

IMPORTANT NOTICE: The following is an excerpt that only includes the sections applying to residents and does not include the boilerplate legal language. The document below was retyped for clarity and, should there be any differences between this document and the Covenants recorded with the El Paso County Clerk and Recorder, the recorded Covenants shall take precedence.

Gleneagle Subdivision Filing No. 4, Phases 1 and 2

## **ARTICLE I**

### **COVENANTS TO PRESERVE THE RESIDENTIAL CHARACTER OF THE SUBDIVISION**

101. No lot shall be subdivided or resubdivided without permission of the Declarant.

102. All lots and building sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any lot or building site.

103. No structure shall be erected within the Subdivision except single-family dwellings and those accessory buildings and accessory structures which have been approved by the Declarant. No structure other than a dwelling, no accessory building other than a guest house or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other structure may be placed on any building site before completion of the dwelling upon such building site except with the permission of the Declarant.

104. No tent, treehouse, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lot at any time without permission of the Declarant except as expressly provided in Section 109.

105. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure shall be moved onto a lot or building site except as expressly hereinafter provided for temporary buildings.

106. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvement unless enclosed in a service yard or within a building so as not to be visible from any neighboring property or adjacent streets.

107. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

108. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without written permission of the Declarant, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and may forthwith be removed by the Declarant at Declarant's sole option at the cost of the Owner.

109. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by the Declarant or with the permission of the Declarant. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant. The appearance and placement of temporary buildings for permitted construction, administrative or sales purposes must be approved by the Declarant. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

110. No derrick or other structure designed for use in or used for boring or drilling for water, oil or

natural gas shall be permitted upon or above the surface of said property, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

#### Easements for Utilities

111. There is hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across the five (5) foot strip along and adjoining each side lot line and also along and adjoining each rear lot line for use of all or part of such areas or lines for transmission of electric current or impulses or electronic signals, including cable vision and videotext/teletext, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

112. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

113. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

#### Density, Set Back and Quality Standards

114. No more than one (1) dwelling shall be erected or maintained within any building site, to wit: a lot established by the recorded plat.

115. No private passenger motor vehicles or pick-up trucks or recreational vehicles or motor houses or boats or any similar objects whether self propelled or towed including unusual working machinery such as tractors, etc. owned by, belonging to, used, leased or controlled by an Owner or his tenant shall be parked overnight on any street or on any driveway or other off-street space within any lot or building site except in a completely enclosed garage structure or adequately screened in a manner approved by the Declarant. The site improvements on each lot or building site shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles. All driveways shall be improved with asphalt or concrete surface paving unless otherwise approved by the Declarant.

116. Except for fireplace projections integral with the building, eaves and overhangs which have been approved in writing by the Declarant no building, porch, projection or other part of a building shall be located within twenty-five (25) feet of a front lot line, or within twenty-five (25) feet of a rear lot line, or within five (5) feet of a side lot line, or within twenty-five (25) feet of a side lot line which adjoins a public street. Furthermore, where the lot adjoins Common Area (definition in Article IV), the Common Area may be used to fulfill the setback requirement, the Common Area being considered a part of the lot in question for setback purposes.

117. No dwelling shall be erected which exclusive of basements, porches, patios, covered by unenclosed areas, garages, and any attached accessory building, has a gross livable finished floor area less than as follows: if a ranch or single story structure, with a full basement 1,300 square feet, and without a full basement 1,700 square feet, and if otherwise than a ranch or single story structure, then 1,500 square feet in addition to a basement, unless in Declarant's sole subjective judgment a basement is not required.

118. Except with the prior permission of the Declarant, accessory buildings and other structures shall not be more than one (1) story in height, no one-story structure shall be more than eighteen (18) feet in height and no multi-story structure shall be more than twenty-seven (27) feet in height. Height shall be measured from the highest ground contour adjoining the foundation perimeter of the structure to the highest point on the structure exclusive of standard chimneys.

119. Architectural standards are established to the end that the Subdivision may benefit from the

natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, Southwestern and Western styles typical of the Pikes Peak Region are desirable. Formal styles such as a French Provincial, English Tudor, and Colonial will not be approved except in modified forms. All buildings must be designed to fit the natural contours of the lot without excessive grading. All buildings shall be designed and all plans signed by a registered architect or by a qualified designer approved by Declarant.

