

**EASEMENTS, COVENANTS AND RESTRICTIONS
HARMONY VILLAGE
FORT COLLINS, COLORADO**

This declaration of Easements, Covenants and Restrictions ("ECR") is made and executed on this 31st day of July, 1999 by Dial-Fort Collins I, L.L.C. ("Dial") as developer and owner of Harmony Village, a planned unit development ("PUD") subdivision of the City of Fort Collins, Colorado. The First National Bank ("First National Bank") has also made and executed this Declaration, as owner of Lot 2 in the PUD. The plat of Harmony Village, PUD was recorded in the office of the Clerk and Recorder of Larimer County, Colorado on April 30, 1999 at Reception No. 99037003 (the "Plat"). (Any reference to Plat shall refer to the Plat as it may be amended from time to time. No Amendment shall be made to the Plat that affects an Owner's property rights, without the written consent of such Owner.) The entire Harmony Village, PUD as described on the Plat is subjected to this ECR and is hereinafter sometimes referred to as the "Property".

**Article I
Recitals**

1.1 Dial is the fee simple owner of Lot 1 and Lots 3 through and including Lot 12, and Tracts A and B of the Property as surveyed, platted and recorded in Larimer County, Colorado. The First National Bank is the owner of Lot 2 of the Property.

1.2 Dial desires that the Property be developed pursuant to a general plan of improvement for commercial use and an assisted living facility or other multi-residential development use in accord with the requirements and provisions of the PUD and the Plat, as well as use permits and zoning restrictions and requirements as approved by the City of Fort Collins, Colorado. Dial further desires that the Property be subjected to easements, covenants and restrictions as hereinafter set forth to insure the proper use and appropriate development and improvement of the Property, including the establishment of a Property Owners' Association to own and maintain the Common Drives and the Detention Area.

**Article II
Definitions**

For purposes of this ECR, the following terms shall have the following meanings:

- A. "Association" shall mean and refer to Harmony Village Property Owner's Association, a Colorado non-profit corporation that shall be established by Dial to serve as the Association for the PUD.
- B. "Building Areas" shall mean those portions of each Lot on which an Owner may elect to construct building improvements so long as the size and location does not violate the Development Agreement and PUD requirements as approved by the City of Fort Collins, Colorado.
- C. "City" shall mean the City of Fort Collins, Colorado.
- D. "Common Drives" shall refer to Tracts A and B as shown on the Plat, which tracts are to be used for access and which are to be landscaped in accordance with requirements imposed by the City.
- E. "Detention Area" shall refer to Lot 8 as shown on the Plat. By the Development Agreement and in conjunction with PUD approvals given by the City, the Detention Area is to be used for storm water detention for the Property and is to be maintained by the Association.
- F. "Development Agreement" shall mean the Development Agreement signed by the City and Dial relative to the development of the PUD. Such Agreement is consistent with the terms and conditions of the Minor Amendment of Harmony Village PUD, Fort Collins, Colorado, prepared by V. F. Ripley Associates, Inc. as Final Site Plan dated November 6, 1998, Job No. R 97-65, last revised May 10,

Return to: Dial-Fort Collins I
11506 Nicholas St.
Omaha, NE 68154

* Lot 8

2

1999, said plan consisting of twelve (21) pages, which was as a part of the PUD approval and which establishes criteria for landscaping, building materials, building heights, sidewalks, grading plan, common drives or dedicated streets or any other development duty imposed by the City on the Property whether to be performed by Dial or any Owner.

G. "Landscape Areas" shall be the portion of each Lot or Tract designated on the Plat or required by the PUD or Development Agreement for lawns, bushes, trees, flowers, hedges or any other type of landscaping.

H. "Lot" shall mean any lot as platted and designated on the Plat (including any future subdivision or resubdivision approved by the City) (excluding Tracts and the Detention Area owned by the Association); provided that if any platted lot is divided so that a portion of the lot is owned by Owner in conjunction with all or a portion of an adjoining lot, and the other portion of the lot is owned by another Owner separately, or in conjunction with all or part of the other adjoining lot, then an entire property so held under one ownership shall be a Lot for the purpose of this ECR. If a platted Lot is divided as described above, the Owners of the Lot shall provide in the deed that divides the Lot how voting rights and assessments attributable to the platted Lot shall be divided. If such provision is not made in the deed, it shall be made in another supplemental document executed by all Owners of the subdivided platted Lot.

