - sewage is blocking flow. Could not lamp at Manhole 3.
5. Manhole 2 to Manhole 1 - fenced and posted "No Trespassing-Keep out".
6. Manhole 1 - There is an 8" stubout to the west.
7. Bunting Avenue - The drain ditch is piped from the sanitary sewer crossing clear to 28¼ Road.
8. Two (2) additional water valves exist west of the hydrant valve. We do not understand their purpose since they are not shown on the plans.

Concerning the above, we have repeatedly asked both in writing and verbally that the lines not be placed in service and that they be flushed clean prior to requesting a final-inspection. You are not only wasting valuable schedule time, you are impacting our staff time by not cooperating on this seemingly reasonable request.

5/18/82 - Spoke with Risk these problems won't hold up plat recording. KL

We have not had the opportunity to properly lamp and mandrel the lines due to the aforementioned and insist on re-inspection when the lines have been flushed. It is also noted the pavement has been placed over the lines so here's hoping they will not have to be excavated for corrections.

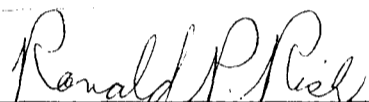
On February 26, 1982, as requested I reviewed and approved construction plans for 50 linear feet of 30 inch RCP to be placed in the drain ditch. I have not seen nor approved construction plans for the piping which exists between that 50 ft. section and 28 $\frac{1}{4}$ Road. You are reminded that Bunting will be a public street and the ditch piping will be under the pavement. That pipe installation had better conform in every respect to City Specifications or it must be removed and replaced prior to the street construction. If construction plans and specifications exist for that 30 inch RCP installation, I hereby request a copy for the City's information.

You are also reminded that 20 ft. wide easements centered on the sanitary sewer should be provided from the Briargate property line to the Court Road right-of-way.

Pressure test results certified by a Professional Engineer who witnessed the testing is required for the waterline prior to City acceptance.

When the above matters have been properly addressed, contact me for final-acceptance of the facilities prior to issuance of Certificates of Occupancy.

FOR THE CITY OF GRAND JUNCTION



Ronald P. Rish, P.E.
City Engineer

cc - Art Crawford, Fruitvale Sanitation Dist.
Norman Speaks, Benchmark Homes
Bob Goldin ✓
Dick Hollinger
Walt Hoyt
Jim Patterson
Harley Seybold
Ralph Sterry
File



PARAGON ENGINEERING, INC.

2784 Crossroads Blvd., Suite 104
Grand Junction, Colorado 81501 (303) 243-8966

May 14, 1982

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Attention: Mr. Ron Rish, City Engineer

Re: Briargate Sanitary Sewer

Dear Mr. Rish:

In response to your letter of May 11, 1982, detailing deficiencies in the Briargate Sewer and Water construction.

1. The road plans call for 2" of pavement over 9" of base at Manhole #6. The availability of manhole barrel sections is limited to a few standard depths. In order to avoid having cone sections sticking above the subgrade during road construction, it has become practice to set the manhole cones below top of subgrade. The result of such construction method is that grade rings between 1 and 2 feet deep are required. If you believe that as a general rule grade rings in paved areas should be limited to one foot, I will see to it that cones are brought to an elevation above subgrade. Please advise me if you feel this condition should be corrected in this case by raising the cone and inserting a one foot barrel section.
2. Sewerlines have been connected to the building sewers. This was done only after a final inspection by the Fruitvale Sanitation District inspector, Howard Paul, Mr. Tim Patty, and the Off-site Sewer Contractor Lyle States. The offsite-sewer was inspected during construction by Howard Paul for the Fruitvale Sanitation District.
3. & 4. The sanitary sewer is laid on a very flat slope. There is little sewage flow in the line and deposits in the line can be expected. Each line was lamped during the inspection previously conducted by Mr. Paul of the Fruitvale Sanitation District.
5. Legal descriptions prepared by this office were forwarded to the Owner's attorney, Mr. Keith Mumby, for the purpose of securing easements. Mr. Mumby has been contacted and will let you know when the easements have been recorded.

Mr. Ron Rish
May 14, 1982
Page - 2

6. The 8" stubout was installed at Manhole #1 to serve future development. Mr. Paul was aware of the addition.

7. The drain ditch was piped before sewer construction began. As the installation was made by the Grand Junction Drainage District and not by the sewer contractor, Mr. Chuck Tilton would better be able to tell you what was installed than Paragon Engineering.

With regard to placing the lines in service before a final inspection, it was my understanding that inspection of sewers in Orchard Mesa and Fruitvale Sanitation Districts by the City was limited to an inspection to assure that infiltration was not a problem and that lamping of lines by City crews was not necessary since the operation of the sewer systems in these two Districts is no longer a responsibility of the City crews. The Administrator of the Fruitvale Sanitation District has reminded us of the City's limited responsibility.

If you and the District agree that a re-final inspection by the City to lamp lines is necessary, I will contact the Contractors and the Owners to see when the lines can be flushed and services interrupted for a period of time.

Very truly yours,

PARAGON ENGINEERING, INC.



Otha J. (Jack) Rogers

OJR:emb

cc: Art Crawford
Howard Paul
Norm Speaks
Dick Hollinger
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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND
RESERVATION OF EASEMENTS
FOR
BRIARGATE, A REPLAT OF BLOCK 2 AND BLOCK 3
EASTGATE PLAZA, FILING NO. 2
AND
BRIARGATE HOMEOWNERS ASSOCIATION, INC.

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS ("Declaration") is made this _____ day of _____, 1982 by BENCHMARK COMMUNITIES, LTD., an alias partnership (the "Developer"), under the following circumstances:

A. Developer is the owner of certain real property located in Mesa County, Colorado, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. Developer desires that the Property shall be held, sold, and conveyed subject to the covenants, conditions and restrictions and reservation of easements contained herein.

C. Developer owns and may acquire other real property in the vicinity of the Property which other real property may be subjected to and annexed to this Declaration by Developer, subject to the provisions of Article IX of this Declaration.

NOW, THEREFORE, in consideration of the foregoing premises and for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer hereby declares that the Property shall be held, sold and conveyed subject to this Declaration and the liens provided for herein.

ARTICLE I

DEFINITIONS

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the same meanings as the definitions of those words in this Article I.

1.1 Annual Meeting. "Annual Meeting" means the annual meeting of the Association held in April of each year upon such date as may be selected by the Board. In the year in which this Declaration becomes effective, the Annual Meeting shall be held on such date as the initial Board shall determine.

1.2 Assessment. "Assessment" means the charge established by Article II of this Declaration.

1.3 Association. "Association" means Briagate Homeowners Association, a Colorado nonprofit corporation, which owns, operates and maintains the Community Facilities, and any successor organization which owns, operates and maintains the Community Facilities.

1.4 Board. "Board" means the Board of Directors of the Association established pursuant to its Articles of Incorporation and By-Laws.

1.5 Class A Members. "Class A Members" means those members of the Association consisting of all Owners except, during the Development Period, Developer.

1.6 Class B Member. "Class B Member" means, during the Development Period, Developer, as a member of the Association.

1.7 Community Facilities. "Community Facilities" means all real and personal property, including easements and licenses benefitting the Community Facilities or any part thereof, if any, from time to time owned by or leased to the Association for the common use and enjoyment of the Owners, including structures, improvements, other facilities and related fixtures, equipment and furnishings. Such real and personal property may but need not include any public, neighborhood or town buildings, community centers and plazas, day care centers, educational facilities, recreational facilities, natural resource facilities, including parks and other open space land, community streets, sidewalks, pathway and bikeway systems, pedestrian facilities, design amenities, or other community facilities, and buildings and other improvements needed or used in connection with water supply or sewage disposal installations or gas or electric lines or installations.

1.8 Constituent Documents. "Constituent Documents" mean the Declaration, the recorded legal map, the Association's by-laws, the Association's Articles of Incorporation, and any other basic documents used to create and govern the Property.