120. All buildings shall conform to the following material and appearance standards:

- a. Exterior materials shall be natural wood, brick, stone, stucco, or other material approved by Declarant.
- b. Aluminum or wood windows are permitted. All aluminum windows shall be anodized bronze or painted and coated a color to blend with the color of the building.
- c. Gutters, and or any other metallic protrusions from the house if installed, shall be painted the same color as the adjoining trim color of the building.
- d. Exposed concrete shall be stuccoed **and** painted or textured in a manner approved by Declarant.
- e. **(As amended by Roofing Amendment to Declaration:)** All roof areas shall be of wood shakes, wood shingles, tile, slate, copper, 40 year composite fiberglass singles or such other material as may be approved by the Association's Board of Directors or Architectural Control Committee, either of which shall be empowered to determine compliance with this section. Composite fiberglass shingles shall be allowed in gray and brown earth tones to coordinate with surrounding roof aesthetics. Any other asphalt roofing materials are not permitted.
- f. All mailbox stands shall be built according to the specifications recorded on January 28, 1985, in book 3965 at page 0917-0918 of the records of El Paso County, Colorado. No free-standing newspaper receptacles shall be permitted. Newspaper receptacles may be included in the approved stand as shown at said page 0918.

121. Fencing shall be limited to privacy areas and animal control areas adjoining the primary dwelling. Fencing along lot lines is not desirable. All fences and walls shall be designed and constructed as a visual extension of the architecture of the primary dwelling, including both scale and use of materials. The painted, stained or natural coloration of fences shall be consistent with the coloration of the primary dwelling. The finished side of fences shall face the exterior of the home. No fence shall be installed without the prior written approval of Declarant.

122. Within six (6) months after completion of a dwelling or within any extension of that period granted by Declarant, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is intended. No existing trees, surface boulders, or scrub oak shall be removed from any lot unless required by construction activity and unless approved by Declarant. The use of gravel, small rocks, and paving as landscape material is not desirable.

123. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot.

124. No aerial or antenna for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

125. Each Owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surface becomes weather beaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawns, shrubs, trees, other landscape material, fences, signing, mail boxes and outdoor lighting. All lawns, trees and landscaping shall be mowed, watered and trimmed as necessary to avoid becoming unsightly or a

nuisance.

126. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris must be removed and the lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months.

#### Living Environment Standards

127. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

128. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage. All garages must be equipped with electronic remote control operators so they may be opened from the car.

129. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

130. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

131. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuses, or receptacles or containers therefor, shall be stored, accumulated or deposited outside so as to be visible from any neighboring property or street, except during refuse collections.

132. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any lot or in any living area. No annoying lights, sounds or odors shall be permitted to emanate from any living unit.'

133. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any building site.

134. All yards and open spaces and the entire area of every lot on which no building has been constructed, shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the opinion of Declarant are likely to cause the spread of infection or weeds to neighboring property and are to be kept free from brush or other growth or trash in which in the opinion of Declarant cause undue danger of fire.

135. In order to affect insect, weed or fire control or to remove nuisances, Declarant has the right at its election to enter upon any lot upon which a building has not been constructed and to mow, cut, prune, clear and remove from the premises brush, weeds or other unsightly growth which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the area, and to remove any trash without such entrance and removal being deemed a trespass. Furthermore, Declarant may charge the reasonable cost of any such clean-up to the lot owner and the charge shall run as a lien on the land.

136. No material change may be made in the ground level, slope, pitch or drainage patterns of any lot as fixed by the original finish grading except after first obtaining the prior consent and approval of Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so to protect foundations and footings from excess moisture.