* Lot 8

I. "Mortgagee" shall mean a holder of a First Mortgage. "First Mortgage" shall mean any real estate mortgage, deed of trust or other encumbrance of a Lot to secure the performance of an obligation that has first and paramount priority under applicable law, subject only to real property, *ad valorem*, taxes and other governmental assessments and liens.

J. "Owner" shall mean the Person or Persons who are the owners of record of any Lot, except Lot 8.

* Lot 8

K. "Parking Area" shall mean the portion of each Lot, which is paved and striped for ingress, egress and parking use by Owners, customers, agents, invitees, tenants and employees in accord with the parking requirements of this ECR, the PUD and Development Agreement, and the City of Fort Collins, Colorado parking requirements.

L. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or any other entity recognized as a person under the laws of the State of Colorado.

M. "Public Streets" shall mean Timberline Road, Harmony Road, Delaney Drive, Timberwood Drive and Wilmington Drive as shown on the Plat, which streets are dedicated to and maintained by the City.

* streets

N. "Sidewalks" shall mean those portions of the Lots and Tracts of the Property designated on the Plat and required by the PUD or Development Agreement to be paved for pedestrians' traffic exclusively.

O. "Tenant" shall mean a lessee of any building or portion of any building located on a Lot, or other such occupancy as by written lease or oral tenancy, including an occupant holding over possession upon expiration of its lease term.

P. "Tracts" shall mean the tracts as platted and designated on the Plat (including any future subdivision or resubdivision approved by the City). Where applicable, any reference to Tracts may also include the Detention Area.

Q. "Users" shall mean all Owners and Tenants and their invitees, including all customers, clients and patrons of the businesses and enterprises conducted on the Property, suppliers of such businesses and enterprises, employees of such businesses and enterprises, and the like.

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Article III
Uses

3.1 Dial hereby declares that the Property shall be subject to the easements, covenants, conditions and obligations set forth in this BCR, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of all Persons having any right, title or interest in the Property and which shall be deemed to run with the land and be a burden upon and a benefit to any Person acquiring such an interest, their heirs, legal representatives, successors and assigns. All of the easements, covenants, conditions and restrictions set forth herein are imposed on each portion of the Property as a mutual equitable servitude in favor of all other portions of the Property.

3.2 All Lots shall be used for commercial purposes of the type normally found in a retail shopping center, including, without limitation, financial institutions, convenience stores (including fuel and food sales and car wash facilities), service shops, fast food and sit-down restaurants, offices and retail stores. Lot 9 shall be used for a commercially operated assisted living facility. The Property shall be subject to the Colorado Common Interest Ownership Act.

3.3 No business of manufacturing, wholesale, or retail distribution, renting or sales of pornographic material, including "triple-X videos, triple-X bookstores" or similar businesses appealing to customers' prurient interests shall be conducted on any Lot without the written consent of the Owners of all Lots. This Article 3.4 shall not impair the right of the movie theater located on Lot 10 from showing movies rated "R" or "NC-17" or any equivalent or lesser rating. No business may be conducted which is an unreasonable annoyance or nuisance to any Owner or Tenant or occupant of any Lot by reason of unsightliness, excessive emission of noxious fumes or odors, vibration, gases, radiation, dust, liquid waste, smoke or noise.

3.4 As long as the primary business activity carried on on Lot 10 involves the operation of a multi-screen movie theater, no other Lot may be used as a movie theater, bar or lounge (except in connection with a restaurant where 50% or more of the gross revenue of such restaurant is generated from the sale of food), bingo parlor, skating rink, liquor store, health club, massage parlor, bowling alley, video arcade, flea market or sale of candy which is not prewrapped or prepackaged when received by a retailer from the wholesale supplier and which is sold by the retailer by weight, or fresh popcorn.

3.5 So long as a bank is operated on Lot 2, no other bank, savings and loan, credit union or similar financial institution shall be operated on any other Lot. This restriction shall not preclude the maintenance of automated teller or similar machines on other Lots.

3.6 So long as a convenience store selling automotive transportation fuels and providing car washes is operated on Lot 6, no other convenience stores selling automotive transportation fuels or providing car washes shall be operated on any other Lot.

Article IV
Improvements

4.1 Building:

(a) Any Owner commencing construction of any building on that Owner's Lot shall diligently proceed to complete the building within a reasonable time after construction has been commenced.