1.9 Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements as the same may from time to time be amended in the manner prescribed herein.

1.10 Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions.

1.11 Design and Use Standards. "Design and Use Standards" means the design and use standards to be adopted by the Board pursuant to Section 5.8 of this Declaration as the same may from time to time be amended.

1.12 Developer. "Developer" means Benchmark Communities, Ltd., an alias partnership, its successors and assigns.

1.13 Development Period. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Mesa County, Colorado Recorder's office and terminating on the earlier of (a) the date five (5) years after such date, or (b) 120 days after 75% of the twenty-five (25) Dwelling Units in all phases have been sold.

1.14 Director. "Director" means any person elected or appointed to the Board pursuant to Article IV of this Declaration.

1.15 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single person, a family or a family-sized group of persons.

1.16 Lot. "Lot" means any parcel of land shown as such upon any recorded plat of the Property together with any structure located thereon with the exception of the Community Facilities and any property leased to a homeowners' association or community services association other than the Association.

1.17 Maintenance Standards. "Maintenance Standards" mean those standards adopted by the Board pursuant to Article VII of the Declaration as the same may from time to time be amended.

1.18 Members. "Members" means all Class A Members and the Class B Member.

1.19 Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.20 Property. "Property" means that certain land in Mesa County, Colorado, particularly described in Paragraph A on the first page of this Declaration together with all improvements now or hereafter located thereon, and any other lands which have been subjected to this Declaration together with all improvements now or hereafter located thereon.

1.21 Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation thereto the Design and Use Standards and the Maintenance Standards and all notices, rules and regulations issued in accordance herewith.

1.22 Structure. "Structure" means:

(a) any thing or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation thereto, any Dwelling Unit or other building, garage, carport, porch, shed, greenhouse, bathhouse, coop, cage, house trailer, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement on such Lot; and

(b) any excavation, fill, ditch, dam or other thing or devise which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.23 Tenant. "Tenant" means any person occupying any Dwelling Unit pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

ARTICLE II

THE ASSESSMENT

2.1 Establishment of Assessment. There is hereby established for the benefit of the Association, as a charge on each Lot, an annual Assessment. The Assessment shall be payable in equal monthly installments, in advance on the first day of each month, and shall commence as to a Lot on the first

day of the month following the month during which the Lot is subject to this Declaration, and no Assessment (other than any contribution to the working capital fund) shall be due as to such Lot prior to such date of commencement. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The obligation to pay the Assessment shall not in any manner be dependent upon, or discharged or otherwise affected by, use or nonuse of the Community Facilities. Subject to the specific provisions of this Declaration relating to subordination of the Assessment created hereunder (including without limitation, the subordination of such lien to the lien of a first mortgage) and notwithstanding the date on which the Assessment is implemented, such lien shall have priority over all liens and encumbrances on the Property or any part thereof or interest therein arising after this Declaration is recorded.

2.2 Purpose of Assessment. The Assessment is established for the benefit and use of the Association and shall be used in covering all of the cost of the Association's operation, insurance, maintenance and repair obligations including, without limitation thereto, the cost of repairing and maintaining all roadways and parking areas on the Property; real estate taxes and assessments on the Community Facilities; the cost of operation, maintenance and repair of Community Facilities; cost of reasonable reserves for contingencies, replacements and working capital and all other costs incurred by the Association in the exercise of its powers and duties pursuant to this Declaration. Either the basic Assessment or a special Assessment may also be used in covering the cost of any capital addition or capital improvement to the Community Facilities to the extent that the cost of same does not exceed \$3,000, and may be used to cover the cost of any other capital addition or capital improvement that is authorized by the Board and approved by the Class A Members and the Class B Member in accordance with Section 8.3 hereof. The Assessment shall not be used for any other purpose. Until the end of the calendar year during which the Association acquires a total of 19 members, or until December 31, 1983, whichever is earlier, Developer shall pay to the Association, by not later than 90 days after the end of the calendar year in question, the amount of any operating deficit incurred by the Association in such calendar year. Thereafter, the amount of any operating deficit incurred in any calendar year shall be paid by means of a special assessment sufficient in amount so as to allow the Association to satisfy such deficit in full, such special assessment to be announced by the Board as soon as possible after the completion of a final accounting for the year during which the deficit occurred and to be paid within 30 days after the announcement and notification to all Members of such special assessment. Any such special assessment as to a calendar year

shall for all purposes of this Declaration be considered to be part of the Assessment for such year, and no consent of Members shall be required with respect to such special assessment.

2.3 Amount of Assessment. The amount of the Assessment shall be determined from year to year in accordance with the following:

2.3.1. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual Assessment shall be \$25.00 per Lot.

2.3.2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, without a vote of the Members, the annual Assessment may be increased or decreased each year by the Board to an amount which the Board estimates will be adequate to pay all costs described in Section 2.2 hereof for the current year and any unpaid deficits for prior years. The Board shall determine the Association's budget and the amount of the Assessment for the immediately following year on or before December 1st of each year and shall give written notice to all Members of the Assessment applicable to their Lot not later than December 15th. If during the course of the year, the Board determines that the amount of the Assessment is or will be inadequate to cover all such costs described in Section 2.2 hereof, the Board may adjust the amount of the Assessment by giving written notice to the Members not less than twenty (20) days before the effective date of the adjustment.

2.3.3. In addition to the annual Assessment, the Board may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement included or to be included in the Community Facilities, including fixtures and personal property related thereto, provided that any such special Assessment shall have been approved in accordance with Section 8.3 hereof.

2.3.4. A working capital fund shall be established by the Association for the initial months of the project operation to insure that the Board will have the cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. This initial working capital fund shall consist of a contribution collected by the Developer and transferred to the Association at the time of closing of the sale of each Lot to a Class A Member. The amount of this contribution shall

be equal to two months of the initial Assessment for the Lot being sold as determined pursuant to this Section 2.3. The Association shall maintain this working capital fund, together with sums allocated pursuant to the budget for the annual assessment to the working capital fund, in a segregated account for the Association's benefit and use. Contributions to the working capital fund shall not be deemed an advance payment of any Assessment.

2.4 Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, the cost of such maintenance, repairs or replacements shall be paid by such Owner. If such Owner does not have the necessary maintenance, repair or replacement performed within thirty (30) days after receipt of notice from the Board demanding such performance, the Board shall have the right to have such maintenance, repair or replacement done and the cost thereof shall be added to and become a part of the Assessment against all Lots owned by the Owner responsible for such cost. All such individual Assessments shall become a lien on the Lots to which they apply as of the date of billing of such costs by the Board.

2.5 Payment. Unless otherwise established by the Board, the Assessment shall be paid in monthly installments not more than ten (10) days after the due date indicated on the bills. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate as to the Assessment. Additionally, if an Owner is in default in payment of an installment of the Assessment, the Board may accelerate the remaining installments of the Assessment for the calendar year during which the default occurs by giving notice to the Owner and the unpaid balance of the Assessment shall become due upon the date designated in the notice, but not less than ten (10) days after delivery of the notice to Owner, or not less than twenty (20) days after the mailing of the notice to the Owner by certified mail, whichever occurs first.

2.6 Penalty For Late Payment. For each Lot as to which any installment of any Assessment is not paid within the period provided by the Board, there shall be added to the installment a penalty of 10% thereof, and interest at the rate of 15% per annum from the due date on the amount of such installment plus penalty until paid. Said penalty and interest shall also be computed on and added to the total of accelerated installments due if the Board exercises its right to accelerate under Section 2.5 above.

2.7 Covenant of Payment. Developer, so long as it continues to be the Owner of any Lot, hereby covenants to pay or secure the payment of the Assessment for such Lot as provided in this Article II. Each succeeding Owner of any Lot, by acceptance of a deed or other instrument of conveyance therefor, shall be deemed to covenant to pay or secure the payment of the Assessment to the Association.