### Restrictions Requiring Declarant Authority

137. Except as the Declarant may from time to time grant permissions, which permissions shall be revocable:

- a. No aerial or antenna for transmission or reception of radio or television or other electronic signals may be maintained or erected within the Subdivision. No electronic or radio transmitter of any kind other than garage door openers shall be operated in or on any structure or within any building site.
- b. No animals except an aggregate of two (2) domesticated dogs or cats and except domesticated birds and fish and other small domestic animals permanently confined indoors shall be maintained within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.
- c. No boat, trailer, camper (on or off supporting vehicles), van, tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit or truck or any other vehicle excepting only a private passenger vehicle or a pick-up availed of solely for the private use of residents of a dwelling shall be parked on any street or within any lot or building site except in a completely enclosed structure, **or fully screened in a manner approved by Declarant so as not to be visible at ground level from any neighboring property or street.**
- d. No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any lot **in such manner as to be visible at ground level from any neighboring property or street.**
- e. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat or machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.
- f. No signs shall be permitted on any lot or structure except for one (1) sign of customary size for offering of the signed property for sale or for rent; one (1) sign of customary size for identification of the occupant and address of any dwelling; such multiple signs for sale, administration and directional purposes during development as are approved by Declarant; such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and such signs as may be required by law. All permitted signs must be professionally painted, lettered and constructed. Never shall be used or displayed any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental.

### Architectural Control by Declarant

138. No structure shall be commenced, erected, placed, moved onto a lot, landscaped or altered in any way so as to change materially its exterior appearance, except in accordance with plans, specifications and other information submitted to the Declarant and approved by the Declarant not more than two (2) years before start of the construction, alteration or installation. Matters which require the approval of the Declarant include but are not limited to: the exterior appearance, material, color, height, location of each structure, drive, walk and fence, grading of site, site lighting, and location, size and type of any landscape material, including grass, ground cover, ornamental rocks, shrubs and trees.

139. In granting or withholding approval Declarant shall heed the standards specified in these Covenants and shall also consider among other things: the adequacy of materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relations of the structure to the environment and to surrounding uses, the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on a neighboring site beyond those reasonably to be expected in an urban residential area from considerate neighbors.

140. All plans, samples and other materials to be submitted to Declarant shall be submitted in duplicate. The minimum scale of such plans shall be **1/20<sup>th</sup>** inch equals 1 foot for site plans and **1/4** inch equals 1 foot for architectural plans. The plot plan in said minimum scale shall show the location of all

buildings, drives, walks, fences and any other structures and the existing houses on all sides of the lot. Proposed new contours throughout the lot and abutting street elevations on all sides shall also be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate such exterior color to be used by means of actual color samples. **If requested, a soils report for the building site shall be supplied to Declarant.** Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the lot not covered by structures. The size and type of all new plant materials shall be indicated.

141. A written statement of the approval or disapproval or other action by Declarant acknowledged by a general partner of Declarant or a person designated by a general partner of Declarant, shall establish the action of Declarant and shall protect any person relying on the statement. If Declarant does not execute and acknowledge such a statement within thirty (30) days material so delivered shall stand approved for the purpose of these covenants. Declarant shall be entitled to retain one (1) copy of all approved plans as part of Declarant's files and records.

142. The Declarant shall be entitled to charge a reasonable plan check fee, and said fee shall be paid when the plans are first submitted for a plan check. The minimum fee shall be \$100.00 and until December 31, 1988 the fee shall be \$100.00.

143. Declarant shall have authority to grant for a lot or building site a variance from the terms of one (1) or more of the foregoing sections subject to terms and conditions fixed by Declarant as will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extra ordinary circumstances, literal enforcement of all of those Sections will result in unnecessary hardship. Following an application for a variance:

- a. Declarant shall call a meeting of Owners of adjoining lots in the Subdivision, to be held at Declarant's principal office, notice of which meeting shall be given to the Owners at least ten (10) days in advance, at which meeting all Owners shall have opportunity to appear and express their views.
- b. Whether or not anyone appears at the meeting in support or in opposition to the application for variance Declarant shall within one (1) week after the meeting either grant or deny the variance.
- c. A variance granted hereunder shall run with the lot or building site for which granted.
- d. If a variance is denied another application for a similar variance for the same lot or building site may not be made for a period of one (1) year.
- e. A variance shall not be granted unless Declarant shall find that all of the following conditions exist:
  - i. The variance will not authorize the operation of a use other than private, single-family residential use;
  - ii. Owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;
  - iii. The variance will not substantially or permanently injure the use of other property in the Subdivision;
  - iv. The variance will not alter the essential character of the subdivision;
  - v. The variance will not weaken the general purposes of these Covenants;
  - vi. The variance will be in harmony with the spirit and purpose of these Covenants;
  - vii. The circumstances leading the applicant to seek a variance are unique to the Lot or its owner and are not applicable generally to Lots in the Subdivision or their owners.