(b) Unless approved by the City, no improvement or alteration by any Owner shall materially change or alter the drainage on the Property or otherwise alter the drainage plans approved by the City in conjunction with approval of the PUJ.

(c) All Owners shall screen or fence from view any ground-mounted HVAC equipment or garbage dumpsters or collection facilities. No Owner shall be required to provide compactor screens. The screening or fencing of garbage dumpsters or facilities shall not be deemed to apply to trash compaction facilities which maintained by Owners.

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4.2 Ingress/Egress and Parking Areas:

(a) Any Owners and Users shall have an easement for ingress and egress from one Lot to another through and across the driving aisles. No Owner may materially modify or change the flow of vehicular or pedestrian traffic as approved by the City in conjunction with the PUD and plat of the subdivision, as approved by the City of Fort Collins. This grant of easement for ingress and egress on one Lot to the other shall run with the land and is only for the benefit of any and all assignees, successors in interest, tenants, buyers or other persons or entities who may be legally entitled to use and occupancy of any Lot.

(b) Any User is granted an easement to park within Parking Areas designated on the Plat, regardless of whether that User is a patron of the business which occupies the Lot on which the parking is located. Notwithstanding the foregoing, no Owner or Tenant, nor any of their employees or business suppliers, is authorized to park on any other Lot unless such Person is a patron of a business located on the Property. Owners and Tenants shall prohibit their on-duty employees from parking on Lots other than the Lot upon which the business by which they are employed is located.

- CAN our employees
No park @
MTC grill or
Lazy Boy?

(c) All parking areas, access drives and loading areas shall be paved with concrete or asphalt and graded in accord with the Property grading plan designated in the PUD approval prepared by JR Engineering, Inc., Fort Collins, Colorado dated April 7, 1999.

(d) Each Owner shall maintain adequate Parking Area to accommodate a minimum of, (i) in the case of retail or service use, five (5) parking spaces for each one thousand (1000) square feet of Building Area, (ii) in the case of a movie theater use, one (1) parking space for each five (5) seats, (iii) in the case of fast food or sit-down restaurants, seven (7) parking spaces for each one thousand (1000) square feet of restaurant facility, (iv) in the case of office use, three (3) parking spaces for every one thousand (1000) square feet of rentable square feet, (v) in the case of a convenience store use such as the one operated on Lot 6, (4) spaces for each one thousand (1000) square feet of convenience store facility, and (vi) in the case of the assisted living facility business carried on on Lot 9, the facility shall maintain such number of parking spaces required by the City. -25
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(e) No Owner or Tenant may commence operation of any business on any Lot until the Parking Area for such Lot has been paved and striped to delineate the number of spaces required by this ECR and is required by the PUD.

4.3 Landscape Areas:

(a) No Owner or Tenant shall operate any business on any Lot unless and until landscaping within any Landscape Areas on that Owner's or Tenant's Lot has been installed in accordance with the PUD and the Development Agreement.

(b) Each Owner shall install an automated underground lawn sprinkling system which shall adequately serve all Landscape Areas on such Owner's Lot. Each Owner shall be responsible for maintenance and providing sprinkler service for all Landscape Areas between the lot lines of that Owner's Lot and the curbs of the Common Drives or Public Streets adjacent to that Lot.

where are valves & timer/meter.

(c) Each Owner shall complete all landscaping and underground sprinkler systems required by this article within sixty (60) days after the substantial completion of construction of any building constructed on that Owner's Lot; provided, however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit.

(d) Dial shall construct or cause to be constructed the Common Drives, Public Streets and Detention Area, and landscaping and improvements required by the City on those areas of the Property. Each Owner shall construct its own access to its Lot from the

Common Drives or Public Streets at it's the Owner's sole cost and expense, including all permit costs.

(e) Changes to Landscape Areas located between an Owner's lot line and curbs of Common Drives of Public Street may be made by an Owner maintaining those improvements only with the approval and consent of the Association, and all such changes shall be made in compliance with restrictions and conditions established by the City.

rem trees in bed near rear door >

Article V Signs

5.1 All signs shall comply with the PUD requirements, codes, rules and regulations pertaining to signs as promulgated from time to time by the City. No sign of any type shall be placed upon the roof of any building on the Property. The Owner or tenant of Lot 10 shall have the first right to place a sign upon the top two-thirds (2/3ds) of the monument sign at the corner of Timberline Road and Harmony Road.

