

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOXTRIDGE FILING NO. 5

This Declaration, made of the date hereinafter, set forth by Niagara Investment Corporation, a Colorado Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

Whereas, Declarant is the owner of certain property in the County of Arapahoe, State of Colorado, which is legally described as follows:

Foxridge Filing No. 5, except lettered Tracts "A" and "B".

Now, therefore, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions; covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with said real property and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1: "Committee" shall mean and refer to the Foxridge Architectural Control Committee its successors and assigns.

Section 2: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties including contract Sellers, but excluding these having such interest merely as security for the performance of an obligation.

Section 3: "Properties" shall mean and refer to that certain real property hereinbefore described, and referred to as Foxridge Filing No. 5.

Section 4: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, excluding road, streets, etc.

Section 5: "Declarant" shall mean and refer to Niagara Investment Corporation, its successors and assigns.

ARTICLE II

ARCHITECTURAL CONTROL

Section 1: Architectural Control Committee: There is hereby created the

Foxridge Filing 5 Architectural Control Committee, hereinafter referred to as "Committee" for the purpose of maintaining, within Foxridge Filing No. 5 a style and nature of building design which is homogeneous to the area's physical setting.

Membership: The Committee is composed of Benjamin F. Carter, Jr., Richard K. Spurway, and David D. Mandarich.

The Committee shall adopt reasonable rules and regulations, fix the time and place of its regular meetings, appoint a chairman and secretary, and keep minutes of the meetings which shall be open for inspection by any Owner, upon approval of a member of the Committee.

All decisions of the Committee shall be by majority vote, provided that a majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. In the event no volunteer successor can be found, the remaining members shall designate any Owner of a Lot as successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant. At any time, the then recorded Owners of a majority of the Lots shall have the power through a duly recorded written instrument to change the membership of the Committee, to increase or decrease its number, or to withdraw any member from the Committee.

It shall remain the prerogative and in the jurisdiction of the Committee to review applications and grant approval for exceptions to this Declaration. Variations and deviations from these requirements and restrictions may be made only when such exceptions, variations and deviations do not in any way detract from appearance and aesthetic qualities of the Properties, and are not in any way detrimental to the property values of individuals located in the vicinity or in any way detrimental to the general public health, safety or welfare.

Section 2: Control: No building, fence, wall, or other structure shall be erected or as alterations made on any building until the construction plans and specifications regarding quality of workmanship, type of materials and harmony of external design and color scheme shall have been approved by the Committee. Also a site plan shall be submitted to the Committee, for their approval, showing the location of said proposed structure with respect to topography, finish grade elevation and any existing structures on or adjacent to said building site. Each Owner shall provide, at his cost, one complete set of house plans, specifications site and grade plans, except where a builder shall construct more than one (1) house from the same plan, only one set shall be required. The plans, specifications, site and grade plan shall be submitted to the Committee at least thirty (30) days after written request thereof, then such approval shall not be required, provided, however, that no building or other structure shall be erected or be allowed to remain on any Lot which violates any of the covenants or restrictions contained herein. The issuance of a building permit or license, which may be contravention of these

protective covenants, shall not prevent the Committee from enforcing these provisions.

ARTICLE III

USE RESTRICTIONS

Section 1: Residential Use: No lot or lots embraced in the Properties shall be used for other than single family residence purpose. There shall not exist on any lot as shown on the plat recorded at the Arapahoe County Clerk and Recorder's Office at any time more than one residence. All buildings or structures erected upon said property shall be of new construction.

Section 2: Building Standards: All structures shall conform with the applicable building codes of Arapahoe County, Colorado, and other appropriate governmental entities and agencies.

Section 3: Building Height: The designated maximum building height shall be 35 feet or 2 stories. Building heights shall be considered as the vertical distance from the average finished ground level of the building site to the highest point of the structure directly above said ground level. The designated maximum building height requirements may be waived by the Committee when, in their opinion, such structures relate to sound architectural planning and land use, and conform to the overall design and pattern of the development.

Section 4: Dwelling Cost, Quality and Site: No dwelling shall be permitted on any lot at a total selling price of less than \$60,000.00 The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,000 square feet for a one-story dwelling, nor less than 700 square feet for a dwelling of more than one story.