#### Declarant's Successor and Assigns

144. The rights and powers of Declarant under these covenants shall pass to the successors and assigns of Declarant. Declarant may, by written instrument of assignment, transfer in whole or in part any or all of its rights and powers under these covenants.

### Officers and Agents Excused from Liability

145. Declarant, its members and agents shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

### Remedies for Violations

146. In case of any breach of these covenants the Declarant may give written notice to the Owner of the lot where the breach occurs or which is occupied by their persons causing or responsible for the breach which notice shall state the nature of the breach and the intent of the Declarant to invoke this Section unless within a period stated in the notice, not less than five (5) days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated as required by the notice Declarant may cause the breach to be cured and terminated at the expense of the Owner or owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the Declarant shall be paid by the person responsible for the breach and if not paid within thirty (30) days after the Declarant has sent such Owner notice of the amount due, such amounts, plus costs of collection, including reasonable attorney's fee, shall be a lien on the lot (including improvements thereon) of the persons so notified and shall in all respects be the obligation of the Owner and enforceable as provided for other assessments by the Declarant.

### Voting Rights

Article III of the "Bethesda Covenants" (Filing 3's original 7/8/93 covenants) were incorporated into Filing 4's Covenants by amendment on 12/21/93. Article III of the Bethesda Covenants was summarized as shown below:

5a) "Article III [of the Bethesda Covenants] provides for the formation of an association to be known as the Gleneagle North Homeowners Association ("Association") and that each owner of a Lot (as defined in the Bethesda Covenants) shall be a member of the Association. As of the date of the recordation of this Amendment to Declaration, Gleneagle Filing No. 4, Phase 2 shall be a member of the Association and subject to each and every provision of Article III."

## **ARTICLE II**

### **COVENANTS FOR ASSESSMENTS**

#### Assessments a Lien and Personal Obligation

201. Each Owner by acceptance of a conveyance of his lot or lots shall be deemed to covenant and agree to pay to the Declarant or its successor in interest charges specifically authorized by these covenants. Each such charge together with the interest thereon and costs of collection, including attorney's fees, shall be a continuing lien upon the lot against which it is made and shall also be the personal obligation of the person who owned the lot at the time when the assessment or charge fall due. Interest shall accrue from the date of the charge through date of payment or collection of the judgement therefore at the statutory rate for mechanic's liens or at the rate of interest on federal income taxes in default, whichever is higher.

202. Any lien imposed for nonpayment of charges or assessments made pursuant to the authority of this Declaration (hereinafter "Declarant lien") shall be junior and subordinate to (1) any lien of record when the Declaration lien arose and (2) any lien of a third party recorded before notice of the Declaration lien shall be recorded, and (3) any lien, whenever recorded, to secure a debt incurred or arising before recordation of notice of the Declaration lien.

Article IV of the "Bethesda Covenants" (Filing 3's original 7/8/93 covenants) were incorporated into Filing

4's Covenants by amendment on 12/21/93. Article IV of the Bethesda Covenants was summarized as shown below. (Note, though, that the amendment did not repeal or even mention Articles 201 or 202 above!)

5b) "Article IV [of the Bethesda Covenants] provides for the creation of the obligation for assessments against each lot. As of the recordation of this Amendment to Declaration, each lot and each owner of a lot in Gleneagle Filing No. 4, Phase 1, except Lot 81, and Gleneagle, Filing No. 4, Phase 2 shall be subject to each and every provision of Article IV of the Bethesda Covenants; provided, however, that the owners of lots in Gleneagle Filing No. 4, Phase 1 and Gleneagle, Filing No. 4, Phase 2 shall not be subject to or be required to pay the annual assessment for calendar year 1994; and the obligation of such owners to pay assessments shall commence in calendar year 1995."

Article V of the "Bethesda Covenants" (Filing 3's original 7/8/93 covenants) were incorporated into Filing 4's Covenants by amendment on 12/21/93. Article V of the Bethesda Covenants was summarized as shown below:

5c) "Article V [of the Bethesda Covenants] provides for the maintenance of certain property by the Association."