2.8 Creation of Lien and Personal Obligation of Assessment. All Assessments shall be a charge and lien on each Lot to the extent and for the period provided in Section 2.9, and shall also be the personal obligation of the Owner of each Lot against which they are made.

2.9 Liens. If an installment of the Assessment on any Lot is not paid within the period established by the Board pursuant to Section 2.5, the amount thereof together with any interest, costs, penalties and reasonable attorneys' fees thereon shall constitute a lien on such Lot in favor of the Association prior to all other liens and encumbrances whatsoever, excepting (a) real estate taxes and assessments and liens of record in favor of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent made superior by applicable law, and (b) all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The Association may record a notice of lien with the Recorder of Montgomery County, Ohio in any legally recordable form, including by affidavit as provided in Section 5301.252 of the Ohio Revised Code or any similar section hereafter enacted. Nonpayment of an installment of the Assessment on any Lot shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

2.10 Evidence of Payment. Upon the request of the Owner or any mortgagee or lessee of any Lot or any prospective purchaser, mortgagee, or lessee thereof, the Board or its designated representative shall furnish written evidence of the amount of the Assessment with respect thereto for the current year and the amount of any unpaid Assessment, penalty and interest, if any. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Lot. The Board may impose a reasonable charge for furnishing such written evidence.

2.11 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of Colorado. In any such enforcement proceeding, the amount which may be recovered by the Association shall include all costs of such proceeding, including reasonable attorneys' fees. In any such foreclosure sale, the Association may become the purchaser.

2.12 Subordination of Lien to First Mortgage. When the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure, such acquirer of title, his or its heirs, successors and assigns, shall not be solely liable for the share of the assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Any lien against such Lot shall be cancelled and voided, and shall become unenforceable. Such unpaid share of assessments shall be deemed to be common expenses collectible from all of the Lots, including that of such acquirer, his or its heirs, successors or assigns.

ARTICLE III

ASSOCIATION FUNDS

3.1 Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and for periodic maintenance, repair and replacement of the Community Facilities. All amounts placed in the reserve for contingencies and replacements shall be contributions to the capital of the Association, and the portion of each monthly Assessment payment made by each Owner which is allocable to the reserve for contingencies and replacements shall be separately designated for that purpose on the records of the Association. Extraordinary expenditures not originally included in the annual budget which may be necessary for the year shall be charged first against such reserve. If the reserve proves inadequate for any reason, the extraordinary expenditures shall be assessed to the Owners as part of the Assessment determined under Section 2.3 of this Declaration. The Board shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the next regular Assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment unless the Board elects to prorate the additional

assessment over a period of more than one month. All Owners shall be obligated to pay the adjusted amount.

3.2 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the costs and necessary reserves, as herein provided, whenever the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly Assessments at the existing rate established for the previous period until the assessment payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

3.3 Books and Records of Association. The Association shall keep full and correct books of account. The Association shall make available to Members, Owners and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

3.4 Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the Owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of the Association and all of the Members thereof. The Board may, in its discretion, take any action which it deems necessary as to the collection, holding, disbursement or categorization of such reserve funds in order to comply with the provisions of the Internal Revenue Code, U.S. Treasury Regulations issued thereunder, and/or any ruling by the Internal Revenue Service as to the non-inclusion of such funds in the taxable income of the Association.

ARTICLE IV

ASSOCIATION MEMBERSHIP, ANNUAL MEETING AND BOARD

4.1 Members. During the Development Period, the Association shall have Class A Members (being all Owners except Developer) and a Class B Member (Developer). After the Class A Members are entitled to elect all of the Board, the Class B membership shall terminate and Developer, if it is then an Owner, shall become a Class A Member and continue as such so long as it shall remain an Owner.

4.2 Voting Rights.

4.2.1. Each Class A Member shall be entitled to one vote for each Lot owned by such Class A Member; provided that any Class A Member (i) with respect to whom a Certificate of Default has been issued by the Board under Section 5.8 of this Declaration, or (ii) who has been issued a Notification of Default pursuant to this Declaration, or (iii) who has had his right or privilege of use and enjoyment of the Community Facilities suspended pursuant to Section 8.1.4 of this Declaration, shall not be entitled to vote during any period in which any such Default or suspension continues; and further provided that if a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Class A Member as to such Lot for purposes of this Article.

4.2.2. The Class B Member shall have two votes for each Lot owned by it.

The Board may make such rules, consistent with the terms of this Declaration and the Association articles and regulations, as it deems advisable with respect to any meeting of members, proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of members for voting purposes, voting by proxy, and other matters concerning the conduct of meetings and voting.

4.3 Annual Meeting. In 1982 the Annual Meeting shall be held on such date as the Board shall determine. Thereafter, the Annual Meeting shall be held in April of each year on such date and at such time and place as the Board shall determine. Each Annual Meeting shall be open to all Owners. Except as otherwise provided in this Declaration, each Member of the Association, regardless of class, shall be entitled to vote on each matter properly submitted to the Members. If the Board shall so determine, voting in elections and voting on other matters at the Annual Meeting may be conducted by mail or by proxy.

4.4 Notice of Annual Meeting. Notice of the Annual Meeting shall be given by the Board to each Member entitled to vote at the meeting either personally or by mail addressed to such Member at his address appearing upon the membership book of the Association, at least fifteen (15) days (but not more than sixty (60) days) in advance of the date of the Annual Meeting. Such notice shall specify the place, date and hour of the Annual Meeting. Notwithstanding the foregoing, nothing shall prevent the Members of the Association from establishing any other procedure for the notification of Members of the Annual Meeting.

4.5 Action by Association Members Without a Meeting.

Any action which may be authorized or taken at a meeting of the Members of the Association may be authorized or taken without a meeting in a writing or writings signed by Members who would be entitled to notice of a meeting of Members held for such purpose, who hold more than fifty percent (50%) of the total voting power in the Association, and who are required signatories under any other provision of the Declaration, which writing or writings shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than five (5) days prior to commencing the circulation of the action for written consent among the Members.

4.6 Voting by Mail by Association Members.

Any Association Member may cast his written vote by mail on any proposal voted upon at any meeting of the Members of the Association by sending such written vote to the Association office not earlier than seven days prior to the date of such meeting and not later than seven days after the date of such meeting by U. S. mail, postage prepaid. Such written votes shall be filed with the records of the Association, and, in no event, shall any action be taken or approved by the Association with the approval of any less than the percentage of voting power required by the provisions of the Declaration or without the consent of any party that is required by any of said provisions.

4.7 Board of Turstees.

Until the first Annual Meeting, the initial Board shall consist of three Directors appointed by the Class B Member who shall serve until their respective successors are elected and qualified. Directors appointed by the Developer need not be members of the Association.

Except as otherwise hereinafter provided and except for the initial Board of three, Directors shall be elected for two-year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the initial Board before the first annual meeting, by reason of death, resignation, removal, or otherwise, shall be filled by a person appointed by the Developer. Any such vacancy occurring thereafter shall be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of members who elected the Directors whose position has become vacant. Any Director appointed or elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he was appointed or elected to fill.

At the first Annual Meeting, the Class B Member shall elect one Director for a two-year term and one Director for a one-year term. Thereafter, at each Annual Meeting the Class B Member, so long as it continues to be a Class B Member, shall elect one Director for a two-year term.

At the first Annual Meeting, the Class A Members shall elect one Director for a two-year term. At the expiration of the term of such Director and at the expiration of the term of each successor of such Director, the Class A Members shall, at the Annual Meeting, elect a successor Director for a two-year terms.

After the termination of the Development Period, all Directors shall be elected by the Class A Members. All Directors elected by the Class A Members both before and after the termination of the Development Period must be Owners. The Developer shall transfer control of the Board to the Class A Members at a meeting of the Members held no later than 120 days after the end of the Development Period. At this meeting all Developer-appointed Directors shall be deemed to be removed from office, and the Class A Members, including the Developer if it is then an Owner, shall elect a Director to fill each vacancy, which Director shall serve as such until the expiration of the term of the Director whose position he was elected to fill. After this meeting, all Directors shall be elected by the Class A Members.