Section 5: Building Location: No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat and recorded fixed Unit Development Plan. In any event, no building shall be located on any lot nearer than 20 feet to the front lot line, or nearer than 15 feet to any side street line, no building shall be located nearer than 5 feet to the interior lot line. No dwelling shall be located on any interior lot nearer than 15 feet to the rear lot line. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot. With written approval of the Committee, on cul-de-sacs, a one story attached garage may be located nearer to the front lot line than above provided, but not nearer than 15 feet of any street line, where the natural elevation of the lot along the established minimum building setback line is more than either 8 feet above or 4 feet below the established roadway level along the abutting street and where in the opinion of said Committee the location and architectural design of such proposed garage will

not detract materially from the appearance and value of other properties. Furthermore, under similar conditions and approval, a dwelling may be located nearer to a cul-de-sac street than above provided, but not nearer than 15 feet to any cul-de-sac street line.

Section 6: Lot Area and Width: No dwelling shall be erected or placed on any lot having width of less than 30 feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than 2,400 square feet.

Section 7: Time for Construction: At the time plans and specifications receive approval from the Committee, the prospective building shall proceed diligently with construction of said building, and the same shall be ready for occupancy within a maximum period of twelve months time from the date of commencement; excepting, however, that this period may be extended as may be deemed reasonable by the Committee if said extension is made necessary by reason of inclement weather, inability to obtain materials, strikes, acts of God, etc.

Section 8: Occupancy of Structures: No structure shall be occupied or used for the purpose for which it was designed or built until the same shall be approved and/or inspected by the County Building Inspector or such other official designated by Arapahoe County. No structure erected upon any lot shall be occupied in any manner while in the course of construction nor at any time prior to its being fully completed, as herein required.

Section 9: Building Exterior: The exterior portions of all buildings shall have color mixed manufactured surface material, natural stone or shall be painted or stained upon completion so that all exposed surfaces shall have a finished appearance.

Section 10: Air-Conditioning Units: No air-conditioning unit, evaporative cooler or object shall be placed upon the roof of any residence or building except or unless such air-conditioned unit is architecturally concealed from view and plans for concealment have been submitted to and approved by the Committee. This shall not preclude solar heating provided, however, the Architectural Control Committee must first approve the design and appearance of such heating plans.

Section 11: Off-Street Parking: At least two off-street parking spaces shall be required for each residence.

Section 12: Clearing of Trees and Grading: Approval shall be obtained from the Committee to cut down, clear or kill any trees on any Lot. Further, each and every grantee agrees that all the trees cleared by him will be disposed of in such a way that all lots, whether vacant or occupied by a residence, shall be kept free of brush, accumulations of trash or other materials which may constitute a fire hazard or render a lot unsightly, provided, however that this shall not prohibit or restrict grantees from storing fireplace wood in heat stacks on their lots.

Under no circumstances shall the Owner of any Lot or parcel of land disturb the natural soil or grasses unless the Owner immediately thereafter constructs upon, paves, gravels or replants such area with ground cover approved by the Committee. The ground may be cultivated for gardening, provided however, that no garden is maintained for commercial purposes. Grading shall conform to the area grading plan prepared by Miller-Ernstsen and Associates, Inc., Engineers.

Section 13: Unnatural Drainage: Under no circumstances shall any Owner of any lot or land parcel be permitted to deliberately alter the topographic conditions of his lot or land parcel in any way that would permit unusual additional quantities of water from any source, except acts of God, to flow from his property onto any other property or public right-of-way. The elevation of a lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. No rock, gravel, or clay shall be excavated or removed from any property for commercial purposes.

Section 14: Temporary Residences: No structure of temporary character, no trailer, converted trailer mobile home, basement, tent or accessory building shall be used on any lot as residence, temporarily or permanently, and no used structure of any sort shall be moved onto any lot, except that the Committee may approve the use of trailers or mobile homes for a designated length of time, not to exceed six (6) months, to be used solely for a temporary residence or construction headquarters during the construction of the permanent residence. Declarant may, however, allow temporary structures to be occupied for sales and merchandising program at Foxridge Filing No. 5.

Section 15: Site Distance at Intersection: On corner lots, no planting of shrubs, trees or flowers or the erection of any fence or structure over 30 inches above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points of 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended.