5.2 Dial shall, at its expense, construct a base and frame and install sign panels, back-lit sign or other signage approved by the City on Lots 1, 3 and 8. Dial may sell or assign such rights to such signage in its sole discretion to any Owner. Dial or the Owners utilizing such signage (based upon square footage utilized) shall be jointly and severally liable for the maintenance of such signage. The Owners of Lots 1, 3 and 8 grant an easement to Dial to construct, maintain, repair and replace signage located on such Lots. Any signage and obligations related to signage may be turned over by Dial to the Association, and Dial thereafter shall have no further obligation or liability hereunder.

CAN we obtain rights to signage on Lot 10 ?

Article VI Easements and Utilities

6.1 **Owner's Easements.** Each Owner shall have an easement for the use of all Common Drives by such Owner, its Tenants and other Users, provided that such use shall be in accordance with any rules adopted by the Association. The Association shall also have an easement across all Common Drives for the purpose of performing its duties under this ECR. In addition to the right to pass over the Common Drives, each Owner shall also have an easement for all utility lines installed on or in the Common Drives and otherwise installed by Dial on the Property. Each Owner shall have an easement to tap into existing utility lines located in the Common Drives and to extend such utility lines as needed in the development of the Owner's Lot. Utility extensions shall be made only in accordance with the conditions imposed by the Association, and any Owner extending a Utility line shall restore the Common Drive to its original condition after completing such extension.

6.2 **Construction of Utilities .** Dial shall cause to be installed sanitary sewer and storm sewer in accordance with the Plat, Development Agreement and PUD submitted to and approved by the City. These utilities shall be available to all Owners so long as no Owner unreasonably interferes with another Owner's right to use such utilities. Hook-up fees, tap-in fees, impact fees, land use fees, meter fees, trip fees for proposed traffic use of streets, meter installation fees or other fees which may be levied or assessed, or charged by any governmental or quasi-governmental agency for the development of each any Lot shall be borne by the Owners developing such Lot.

6.3 **Easements.** Each Owner of each Lot shall reasonably cooperate in granting appropriate easements to the appropriate governmental or quasi-governmental agencies or utility companies and the other Lot Owners for the installation, maintenance, repair and replacements of services as set forth in the PUD and plat of the subdivision.

Article VII Maintenance

7.1 **Maintenance obligation.** Each Owner shall keep and maintain its Lot and improvements in good condition and repair. Maintenance shall include, without limitation, the following:

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- (a) Maintenance of all parking surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (b) Removal of all debris, filth and refuse and periodically sweep said areas to keep such areas in a clean and orderly condition;
- (c) Removal of snow and ice from Parking Areas and Sidewalks so that they may be used by patrons of the Owners and Tenants in accordance with the provisions of this ECR;
- (d) Operation, repair and replacement of artificial lighting facilities, particularly including facilities serving Parking Areas;
- (e) Maintenance of all perimeter walls, exterior building walls and all retaining walls in a good condition and state of repair;
- (f) Maintenance, mowing, weeding, trimming and replacement of shrubs and other landscaping as is necessary;
- (g) Any maintenance of underground sprinkler systems serving Landscape Areas;
- (h) Installation and placement of appropriate directional signs and markers.

- sweeping w/ contract?

7.2 Expenses. Each Owner(s) shall pay the expenses of maintaining the Building Areas, Parking Areas, Sidewalks, and Landscape Areas on that Owner's respective Lot and between that Owner's lot line and a Common Drive or Public Street.

7.3 Assessment for Failure to Maintain. If any Owner fails to maintain its Lot as provided herein, the Owners' Association or its designee may, after giving the Owner ten (10) days' written notice to perform or have performed such maintenance. If the Association undertakes such maintenance due to the failure of Owner to perform the same, the costs of such maintenance shall be paid immediately in the same manner as a supplemental assessment (Article 8.3) upon written demand for payment by the Association. If such assessment is not paid with thirty (30) days after written demand of the Association, such assessment shall constitute a lien against the Lot, which lien shall have priority and be enforceable the Association (as set forth in Article VIII).