Notwithstanding anything above to the contrary, the Class B Member may, at any Annual Meeting, relinquish to the Class A Members the Class B Member's right to elect one or more Directors at such Annual Meeting pursuant to this Section 4.7.

4.8 Fidelity Bonds. The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be an item included in the annual Assessment.

4.9 Right of Action. The Association and any Owner shall have the right of action against any other Owner(s), and any Owner shall have a right of action against the Association, for any failure to comply with the provisions of any Constituent Document, and for any failure to comply with Association decisions made pursuant thereto.

ARTICLE VARCHITECTURAL REVIEW

5.1 Alteration of Structures. Except with respect to the initial construction of Dwelling Units by the Developer, no Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot, nor shall any Structure on any Lot be remodeled, painted or altered in any way which materially changes the exterior appearance thereof, unless detailed plans and specifications therefor shall have been submitted to and approved in writing by the Board. Such plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following: a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; and evidence of conformity with building codes. The Board shall either (i) approve the plans and specifications, (ii) disapprove them or (iii) approve them with conditions or qualifications.

5.2 Approval of Plans and Specifications. The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) if it finds that they (a) comply with the requirements of Section 5.1 and (b) conform to the Design and Use Standards (as set forth in Section 5.8), and will further the purposes outlined in Section 5.8.1. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Article) or to amend the Design and Use Standards. The Board's approval of any plans and specifications shall not constitute a representation or warranty as to the quality of the plans and specifications or their compliance with applicable laws and codes.

5.3 Disapproval of Plans and Specifications. If Plans and Specifications (whether schematic, preliminary or detailed) submitted to the Board with respect to any Lot do not comply with (a) the Design and Use Standards (and/or will not further the purposes outlined in Section 5.8.1) or (b) the requirements of Section 5.1 as to the information required to be included in the plans and specifications, the Board shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as the Board may deem necessary to achieve compliance.

5.4 Failure of the Board to Act. If the Board shall fail to act upon any plans and specifications submitted to it within thirty (30) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Board shall be required. If construction of a Structure is not commenced on a Lot on or before six (6) months from the date of submission of plans and specifications, then such "deemed approval" shall be automatically cancelled and a new submission shall be required.

5.5 Violations. If any Structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved plans and specifications, the Board shall certify a Default to the Owner of the Lot involved, provided, however, that the Board may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board or the Design and Use Standards.

5.6 Right of Entry. The Board through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Structure thereon is in compliance with the provisions of this Article, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.7 Fees. The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Board.

5.8 Design and Use Standards.

5.8.1. In order to assure the development of the Property as a community of high aesthetic quality, the Board shall adopt and may, from time to time, amend Design and Use Standards for the Property and all Structures thereon in furtherance of the following purposes: the compliance with all zoning and similar governmental regulations; the promotion of the health, safety and welfare of all Owners and Residents; the preservation, beautification and maintenance of the Property and all Structures thereon, as a subdivision of high quality; the preservation and promotion of environmental quality; and the assurance of adequate water, sewage and drainage facilities and other utilities and services. The Design and Use Standards

shall not apply to initial construction of Dwelling Units by the Developer.

5.8.2. The Design and Use Standards shall establish requirements relating to land use, architectural features, site planning, lighting, landscaping and signage. The Design and Use Standards may include, but shall not be limited to, provisions as to the following subject matters: the permitted uses of Lots and Structures; provided, however, that no standards shall permit any use or activity which is prohibited by any applicable zoning laws; the placement of Structures on Lots, including front, side and rear yard requirements; the specification of materials, design, architectural style, color schemes, screening structures and other details affecting the exterior appearance of Structures; the subdivision of Lots; the reservation of utility, visual and other easements; the installation, location and maintenance of utility lines and facilities, including water, gas, electricity, sanitary and storm sewage, telephone, cable television and other communication systems; the planting and preservation of gardens, trees and other landscaping; the size and location of patios, driveways and parking facilities and the assignment of specific carports and parking spaces for the exclusive use of specific Dwelling Units; the size, construction materials, color and design schemes, and location of fences, walls, walks and outdoor furniture; the character, location and direction of exterior lighting; any activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight, or which may be or become a nuisance or annoyance to the community; and any activity which impairs or promotes the purposes outlined in Section 5.8.1.

5.8.3. The Design and Use Standards shall not prevent Developer or another Owner from imposing additional restrictions on any Lot provided that such restrictions have been included in the plans and specifications (or are included in amended plans and specifications) for the Lot and approved by the Board. The Design and Use Standards shall not be construed as permitting any action prohibited by (a) any applicable zoning or other statute, ordinance, resolution, regulation or order of the State of Colorado or any political subdivision or governmental instrumentality of the State of Colorado or (b) any other applicable covenant, condition, restriction or reservation of easement contained in any recorded instrument. If any inconsistency exists between or among any provision of the Design and Use Standards, the Maintenance Standards, governmental requirements or recorded instruments with respect to any Lot, the more restrictive provision shall apply.

ARTICLE VI

COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY

6.1 Purposes. In order to promote the health, safety and welfare of all Owners, Residents and Members, and to preserve, beautify and maintain the Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions are in addition to the Design and Use Standards.

6.2 Covenants and Restrictions. The following are the covenants and restrictions and limitations as to use and occupancy to which the Property is hereby subjected:

6.2.1. Use of Property. An Owner or Resident of a Lot may use his or her Dwelling Unit for any purpose or use which is permitted by law, including any applicable zoning regulations as they may exist and be amended from time to time.

6.2.2. Detached Buildings. Detached buildings may be placed upon a Lot only if in compliance with this Declaration. Unless otherwise permitted by the Board, any such detached building shall have the same exterior finish, design, color and appearance as the Dwelling Unit on the Lot. Any storage building, barn, treehouse, or other out-building or structure shall be completely screened from the streets and drives of the Property. No trailer, tent, garage or other out-building erected anywhere on the Property shall at any time be used as a residence or for the housing of animals, poultry, or pets, except such household pets as are permitted by these Restrictions.

6.2.3. Exterior Surfaces of Buildings. All radio transmitting or receiving antennas and television antennas shall be attached only to the Dwelling Unit located upon each Lot. No free-standing antennas or receivers are permitted, and the maximum allowable height for any antenna or receiver is ten (10) feet above the roof line of the Dwelling Unit. No radio transmitting or receiving antenna, except television antennae, shall be permitted upon any Lot without prior approval of the Board, which approval shall not be given until and unless the Board has received adequate assurances that the installation and operation of the antennae will not cause interference with the reception of electronic signals by other residents. Owners shall not cause or permit anything to be hung or displayed on the outside walls of a Dwelling Unit, except awnings, shutters and similar decorative and protective accessories to Dwelling Units, and no signs shall be affixed to or placed upon the

exterior walls or roof or any part thereof, without the prior consent of the Board with the exception of signs used by Developer to advertise the Property during the Development Period.

6.2.4. Parking. No part of a Lot upon which a Dwelling Unit is constructed, other than an enclosed garage, and no carport or parking space assigned for the exclusive use of a Dwelling Unit pursuant to Section 5.8.2 hereof, nor any other parking area located on the Property, shall be used for parking any trailer, truck, boat, motorcycle or anything other than operative automobiles, bicycles or scooters. Owners and Tenants shall provide adequate off-street parking for their vehicles. The word "trailer" shall include house trailers, boat trailer, mobile homes, automobile trailer, trailer coaches, recreational vehicles, motor homes, campcar, campers or any other vehicles, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or for the conveyance of machinery, tools or equipment, whether resting on the wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pickup truck or van which is used as a primary source of transportation by an Owner or Tenant of a Dwelling Unit or Lot. Vehicles being used for the purpose of construction, delivery or repair work upon any Lot or Dwelling Unit may be permitted to park on the Property while being used for one or more of those purposes.