Section 16: Nuisance: Nothing shall be done or permitted on the Properties which may be or become annoyance or nuisance to the subdivision development. No noxious or offensive activities or commercial business or trade shall be carried on or upon any lot. No lot shall be used in whole or in part for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material emit foul or obnoxious odors, or that which will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

Section 17: Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 18: Walls: No boundary wall or fence shall be constructed with a height of more than six (6) feet and no boundary line hedge or shrubbery shall be permitted with a height of more than six feet. No wall or fence of any height shall be constructed on any lot until after the height, type, design and approximate location therefore shall have been approved in writing by the Committee. The elevations of any wall or fence shall be measured from the existing elevations of the property at or along the applicable points or lines. Any questions as to such heights may be completely determined by the Committee.

Section 19: Retaining Walls: Lots within Foxridge Filing No. 5 may contain the base of retaining walls. Each lot owner is responsible for the cleanliness, maintenance, prevention of misuse, security, and reconstruction, if necessary, of that portion of any retaining wall the base of which is located on the lot.

Section 20: Tanks, etc: No elevated tanks of any kind shall be erected, placed or permitted on any part of such premises, provided, that nothing herein shall prevent the permitting of the placing of tanks and other water system apparatus on the Properties.

Any tanks for use in connection with residence constructed on such premises, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring lots, roads, or streets. All garbage cans, equipment, coolers, or storage piles shall be walled in to conceal them from the view of neighboring lots, roads or streets. Plans for all enclosures of this nature must be approved by the Committee prior to construction.

Section 21: Signs: No sign of any character shall be displayed or placed upon any of the lots in the Properties except one professional sign of not more than three square feet in area per side advertising the property for sale, house numbers, and occupant's name. Signs used by a builder(s) to advertise the property during any construction and sales period shall be excepted from this section. All signs are subject to the approval of the Committee.

Section 22: Subdivision of Lots: None of the lots shall at any time be divided, subdivided or re-subdivided unless said division, subdivision or re-subdivision is permitted under the regulations, codes and ordinances of the County of Arapahoe, State of Colorado. In the event of said division, all property thereunder shall be subject to all other provisions hereof.

Section 23: Livestock and Poultry: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

Section 24: Mining: No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed, or permitted upon any part of such premises, nor shall any oil, natural gas, petroleum, asphaltum, or

hydrocarbon products, water or minerals of any kind be produced or extracted therefrom, except the Willows Water District who shall have the right to extract water from beneath the surface of the land.

Section 25: Street Lighting: All lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The owner or owners shall pay as billed a portion of the cost of public street lighting in the subdivision according to Public Service Company rates, rules, and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 26: Trailers, Boats and Motor Homes: No trailer, boat, motor home, mobile home, camper or similar recreational vehicle shall be stored, maintained or used in the front yard or driveway of any dwelling. Subject to prior approval of the Architectural Control Committee, said vehicles may be stored in the rear or side yard provided adequate access is available, adequate fencing or screening is constructed to screen the vehicle from view, and the fencing or screening is also approved by the Architectural Control Committee. This Article shall not apply to the Declarant or home builders in their use of trailers or temporary structures used in construction or sales activities.

Section 27: Repair of Automobiles, Trucks or other Vehicles: No repair of any vehicles shall take place in the front yard, on the front drive, or in the street in front of any house and no repair shall take place in rear yard or side yard, unless screened from view, adequate access is available, and fencing or screening is also approved by the Architectural Control Committee.

Section 28: Antennas: No antenna of any type (T.V., C.B., etc.,) is allowed on the roof of any dwelling or attached in any visible way to any dwelling. No free standing antennas are allowed if they are visible from an adjoining property.

Section 29: Landscaping: The front yard of each house shall be landscaped within twelve (12) months of the issuance of the Certificate of Occupancy by Arapahoe County, This will include the areas mentioned in Article IV, Section 2, within the street rights-of-way.

ARTICLE IV

EASEMENTS

Section 1: Easements: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of Foxridge Filing No. 5 and subsequent utility easements of Public Record at Arapahoe County.

Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the Owner of the lots, except for those improvements for which a public authority or utility company is responsible.

Section 2: Street Rights of Way: All areas adjacent to the front of side of any lot that are located in Street Rights-of-Way and that do not contain street improvements (curb, gutter, sidewalk, or asphalt) shall be maintained continuously by the owner of the lot.

ARTICLE V

GENERAL PROVISIONS

Section 1: Enforcement: The Committee, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration. Failure by the Committee or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability: Invalidation of any one of these covenants or restrictions by judgment of court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3: Term: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

Section 4: Gender and Grammar: The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

In Witness Whereof, the undersigned, being the Declarant, has executed ration this 11th day of October, 1979.