Article VIII
Owners' Association

3.1 Duties and Responsibilities of the Association. The Association has been incorporated as a non-profit corporation and is hereby designated to be the administrator and manager of the Harmony Village Center and its affairs. The Association shall have all powers, authorities and duties set forth in this ECR and in the Articles, Bylaws and Rules and Regulations of the Association as may be necessary and proper to manage the business and affairs of the Harmony Village Center and the Property. Without limiting the foregoing, the powers and duties of the Association shall include the following:

- (a) To adopt Rules and Regulations governing the use of Common Drives and the Detention Area and otherwise providing for the regulation and management of Harmony Village Center and regulating the cutting and installation of streets and standards for street repairs. The Association shall have no power to adopt any regulation which would authorize any User to tow any vehicle parked on any Common Drive, unless that vehicle has been parked as to directly obstruct access to any lot or is parked in any fire lane;
- (b) To adopt budgets for revenues and expenditures and to amend such budgets as necessary from time to time;

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on Disc?

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(c) To levy assessments against Lots and collect such assessments, all as provided in Article VIII below;

(d) To impose charges for late payment of assessments, recover reasonable attorney's fees and other legal costs incurred in collecting assessments, and enforcing the provisions of this ECR, whether or not suit was initiated, to charge interest at the rate provided by the rules and regulations on delinquent assessments and to levy reasonable fines and penalties for violations of the ECR, the Articles, the Bylaws and the rules and regulations adopted by the Association;

(e) From funds available to it, to provide for maintenance, management, repairs, replacements and other expenses related to the Common Drives, including maintaining, repairing, lighting and plowing Common Drives and maintaining the Detention Area;

(f) To obtain insurance covering the Association and its property;

(g) To borrow such amounts as the board of directors may determine necessary or desirable and to pledge and assign future income, including revenues from assessments, provided that such borrowing must be approved by Owners holding at least 75% of the votes that members are entitled to cast.

(h) To employ workmen, managers and other employees, to contract for services, to purchase supplies and equipment, to enter into contracts and to do all other acts necessary to perform the duties placed on the Association pursuant hereto;

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(i) To protect and defend areas under the control of the Association by suit or otherwise;

(j) To employ accountants, attorneys and other professionals as required to perform any of the responsibilities of the Association;

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(k) To deposit monies in the hands of the Association in accounts of banks, savings banks and similar institutions insured by FDIC or similar governmental authority.

8.2 Membership. All Owners shall be members of the Association. The ownership interest of an Owner in a Lot shall be the sole qualification for membership. An Owner may, upon written notice to the Association, delegate and assign voting rights to a tenant occupying a Lot or Lots owned by such Owner. Any such delegation or assignment shall automatically expire upon the expiration or termination of such tenant's right of possession of the Lot or Lots involved, and may also be revoked by written notice of revocation, from the Owner to the Association. Upon the sale or transfer of the Owner's Lot, that Owner's membership shall terminate and shall automatically transfer to the Owner's purchaser or transferee.

8.3 Voting. The Association shall have four classes of voting membership:

CampANA ← Class A: The Owner of Lot 9 shall be a Class A Member and shall be entitled to elect one Member of the Association's Board of Directors.

? ← Class B: The Owners of Lot 10 shall be a Class B Member and shall be entitled to elect one Member of the Association's Board of Directors. - *Cine Mart*

MAC Grill?
Rand house,
vacant lot ← Class C: The Owners of Lots 11 and 12 shall be Class C Members and shall have the right, jointly, to elect one Member to the Association's Board of Directors.

11A/11B?

VII, Laz-Boy
FAB. Entrance,
scholars ← Class D: The Owners of Lots 1, 2, 3, 4, 5, 6, and 7 shall be Class D Members and shall jointly have the right to elect two Members to the Association's Board of Directors.

1B, 2A, 2B

The Association's Board of Directors shall be made up of a total of five (5) Members.

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The Board of Directors shall prepare an annual budget for the operation of the Association at least sixty (60) days prior to the beginning of the Association's fiscal year (to be determined). The budget shall be adopted by a majority vote of the Board of Directors.

Upon adoption of the annual budget, the budget amount shall be assessed against each Lot and Owner in the following percentages:

Lot #	Percent of Cost
1	8%
2	8%
3	8%
4	5%
5	8%
6	8%
7	5%
9	8%
10	22%
11	10%
12	10%

when do board of dir meet? how often?
needs Amendment?
to reflect current lot - 1B, 2B

Each Owner shall pay its proportionate share of the budget as assessed on a quarterly basis, in advance, the first payment due on the first day of the Association's fiscal year. If the budget, as adopted, is insufficient to pay the Association's obligations, the Association's Board of Directors may adopt a supplemental budget at any time during the course of the year, and any additional amounts due as a result of the adoption of the supplemental budget will be immediately assessed against and due from each Lot and Owner based upon the same percentages as set forth above.

what is fiscal yr?
Are Assoc fees correct on 1B?