6.2.5. Hazardous Uses. No Owner shall permit anything to be done or kept in his or her Dwelling Unit or on his or her Lot or in or on the Community Facilities which would be in violation of any law or which would result in the cancellation of any insurance coverage.

6.2.6. Animals and Pets. No animals of any kind shall be raised, bred, accepted or permitted to remain on or kept on any part of the Property except dogs, cats, or other household pets kept in a Dwelling Unit, provided that they are not kept, bred, or maintained for any commercial purpose. Any such pet or pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon seven (7) days' written notice from the Board. No pet shall be allowed to run unattended. No device or apparatus to which a line, wire or rope is connected for the restraint of animals or pets shall be constructed or permitted upon any Lot.

6.2.7. Nuisances. No activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be conducted on any Lot, nor shall

anything be done within any Structure (including Dwelling Units), either willfully or negligently, or on any Community Facilities, which may be or become an annoyance or nuisance to the other Owners or Tenants.

6.2.8. Trash. Trash, garbage, or other waste shall not be kept upon a Lot except in sanitary containers screened from visibility from the streets and drives of the Property.

6.2.9. Mailboxes, Numerals, and Letters. The design, size, shape and color of mailboxes and the numerals and letters thereof and numerals and letters identifying Dwelling Units shall be subject to approval as to design, style, location, color, and size by the Board. The Board shall maintain one or more approved designs which may be selected by Owners at the time of, or in conjunction with, the submission of plans and specifications.

6.2.10. Easements. Easements for location, installation, use, maintenance, repair and replacement of utilities and drainage facilities are reserved on the recorded plat for each Lot. Owners and Tenants may not obstruct or interfere with any such easements including the natural flow of surface water which shall, at all times, be kept free from obstruction.

6.2.11. Prohibited Activities. Except as otherwise provided herein, no industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained, or permitted on any part of the Property; provided, however, that to the extent permitted by law an Owner, a Tenant or any other person claiming through an Owner, may use a portion of any Dwelling Unit for his office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner, Tenant, or any other person claiming through an Owner and provided, further, that such activities do not increase the normal flow of traffic of individuals in and out of the Property or in and out of a Dwelling Unit.

6.2.12. Fences and Storage Areas. No chain-link or similar fences shall be erected or constructed anywhere upon the Property. All fences and storage areas shall be subject to prior approval by the Board.

6.2.13. Laundry on Property. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Property.

6.2.14. Rental of Dwelling Units. No Owner of a Lot or Dwelling Unit shall lease to another any such Lot or part thereof or any such Dwelling Unit unless such lease shall be in writing expressly providing that the terms of such lease shall be subject in all respects to the provisions of this Declaration and that any failure by the Tenant to comply with the terms of such documents shall be a default under such lease.

6.2.15. Lounging or Storage in Community Facilities. Playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs in or on any part of the Community Facilities shall be subject to reasonable rules and regulations of the Association.

6.2.16. Impairment of Structural Integrity of Buildings. Nothing shall be done in any Dwelling Unit which will impair the structural integrity of that Dwelling Unit or of any Structure on an adjoining Lot.

6.3 Failure to Comply. Failure to comply with the covenants and restrictions as to use and occupancy shall constitute a Default.

ARTICLE VII

MAINTENANCE STANDARDS

7.1 Adoption and Amendment. In furtherance of the purposes outlined in Section 5.8.1, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Structures thereon. If any provision of any applicable building inspection, housing inspection or similar maintenance statute, ordinance, resolution, regulation or order of the State of Colorado, any other political subdivision or governmental instrumentality of the State of Colorado, or the Board, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance Standards shall provide, among other things, that:

- (a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Community Facilities and all Structures thereon and for the maintenance, repair (including painting) and replacement of the exterior surface of all Dwelling Units and other Structures located on the Property;

(b) each Owner shall maintain, repair and replace at his expense all portions of the Community Facilities which may be damaged or destroyed by reason of his own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, lessee, licensee, employee, agent, family member or guest of such Owner;

(c) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property;

(d) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder;

(e) except as otherwise provided above in Section 7.1(a), each Owner shall maintain, repair and replace at his expense all portions of each Lot (including all Structures thereon) owned by him and all internal and external installations of such Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of the Lot;

(f) each Owner shall maintain and repair all balconies, windows, doors, vestibules and entryways, patios, decks and all associated structures and fixtures which are appurtenances to each Lot owned by him other than those exterior surfaces which are to be maintained and repaired by the Association under Section 7.1(a) above. The foregoing responsibilities of each Owner include, without limitation thereto, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

7.2 Obligation to Keep Premises in Good Repair. Each Owner during his period of ownership and, during his tenancy, each Tenant leasing a Lot, shall keep each Lot and all Structures thereon owned or leased by him in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

7.3 Periodic Inspection. Periodically as needed, but not less frequently than annually, the Association shall inspect each Lot and the Structures thereon to determine whether such Lot and the Structures thereon comply with the Maintenance Standards. After each such inspection, the Association shall, if any defects are found which are not the responsibility of the Association to correct, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report.

7.4 Drainage Swales. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any open storm water drainage way on any Lot without the prior written consent of the Association.

i 7.5 Right of Entry. The Association, through its authorized officers, employees, and agents, shall have the right to enter upon any Lot and/or Structure at all reasonable times and upon reasonable advance notice for the purpose of making inspections required by this Article without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Community Facilities or upon any utility easements located on any Lots, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, Dwelling Units, or other Structures, then the prior approval of the Board shall be required.

7.6 Failure to Comply. Failure to comply with the Maintenance Standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default.

ARTICLE VIIICOMMUNITY FACILITIES AND EASEMENTS8.1 Rights of Enjoyment in Community Facilities.

Each Owner shall have a right and nonexclusive easement for use and enjoyment of the Community Facilities, and such right and easement shall be appurtenant to, and shall pass with the title to, his Lot. Each Resident shall have a nontransferable right to use and enjoy the Community Facilities, if any, which right shall terminate when such person ceases to have the status of a Resident. Such rights and privileges shall be subject, however, to the following:

8.1.1. The right of the Board, with the approval by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting, to borrow money for the purpose of constructing, equipping, improving and maintaining Community Facilities and in aid thereof to mortgage the Community Facilities.

8.1.2. The right of the Board to adopt and enforce and from time to time amend reasonable rules and regulations pertaining to the use of the Community Facilities, including regulations limiting guests of Owners and Residents who may use the Community Facilities at any one time.

8.1.3. The right of the Board to establish and charge reasonable admission and other fees for the use of any of the Community Facilities. In establishing any such fee, the Board may establish reasonable classifications of Owners, Residents, Tenants and other persons. Each fee must be uniform within each class but need not be uniform between classes.

8.1.4. The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Community Facilities that are recreational in nature as determined by the Board for any infraction of the rules and regulations relating to the Community Facilities for a period not to exceed sixty (60) days for each such infraction.

8.1.5. The right of the Board to suspend the right of any Owner and the privilege of each Resident claiming through such Owner to use such of the Community Facilities that are recreational in nature as determined by the Board for the nonpayment or delinquency of the Assessment against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

8.1.6. Such rights as the Board may have to grant easements or rights of way to any public utility corporation or public agency.

8.1.7. All applicable provisions of valid agreements of the Association relating to the Community Facilities.

8.1.8. Such rights as the Board may have under the Declaration to convey or lease all or any part of the Community Facilities.

8.1.9. All other easements, restrictions and rights to which the Property is subject.

8.1.10. The right of the Association to grant permits, licenses, and easements over the Community Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

8.2 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Community Facilities.