### **ARTICLE III**

#### **GENERAL PROVISIONS FOR EFFECT OF THESE COVENANTS**

##### Definitions

301. The following words and expressions used in these Covenants have the meaning indicated below unless the context clearly requires another meaning: Accessory Building: Garages, patios, swimming pools, dressing rooms for swimming pools, separate guest houses without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence. Building Site: A Lot as established by the recorded plat or the combination of two (2) or more lots or portions thereof as approved in writing by the Declarant and aggregating not less than 10,000 square feet. Cost of Collection: All expenses and charges incurred, including attorney's fees. These Covenants: This declaration and the provisions contained in it. Declarant: (This paragraph was amended 12/21/93 to make Bethesda Management Company, a Colorado corporation, the Declarant.) Lot: Each area designated as a single family lot in the recorded plat, limited, however, to areas so designated within the real property affected by this Declaration (that is, limited to areas so designated within the Subdivision.) Owner: Person having fee simple legal title to a lot. If more than one (1) person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one (1) of them as they may designate from time to time. Structure: Structure shall mean any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, coop or cage, patio, swimming pool, tennis court, stable, fence, wall or hedge more than two (2) feet in height, sign and any temporary or permanent living quarters. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot. The Subdivision: The area affected by this Declaration as more specially defined in the beginning of this document as the "Affected Real Property". Enumerations Inclusive: A designation which describes parcels or other things as from one (1) number, letter or other designation to another includes both such numbers, letters or other designations and all in between. Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

##### Captions

302. Captions, titles and headings in these covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

#### Declarant Resolves Questions of Construction

303. If any doubt or question shall arise concerning the true intention or meaning of any of these covenants the Declarant shall by a written declaration state the proper intention which statement shall be binding and presumed correct absent fraud on the part of the Declarant.

#### Covenants Run With the Land

304. These covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

#### Covenants Are Cumulative

305. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

#### These Covenants May Not Be Waived

306. Except as these covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and the Declarant by failure to enforce may not waive or impair the effectiveness or enforceability of these covenants. Every person bound by these covenants is deemed to recognize and agree that it is not the intent of these covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these covenants or any part of them, nor operate as an impediment to their subsequent enforcement. No such person shall defend against enforcement on the grounds of waiver.

#### Right To Enforce The Covenants

307. These covenants are for the benefit of the Owners, jointly and severally, and the Declarant, and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and by any other appropriate legal remedy, instituted by one (1) or more Owners, the Declarant or any combination of them.

#### Duration of Restrictions

308. (MISSING)

#### Amendment, Termination and Extension

309. (MISSING)

#### Exception from Termination or Amendment

#### Severability

310. (MISSING)

#### Notices

311. (MISSING)

## **ARTICLE IV**

### **COMMON AREA**

The section of the original Covenants contained sections entitled:

- Definitions;
- Ownership And Taxation of Common Area;
- Use, Control and Maintenance;
- Assessment;
- Indemnity.

The Covenants were amended 12/21/93, and Article IV was replaced in its entirety by the following numbered paragraphs of the Amendment:

4. Article IV of the Original Declaration is hereby deleted in its entirety.

5. Articles III, IV and V of the Bethesda Covenants\* are hereby incorporated into this amendment as if fully set forth herein. The capitalized defined terms as set forth in the Bethesda Covenants shall be defined in the Bethesda Covenants and shall be deemed to include the Affected Real Property that is subject to the Original Declaration, as hereby amended. In general the provisions of Articles III, IV and V of the Bethesda Covenants provide for the following matters:

- a. (See earlier in this comparison alongside Article III of the Filing 3, 4, and 8 Covenants.)
- b. (See earlier in this comparison alongside Article IV of the Filing 3, 4, and 8 Covenants.)
- c. (See earlier in this comparison alongside Article V of the Filing 3, 4, and 8 Covenants.)

\*-The "Bethesda Covenants" are defined by the Amendment as the Filing 3 Covenants dated 7/8/93. (The Covenants for Filings 4 and 8 were filed in 1995 and 1996, respectively, so they did not exist at the time that Filing 4's Covenants were amended.) Consequently, Filing 3's Articles III, IV, and V also apply to Filing 4.

A couple questions do come to mind. How broadly should the statement above regarding "capitalized terms" be interpreted? Does it mean only capitalized terms used in Articles III-V or all capitalized terms? And, if Articles III, IV, or V of Filing 3's Covenants were to be amended would such an amendment apply to Filing 4?