8.4 Enforcement of Assessments. Each Owner shall pay any assessment (except supplemental assessments) due on a quarterly basis. The Association shall provide each Owner with a notice of assessment ("Notice of Assessment") immediately after adoption of any budget or supplemental budget. Any assessment not paid when due shall bear interest at the rate of sixteen percent (16%) per annum from the later of the due date of the assessment or thirty (30) days after the Notice of Assessment has been placed in the United States mail, postage prepaid and properly addressed. In addition to interest, the Association shall, in the event of failure to pay an assessment, likewise be entitled to (i) suspend all voting rights, as a member of the Association, of the delinquent Owner during the period of delinquency; (ii) accelerate all remaining assessment installments for the year so that the unpaid assessments for the remainder of the year shall be due and payable at once; and (iii) collect any costs or attorney's fees which the Association might incur as a result of the failure to timely pay the assessment. An assessment lien shall be superior and prior to all other liens and encumbrances, except (i) liens for ad valorem real estate taxes and other governmental assessments or charges against the Lot, and (ii) the lien of a first mortgage or deed of trust made in good faith and for value and recorded with the Clerk and Recorder prior to the date a notice of delinquency in payment of the assessment was recorded with the Clerk and Recorder. No additional notice of such lien shall be required, and the lien on a Lot shall remain a lien until the assessment, including all interest, late fees, attorney's fees and costs, and other charges on account of default or relating to the foreclosure of the lien have been fully paid. The lien may be foreclosed by the Association in the manner provided by the laws of the State of Colorado for foreclosing a mortgage on real property.

8.5 Foreclosure. In the event of a foreclosure, the members of the Association shall have the power to bid on the Lot being foreclosed. The Association or its representative shall notify any mortgagee of the Lot being foreclosed, if such encumbrancer has its address of record in the encumbrance document or otherwise furnishes its address in writing to the Association. Any mortgagee or other creditor holding a lien on the Lot may, but shall not be required to, pay in full, to the date of payment, any unpaid assessment and upon such payment such mortgagee or other creditor shall succeed to the lien of the Association on the Lot to the extent of the amount paid. Each assessment (including all interest, attorney's fees and costs) against a Lot is a personal obligation of all Owners jointly and severally who own the Lot at the time the assessment was made, and such personal obligation shall not pass to any successors in title, unless such successors assume the assessment obligation. An Owner who is personally obligated for the assessment shall not be exempt from liability for the assessment for any reason. To

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recover a money judgment for unpaid assessments, interest, costs and expenses, including attorney's fees, an action may be maintained by the Association without foreclosing the lien on the Lot or in connection with a foreclosure, as the Association may elect.

8.6 Certificate of Compliance. Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00) and upon written request of any Owner, prospective Owner, Mortgagee, prospective Mortgagee, Tenant, or prospective Tenant of a Lot, the Association or its representative shall issue an acknowledged certificate in recordable form setting forth the amount of any unpaid assessments (and any interest or costs), if any, and setting forth generally whether or not the Association has knowledge of any existing violation of any of the terms and conditions of this ECR. Such written statement shall be conclusive upon the Association in favor of the persons who rely thereon in good faith. Such statement shall be furnished by the Association within a reasonable time, but not to exceed ten (10) days from the actual receipt of a written request for such written statement. In the event the Association fails to furnish such statement within ten (10) days, a party requesting a statement may provide written notice to each Owner that, if a statement is not provided within twenty (20) days from the date of mailing or personal service upon each Owner, then it shall be conclusively presumed that there are no unpaid assessments relating to the Lot as to which the request was made, and that such Lot is in conformity with all the terms and conditions of this ECR.

Do we need
a cert of comp?

**Article IX
Miscellaneous**

9.1 Severability. All of the conditions, covenants, restrictions and reservations contained in this ECR shall be construed together, but if it shall at any time be held that any one of such conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

9.2 Owner's Liability Subsequent to Sale. Upon conveyance of a Lot, the selling Owner shall have no further liability for any obligations imposed by this ECR; provided, however, that nothing herein shall be construed so as to relieve any Owner from any liability or obligation incurred prior to such conveyance

9.3 Not a Public Dedication . Nothing contained in this ECR shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of the declarants that this ECR shall be strictly limited to the purposes expressed herein.