8.3 Construction of Community Facilities. The Association shall not construct any capital addition or capital improvement to the Community Facilities or annex any additional Community Facilities (other than as provided below in Section 8.4) unless such addition, improvement, or annexation shall have been authorized by the Board. If the cost of such addition, improvement or annexation exceeds \$3,000, it must also be approved by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting. Written notice of any such meeting shall be sent to all Members not less than 30 days and not more than 60 days prior to the meeting date.

8.4 Additional Community Facilities. The Developer may from time to time, during the Development Period, convey to the Association for nominal or other appropriate consideration, and the Association may accept conveyance of any land owned by the Developer along with any Structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon.

8.5 Conveyance or Lease of Community Facilities.

Upon authorization by the Board and upon the approval by (a) 75% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (b) the Class B Member voting in person or by proxy at such meeting, the Association may at any time convey or lease all or a part of the Community Facilities to any public agency, authority, or utility or to any private entity, upon such terms and conditions as shall be agreed upon by the other party and Board, including, without limitation, terms and conditions providing for the use of such Community Facilities by the public in general and terms and conditions pertaining to the maintenance and repair of such Community Facilities and the assessments of Owners and/or Tenants for the costs of such maintenance and repair.

8.6 Maintenance and Management of Community

Facilities. The Association shall provide for the management of all Community Facilities and shall keep all Community Facilities in such maintenance, repair and appearance as shall comply with the Maintenance Standards. The Association may fulfill this responsibility by contracting with any professional management company (including, without limitation, Developer or an affiliate or associate of Developer) for the management, maintenance and repair of the Community Facilities upon such terms and conditions including terms as to reasonable compensation as shall be agreed upon by the Association and the manager. Notwithstanding the foregoing, any such contract with Developer or an affiliate or associate of Developer shall (i) not exceed one year in duration, (ii) be terminable on thirty (30) days notice by either party, and (iii) be reviewable for reasonableness upon written request by the Federal National Mortgage Association, FHA, VA or any other agency which insures loans on Dwelling Units.

8.7 Payment by First Mortgagees of Obligations and

Reimbursement for Same. In the event that the Association shall (a) default with regard to payment of taxes or other obligations which may become a charge against the Community Facilities, or (b) fail to pay premiums for insurance in accordance with Article XI and shall not in good faith contest liability for payment of same, first mortgagees of Lots shall, upon prior written notice of intent to do so to the Association, jointly or severally, have the right to pay such amounts, whereupon such participating first mortgagees shall be entitled to reimbursement from the Association for payment of such amounts.

8.8 Use of Community Facilities by Developer.

Developer and its affiliates and associates shall have the same rights of use and enjoyment of the Community Facilities (including use of Community Facilities for promotional purposes) as the Class A Members during the Development Period.

8.9 Easements.

(a) Encroachments. In the event that, by reason of the construction, settlement or shifting of any of the buildings or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Community Facilities presently encroaches or shall hereafter encroach upon any part of a Dwelling Unit; or any part of a Dwelling Unit presently encroaches on shall hereafter encroach upon any part of the Community Facilities or any other Dwelling Unit or Lot; or if by reason of the design or construction of any Dwelling Unit it shall be necessary or advantageous to an Owner to use or occupy, for formal uses and purposes any portion of the Community Facilities, consisting of unoccupied space which adjoins his Dwelling Unit; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit presently encroach or shall hereafter encroach upon any part of any Dwelling Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established. These easements shall exist for the benefit of such Dwelling Unit and the Community Facilities, as the case may be, so long as all or any part of the building containing such Dwelling Unit shall remain standing. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner.

(b) Maintenance Easements. The Owner of each Dwelling Unit shall be subject to easements for access arising from necessity of maintenance or operation of the Property. The Owner of each Dwelling Unit shall have the permanent right and easement to and through the Community Facilities and walls of the building in which his Dwelling Unit is located to the use of water, sewer, power, television antenna, and other utilities now or hereafter existing within the Community Facilities and walls.

(c) Easements for Certain Utilities. The Association may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Community Facilities, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(d) Easements Through Walls Within or Under Decks Connected to Dwelling Units. Easements are hereby declared and granted to install, lay, use, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls or under the decks of the Dwelling Units, whether or not such walls or decks lie in whole or in part within the Dwelling Unit boundaries.

(e) Reservation of Sewer and Utility Easements. Developer hereby reserves easements and the right to grant easements for the installation, maintenance, use, repair and replacement of utilities, drainage facilities, storm and sanitary sewers, as the same appear on the record plat of the Property, and to cut and grade slopes in and along Lot boundaries at streets and drives built within the Property.

(f) Easements to Run with Land. All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof.

ARTICLE IX

COVENANT FOR STAGED DEVELOPMENT

9.1 Staged Development. At any time during the Development Period, the Developer may submit, make subject to, or annex to this Declaration, part or all of the additional lands (the "Additional Property") which are described, together with the Property, in Exhibit B of this Declaration. The Property and the Additional Property shall consist of annexed Lots which shall include a maximum of 25 Dwelling Units. All

intended improvements to the Additional Property shall be substantially completed before annexation of the additional Property. All improvements to the Additional Property shall be of a quality of construction which is consistent with the initial improvements to the Property.

9.2 Supplemental Declaration for Staged Development. The Additional Property may be subjected, annexed, or submitted to this Declaration by filing of record a supplemental declaration which shall incorporate and extend this Declaration to such Additional Property.

ARTICLE X

PARTY WALLS

10.1 Definition. Each wall built during original construction as a division wall common to Structures built on adjoining Lots shall be a Party Wall. Each of the Owners of adjoining Lots shall own in severalty so much of any Party Wall as stands upon his or her Lot subject to the covenants, easements and restrictions provided for herein. A Party Wall shall not include the decorated surface within a Dwelling Unit or any finishing materials or items applied to said surface including paint, lacquer, varnish, wallpaper, tile, carpeting or paneling.

10.2 Covenants, Easements and Restrictions. The following covenants, easements, and restrictions as to use, maintenance, repair, restoration and reconstruction of Party Walls are hereby declared, adopted and established:

10.2.1. Easement of Use. The Owner of a Structure shall have the right and easement to use so much of any Party Wall as is owned by an adjoining Owner for any purpose not inconsistent with joint use of the Wall or prohibited herein. Such right of use shall include the right to enter the Lot and Structure of an adjoining Owner at reasonable times and as reasonably necessary to repair, restore, reconstruct, maintain or improve the Party Wall or any Structure of which the Party Wall is a part.

10.2.2. Damage or Destruction. In the event of damage or destruction of a Party Wall from any cause or person, then repair, restoration, or reconstruction shall be undertaken by the Association as provided for herein in Article XI; provided, however, that (with regard to a Party Wall) the expense of any repair, reconstruction or restoration which the Association is not required to make shall be borne equally by Owners of Structures divided by a Party Wall regardless of the ownership interest in the Party Wall by such Owners; provided, further, that nothing herein shall release or be construed to

release any Owner from liability for damages caused by such Owner by his or her negligence or willful misconduct.

10.2.3. Maintenance of Structural Integrity. Subject to the Association's obligation to maintain Structures, the expense of repair and maintenance for the purpose of maintaining the structural integrity of a Party Wall shall be borne equally by Owners of Structures divided by a Party Wall. In the event, however, that an Owner or anyone for whose act an Owner would be legally liable causes a Party Wall to be exposed to the elements by any act whether negligent, willful or intentional, then such Owner shall bear the entire cost of weatherproofing the wall to protect it from the elements.

10.2.4. Prohibited Uses. No one subject to this Declaration shall without the consent of adjoining Owners and the Review Board make or cause to be made openings in a Party Wall, decrease or increase the thickness of a Party Wall, add to or extend a Party Wall or place or construct chimney flues or fireplaces against a Party Wall.

ARTICLE XI

INSURANCE, DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

i 11.1 Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of all owners and mortgagees insurance on all buildings, Structures or other improvements now or at any time hereafter constituting a part of the Property, including fixtures and building service equipment to the extent they are a part of the Community Facilities, as well as common personal property and supplies, against loss or damage by vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable) fire, lightning, cost of demolition, cost of debris removal and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use, including all perils as are at this time comprehended within the "all risk" form of fire insurance policy with extended coverage. The policy shall be in an amount not less than one hundred percent (100%) of the then current replacement value thereof exclusive of the cost of the land, foundations, footings and excavation, without deduction for depreciation. The policy shall have cost of demolition, water damage and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any

right to apply the proceeds thereof to the reduction of any mortgage debt, and shall name as first lienor any Servicer (being any financial institution which is servicing any mortgage on behalf of any quasi-governmental institution, including, but not limited to, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation). Such policy shall provide the above coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Unit owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause or a provision stating that the coverage will not be affected by the act, omission or neglect of any person unless such act, omission or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property installed by or for any Owner or Tenant in, on or about a Dwelling Unit.

Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten (10) days prior to any expiration or cancellation of such coverage to the Association and to any mortgagee or mortgagees of any Dwelling Unit.

Such insurance by the Association shall be without prejudice to the right of an Owner or Tenant to obtain individual contents or chattel property insurance, but no Owner or Tenant may at any time purchase individual policies of insurance covering any item which the Association is required to insure. If any Owner or Tenant does purchase such a policy, he shall be liable to the Association for any damages, expenses or losses which it suffers or incurs as a result thereof, and the Association shall have the same lien rights provided by Section 2.9 hereof for assessments with respect to any such damages, expenses or losses not paid to it by such Owner or Tenant.

All policies purchased under this Section 11.1 shall provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owner, member of his family, Tenant, or other occupant of the Property for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

The insurance coverage required under this Section 11.1 shall be reviewed at least annually by the Board, and if

any of it becomes impossible to obtain, the Association shall obtain coverage which most closely approximates the required coverage with the deductible provisions described in the first paragraph hereof.

If the required insurance coverage under this Section 11.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Property; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by a special assessment against all Owners under Article II of this Declaration and shall not require a vote of the members of the Association, anything to the contrary in this Declaration notwithstanding.

If any of the insurance coverage required under this Section 11.1 is or becomes impractical to obtain, or is not available in the area where the Property is located, the Association shall obtain coverage which most closely approximates the required coverage with the deductible provisions described in the first paragraph of this Section 11.1.

Property insurance covering Structures upon the Property owned by Owners shall be provided in an amount at least sufficient to pay the mortgage balance for each such Structure in the event of a covered loss, unless the appraisals provide separate evaluations for land and improvements, in which case the insurance shall be in an amount less than the mortgage balance so long as the insurance covers the full replacement cost of the improvement. The insurance described in this Section 11.1 which covers all Structures upon the Property owned by or leased to the Association shall contain an agreed amount and inflation guard endorsement, if available. Construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement, and an increased cost of construction endorsement) may be required if the Property is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of Structures by an insured peril.

11.2 Public Liability Insurance. The Association shall insure itself, the Board and all Owners against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring in connection with the operation, and maintenance or use of the Community Facilities, such insurance to afford protection to a limit of not less than \$1,000,000 in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than \$1,000,000 in respect to any one occurrence, and to the limit of not less than \$1,000,000 in respect to damage to or destruction of property arising out of any one accident. The coverage shall provide protection, if available, against liability arising out of lawsuits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to projects similar in construction, location, and use. The policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligence of the association and/or another Owner or Owners. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Dwelling Units or Lots. Each Owner shall, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or within his Dwelling Unit and Lot.

Policies required under this Article XI must contain a provision providing that they may not be cancelled or substantially modified by any party without at least ten days' prior written notice to the Association.

11.3 Insurance Premiums. Insurance premiums for the policies referred to above in Sections 11.1 and 11.2 (other than policies purchased by Owners) and for such other insurance policies as the Board shall determine from time to time to be desirable, together with such deductibles on any losses as are determined by the Board to be properly chargeable to the Association, shall be a common expense to be covered by annual general assessments.

11.4 Sufficient Insurance. In the event the improvements forming a part of the Property or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor as hereinafter provided.

11.5 Insufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the repair is the obligation of a particular Owner under other provisions of this Declaration, such repair, restoration or reconstruction of the improvements so damaged or destroyed shall be undertaken by the Association at the expense of all the Owners, all in accordance with the provisions of Section 11.6 hereof. Should any Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner. Such assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the nonpayment of other assessments.

11.6 Procedure for Reconstruction or Repair. Immediately after a casualty causing damage to any portion of the Property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that immediately before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

The insurance proceeds and the sums deposited with the Association from collections of special assessments against Owners on account of such casualty, shall constitute a construction fund which shall be applied by the Association to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be deposited in the Association's contingency and replacement reserve fund.

Each Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under the insurance policies referred to above in Sections 11.1 and 11.2 other than those purchased by such Owner.

11.7 Notice to First Mortgagees. In the event that the Community Facilities shall be damaged in an estimated amount exceeding \$10,000.00, the Association will notify any first mortgagees of such damage who requested to be notified of same, and shall notify any Servicer, at the Servicer's address, of any such damage.

11.8 Easement for Repair of Dwelling Units. The Association through its authorized officers, employees, and agents shall have the right and easement to enter upon any Lot at all reasonable times and to do anything necessary to repair, restore and/or reconstruct Dwelling Units as provided in this Article. This right of entry shall include the right and easement to enter the Lot of any Owner to repair, restore and/or reconstruct Dwelling Units on neighboring Lots. The Association or its officers, employees or agents shall not be deemed to have committed a trespass or wrongful act by reason of such entry to restore, reconstruct and/or repair.

ARTICLE XII

CONDEMNATION

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Community Facilities. Each Owner, by acceptance of delivery of the deed for a Lot, thereby appoints the Association as his attorney-in-fact for such purposes.

If all or part of the Community Facilities are taken or required by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of Owners and their mortgagees as their interests may appear.

ARTICLE XIII

ENFORCEMENT

13.1 Curing Defaults; Lien. In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within thirty (30) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder. The Board may exercise without notice any

of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner thereof which shall be payable on demand. If the Owner fails to pay such costs within 30 days after demand, the Association shall enter the amount of the obligation, the name of the Owner as it appears on its records and the description of the Lot in a lien record book to be maintained by the Board at its main office, together with the date of such entry. The Association shall have a prior lien on such Lot for such amount until paid and such lien shall have priority from the date of such entry over all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments, liens of record as of the date of such entry and liens of the United States of America, the State of Ohio, and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent made superior by applicable law, all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The lien provided in this Section shall be recordable as provided in Section 2.9 hereof and shall be enforceable as provided in Section 2.11 hereof.

13.2 Remedies. Nothing contained in this Article shall be deemed to affect or limit the rights of Developer, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

13.3 Right and Easement of Entry. The Association, through its authorized officers, employees, and agents, shall have the right and easement to enter upon any Lot at all reasonable times and to do anything thereon necessary to perform the action or actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Article, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

13.4 No Waiver. The failure of Developer, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

13.5 Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations regarding the administration, interpretation and enforcement of the Restrictions. Each such rule and regulation shall be consistent with and designed to further the purposes outlined in Section 5.8.1 of this Declaration.

ARTICLE XIV

DURATION, AMENDMENT AND TERMINATION

14.1 Duration. The Restrictions shall be covenants running with the land and shall bind the Property and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by, the Board and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded in the Recorder's Office of Montgomery County, Ohio. Thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article.

14.2 Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by the Developer and approved by the Owners of at least 75% of all Lots. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least 75% of all Lots.