9.4 Duration and Benefits and Burdens. The terms and provisions contained in this Declaration shall be perpetual (unless amended) and shall be binding upon and inure to the benefit of the Dial, the Association, and the Owners and their respective heirs, successors, personal representatives, and assigns. Each Tenant shall be subject to this declaration, but no Tenant shall take any rights hereunder or be deemed to be a third party beneficiary hereof.

9.5 Notice. Any notices required or permitted herein shall be in writing and sent by Federal Express or other receipted overnight courier service or mailed, postage prepaid, by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner, to the Owner by name and address as shown on the then current real property tax rolls in Larimer County, Colorado. If intended for the Association, to its registered agent or to such other address as the Association may designate in any supplement hereof executed by the Association or its representative and recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Any tenant to whom voting rights have been delegated or assigned shall be given notice hereunder, in addition to the Owner from whom the tenant received such delegation or assignment.

9.6 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

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9.7 Insurance. The Owner or Tenant of each Lot shall maintain for the Parking Areas located on that Owner's or Tenant's Lot public liability insurance covering such Parking Areas, providing coverage against the risk of bodily injury, property damage and personal injury liability with respect to such Parking Area, in an amount of not less than Five Million Dollars (\$5,000,000.00).

*part of Cam
allocate to tenants
based on sq ft.*

9.8 Amendment. This BCR may be amended at any time by an instrument recorded in the office of the Clerk and Recorder containing the consent of Owners holding 75% of the votes entitled to be cast at meetings of the Association at the time such amendment was made. Any amendment adopted as provided herein shall apply to all of the Property and shall be binding upon all Owners unless otherwise specified in said amendment. The certificate of the Secretary of the Association certifying that the required number of votes were cast to adopt the amendment shall adopt the facts so certified, and the amendment so certified shall be effective when recorded with the Clerk and Recorder. Notwithstanding the foregoing, this ECR may not be modified without the consent of the Owners (and Tenants) of Lots 2 and 10.

9.9 Waiver. No provision of this ECR is waived by reason of any failure to enforce the provision, regardless of the number of violations or breaches which may occur.

9.10 Headings and Terms. The headings used herein are inserted for convenience only and are not a part of this BCR, nor do they in any way define, limit or describe the scope and intent of the particular sections to which they refer. As used herein, the singular includes the plural and vice versa. All personal pronouns, whether used in the masculine, feminine or neuter, shall include the other genders.

IN WITNESS WHEREOF, declarant has executed this BCR as of the date first above written.

DIAL - FORT COLLINS I, L.L.C.

By: *Barbara Wulf*
Title: *Agent for Dial Fort
Collins I, L.L.C.*

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STATE OF Colorado)
COUNTY OF Larimer) ss.

The foregoing instrument was acknowledged before me this 3rd day of August 1999, by Barbara Wolf as authorized agent of Dial - Fort Collins I, L.L.C.

Witness my hand and official seal.

My commission expires: Sept 30, 2000

Carmel DuCharme
Notary Public



First National Bank

By: [Signature] Executive Vice Pres
, Authorized Signer

STATE OF COLORADO)
COUNTY OF LARIMER) ss.

The foregoing instrument was acknowledged before me this 2nd day of August 1999 by Robert A. Hildebrand as Authorized Signer for the First National Bank.
Executive Vice President

Witness my hand and official seal.

My commission expires: 1-30-2001

Anita J. Hildebrand
Notary Public



8/1/99

APPROVAL AND RATIFICATION BY LENDER

The undersigned, being the holder of a first lien Deed of Trust on the Property, hereby approves and ratifies the foregoing Easements, Covenants, and Restrictions for Harmony Village in Fort Collins, Colorado.

Signed this 31st day of August, 1999.

Fort Collins Banking Center, a
Branch of First State Bank of Colorado

By: *T. P. Garrozy*
Authorized Signer

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 2nd day of August 1999 by *M. G. Manary* as Authorized Signer for the Fort Collins Banking Center, a Branch of First State Bank of Colorado.

Witness my hand and official seal.

My commission expires: 2-9-2001

**Corrine G. McDonald
Notary Public
State of Colorado**

Corrine G. McDonald
Notary Public