The President of the Board shall determine whether the persons who have approved of any amendments or termination of this Declaration constitute Owners of at least 75% of all Lots. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded (a) the written instrument of amendment or termination executed in properly recordable

form by the President of the Association and Developer, if during the Development Period, and (b) the certificate of the President of the Association that the Owners of at least 75% of all Lots have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

Notwithstanding anything above to the contrary, this Declaration may be amended at any time during the Development Period without the vote of Owners by a written instrument executed by Developer for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Developer's original intent; making any changes necessary or desirable to meet the requirements of any institutional lender, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the VA, FHA, or other agency which may insure loans on a Lot; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or right to use the Community Facilities. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Developer as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Developer, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Developer to be necessary or proper to effectuate the provisions of this paragraph.

ARTICLE XV

MISCELLANEOUS

15.1 No Reverter. No covenant, condition, restriction or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

15.2 Notices. Any notice required or permitted to be given to an Owner or Resident by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to his or her last address as it appears on the records of the Association.

15.3 Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefitted or bound by the provisions of this Declaration.

15.4 Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

15.5 Headings. The headings of the Articles and Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

15.6 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

15.7 Notice to and Rights of First Mortgagees, Insurers, and Guarantors. Any holder, insurer, or guarantor of any first mortgage may designate a representative to attend any Owners' or Members' meeting. Any first mortgagee, insurer, or guarantor shall, upon written request to the Association specifying its name and address and the Lot number or address, be provided timely written notice of the following:

15.7.1. Any condemnation or casualty loss which affects a material portion of the Property or which affects any Lot held, insured, or guaranteed by the first mortgagee, insurer, or guarantor;

15.7.2. Any delinquency which remains uncured for sixty (60) days in the payment of Assessments or charges owed by an Owner of a Lot held, insured, or guaranteed by the first mortgagee, insurer, or guarantor, or any Default which remains uncured for sixty (60) days;

15.7.3. Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

15.7.4. Any proposed action which would require the consent of a specified number of first mortgagees under Section 15.8;

15.7.5. Any notice which must be provided to Members or Owners under any of the Constituent Documents;

15.7.6. Notice of termination of the Development Period;

15.7.7. Any material amendment to any of the Constituent Documents;

15.7.8. The effectuation of any decision by the Association to terminate professional management and assume self-management of the Property.

15.8 Consent of First Mortgagees.

15.8.1. Notwithstanding compliance with the other provisions of this Declaration with regard to such actions, unless at least 75% of the first mortgagees (based upon one vote for each first mortgage) of Lots have given their prior written approval, the association shall not be entitled to:

15.8.1.1. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Community Facilities having a fair market value of more than \$3,000.00, as determined by the Board. The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;

15.8.1.2. amend any provision of Articles VI, VII or VIII of this Declaration to reduce the requirements of those Articles;

15.8.1.3. fail to maintain fire and extended coverage on insurable Community Facilities and Structures in accordance with Section XI;

15.8.1.4 use hazard insurance proceeds for losses to any Community Facilities or Structures for other than the repair, replacement or reconstruction of such improvements, and expenses related thereto.

15.8.2. Notwithstanding compliance with the other provisions of this Declaration with regard to such actions, unless at least 51% of the first mortgagees (based upon one vote for each first mortgage) of Lots have given their prior written approval, the Association shall not be entitled to:

15.8.2.1. restore or repair the Property, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and to its former condition;

15.8.2.2. elect to terminate the legal status of the Property after substantial destruction or substantial taking in condemnation of the Property.

15.8.3. If any first mortgagee, insurer, or guarantor has previously required professional management of the Property, whether such entity became a mortgage holder or insurer or guarantor at that time or later, the Association may only decide to establish self management of the Property upon the prior consent of Owners of Dwelling Units to which at least 67% of the votes of the association are allocated, and the approval of at least 51% of first mortgagees (based upon one vote for each first mortgage).

15.9 FNMA and FHA/VA Approval. During the Development Period, any dedication of a significant portion of the Community Facilities to the public will require the prior approval of the Federal National Mortgage Association, FHA, the VA or any other agency insuring a loan on one or more Lots.

15.10 Easement Over Common Walkways. For their convenience and benefit, there is hereby reserved to Developer, Mortgagees, Owners, Tenants and their successors, heirs, and/or assigns, guests, agents, employees, visitors, licensees, and invitees a nonexclusive perpetual easement and right of way for ingress and egress and as an unobstructed pathway for pedestrian travel over all sidewalks, pathways, and walkways now in existence or hereafter to be constructed upon the Property wherever located, whether located upon the Community Facilities or upon a privately-owned Lot.

15.11 Conflict. In the event of a conflict between the Restrictions or any one or more of them and other private restrictions which may be recorded before or after this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

15.12 Covenants Running with Land. This Declaration and all amendments hereto (a) shall be, and shall be construed as, covenants running with the land, (b) shall be binding upon Developer, Mortgagee, the Association, its Members, each Owner, each Tenant and all claiming under each Owner or Tenant, and (c) shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by (i) Developer, (ii) the Association, and (iii) each Owner and all claiming under each Owner.

15.13 Lease of Lot. No Owner of a Lot or Dwelling Unit shall lease to another any such Lot or part thereof or

any such Dwelling Unit unless such lease shall be in writing shall be for a period of at least ninety (90) days and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and that any failure by the Tenant to comply with the terms of this Declaration shall be a default under such lease.

15.14 Encroachments. If any portion of the Community Facilities encroaches upon any Lot or if any portion of a Dwelling Unit inadvertently encroaches upon the Community Facilities or another Lot as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any Structure, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

15.15 Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, Regulations, and other rules concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

15.16 Termination of Regime or Amendment of Documents Not Caused by Destruction, Damage, or Condemnation. The provisions of this Section do not apply to terminations or amendments which result from damage to or destruction or condemnation of the Property, which eventualities are covered by Sections 15.8.2.1 and 15.8.2.2.

15.16.1. The legal status of the Property as a PUD may be terminated upon the prior consent of Owners of Dwelling Units to which at least 67% of the votes of the Association are allocated, and the prior approval of at least 67% of first mortgagees (based upon one vote for each first mortgage).

15.16.2. The consent of Owners of Dwelling Units to which at least 67% of the votes of the Association are allocated, and the approval of at least 51% of first mortgagees (based upon one vote for each first mortgage) shall be required to add or amend any material provisions of the Constituent Documents which establish, provide for, govern or regulate any of the following: voting, Assessments, Assessment liens, or subordination of such liens; reserves for maintenance, repair, and replacement of the Community Facilities (or Dwelling Units if applicable); insurance or fidelity bonds; rights to use of the Community Facilities; responsibility for maintenance and repair of the several portions of the Property; expansion or contraction of the Property or the addition, annexation,

or withdrawal of property to or from the Property; boundaries of any Dwelling Unit; interest in Community Facilities; convertability of Dwelling Units into Community Facilities or of Community Facilities into Dwelling Units; leasing of Dwelling Units; imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Chargeable Parcel; any provisions which are for the express benefit of mortgage holders, eligible mortgage holder, insurers, or guarantors of first mortgages on Parcels. Such an addition or amendment shall not be considered material if made to correct a technical error, or only to clarify. If a first mortgagee received a written request to approve such an addition or amendment, and does not deliver or post a negative response to the requesting party within thirty (30) days, it shall be deemed to have approved such addition or amendment.

15.17 Right of Entry. The Association shall have a reasonable right of entry upon any Parcel to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property.

15.18 Termination. Any distribution made as a result of any termination of the legal status of the Property as a PUD shall be reasonable and equitable.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

BENCHMARK COMMUNITIES, LTD.

By [Signature]
Richard H. Grey, Managing Partner

And _____

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 23rd day of Sept, 1982 by Richard H. Gray, Managing Partner of BENCHMARK COMMUNITIES, LTD.

Witness my hand and official seal.

My Commission expires:

[Signature]
2808 North Acme, Suite 400
Grand Junction, CO 81501
MY COMMISSION EXPIRES 9-15-83
Address

EXHIBIT "A"

BRIARGATE, A REPLAT OF BLOCK 2 AND BLOCK 3
EASTGATE PLAZA, FILING NO. 2

EXHIBIT "B"

NONE