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TRACY K. BAKER
ARAPAHOE COUNTY

Smoky Hill Homeowners Association

**Revised Protective Covenants
For Smoky Hill 400 Community
City of Centennial, Arapahoe County
Colorado**

Final Document for Approval

July 23rd, 2001

Approved for filing January 30, 2003

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Revised Protective Covenants for Smoky Hill 400 Community

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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND
RESTRICTIONS FOR SMOKY HILL COMMUNITY, CITY OF
CENTENNIAL, ARAPAHOE COUNTY, COLORADO**

RECITALS

A Declaration of Protective Covenants, Conditions and Restrictions in Smoky Hill Community, City of Centennial, Arapahoe County, Colorado ("Declaration") was recorded on April 21, 1978 at Reception Number 1728249, Book 2762, Page 65 in the public records of Arapahoe County, Colorado ("Public Records").

A Declaration was recorded on May 17, 1978 at Reception Number 1736412, Book 2777, Page 157 in the Public Records. It attaches to, binds, regulates and runs with the land described in Exhibit A, attached hereto.

Section 6 of the Declaration authorizes amendment of the Declaration by an instrument signed by the Owners of a majority of the residential Lots in the Community. The majority is defined as fifty percent of the Lot Owners plus one Lot (50% + 1).

AGREEMENT

Now therefore, the undersigned Owners hereby amend, restate and supersede the Declarations and any amendments, supplements and annexations thereto, for the following inclusive area:

Exhibit A, which is incorporated herein by reference, as follows: See attached map.

Hereinafter, these amended and restated Declarations shall be referred to as the Revised Covenants, which shall supersede the Declaration referred to in the Recitals.

PREAMBLE

All Lots subject to these Revised Covenants shall be held, sold and conveyed subject to the following protective covenants, reservations, easements, conditions and restrictions so that all persons who may from time to time own the subject Lot or any part thereof shall own said Lot subject to said protective covenants, reservations, easements, conditions and restrictions which shall run with the land and shall inure to the use and benefit of and be binding upon all parties having or requiring any right, title or interest in the subject Lot, or any part thereof, and shall inure to the benefit of each of the Owners at any time of any of said Lot, their heirs, personal representatives, successors and assigns.

Section 1. Definitions

Section 1.1 Community

Community shall mean the defined area of Exhibit A.

Section 1.2 Lot

Lot shall mean any residential Lot located within the Community.

Section 1.3 Lot Owner or Member

Lot Owner or Member shall synonymously mean any Owner of a residential Lot located within the Community. Each Lot shall constitute one vote in any election.

Section 1.4 Improvement(s)

Improvement(s) shall mean any structure, or landscaping as applied or proposed to be applied to any Lot located in the Community.

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Section 1.5 Smoky Hill Homeowners Association (SHHOA)

SHHOA shall refer to the homeowners association formed in accordance with these Revised Covenants.

Section 1.6 Architectural Review Committee (ARC)

ARC shall refer to the Architectural Review Committee appointed by the SHHOA Board of Directors in accordance with the SHHOA by-laws.

Section 1.7 Board or Board of Directors

Board or Board of Directors shall mean the Directors of the Smoky Hill Homeowners Association as elected or appointed in accordance with the by-laws of the SHHOA.

Section 2. Architectural Review Committee

Section 2.1 Committee Membership

The ARC shall consist of (A) the Board of Directors, or (B) at the Board's option, three (3) to five (5) persons who are Lot Owners of the Community, to serve on the ARC, as appointed by the Board. The Board may remove Members of the ARC and may fill vacancies thereof. The ARC membership must consist of a minimum of one Member of the Board of Directors. The Chairperson of the ARC, or an ARC Member, shall attend the SHHOA Board of Directors regularly scheduled monthly meetings. The ARC shall present an activity report at each monthly meeting.

Section 2.2 Written Approval of Plans Required

No Improvements shall be constructed, erected, placed, applied or installed upon any Lot unless such plans and modifications are first submitted to and approved in writing by the ARC. Such plans and specifications shall describe exterior design, height, materials, color and location of the Improvements, and type of landscaping, fencing, drainage, walls, and grading plan, as well as such other materials and information the ARC may reasonably require. An exception is that Improvements to existing architecture and landscaping shall be deemed automatically approved if such Improvements are identical in all visual aspects of the original Improvement. The ARC shall develop and adopt written standards to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures, and shall base its decisions according to the conformity of proposed Improvements to the adopted standards.

All plans submitted by a Lot Owner for approval must contain a proposed start and completion date. Any approval by the ARC is contingent upon completion of the project by the approved date. A Lot Owner may request, in writing, an extension of the completion date, which the ARC may approve.

Approval by the ARC is contingent upon a Lot Owner successfully completing all legal requirements itemized in the following paragraph. Should such approval require changes to existing approved plans, said plans are deemed disapproved until the revised plans are submitted and approved by the ARC.

The purpose for review of the plans by the ARC is to assure the overall aesthetic design, appearance, and visual quality of the Community. The ARC does not assume responsibility for such items as: (a) the structural adequacy, capacity, or safety features of the proposed Improvement or structure; (b) drainage, soil erosion, non-compatible or unstable soil conditions; (c) compliance with any or all building codes, zoning codes, safety requirements, governmental laws, regulations, or ordinances; (d) performance or quality of work of any contractor; or (e) any alterations or amendments to originally approved plans.

Section 2.3 Procedures

The ARC shall approve or disapprove all proposed Improvements in writing within thirty (30) days after the receipt of the complete set of plans, specifications and other materials for the proposed Improvement(s). If disapproved by the ARC or the ARC requires additional information or clarification of plans, said plans may be resubmitted. The ARC will notify the Lot Owner in writing of such need. Such notice shall cancel the 30-day approval period, which shall begin again upon the ARC's receipt of the requested information.

Section 2.4 Vote and Approval

The ARC must approve or disapprove any submitted plan or proposal for Improvements in the manner and time frame as stated within this Section 2. If written disapproval by the ARC has not been given to the Lot Owner within thirty (30) days, the plan is deemed approved. Any Lot Owner within the Community shall have the right to appeal the ARC's decision to the Board of Directors of the Association within thirty (30) days of the ARC's decision.

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Section 2.5 Records

The ARC shall maintain written records of all applications received and actions taken by it for a period of three (3) years. Such records shall be made available to any Lot Owner for inspection at a reasonable, mutually agreed upon time upon request made to the ARC. It is recommended that each Lot Owner retain a copy of the written approval for the Improvement(s) for its own records.

Section 2.6 Implementation Standards for the Architectural Review Committee

These covenants are general in nature. The ARC shall maintain and adopt standards to assist in the Improvement request review process. These procedures and standards must be approved by the Board of Directors and made available for inspection by Lot Owners at a reasonable, mutually agreed upon time. At any time, a majority of the Lot Owners may petition for changes to these standards to the Board of Directors.

Section 2.7 Liabilities

The SHHOA, Board of Directors, the ARC and any representative of the ARC appointed to act on its behalf, shall not be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the ARC for any action or failure to act in regard to any matter within its jurisdiction hereunder, if such action was in good faith. In reviewing any matter, the ARC shall not be responsible for review of safety issues, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of any proposed Improvement(s) be deemed approval of such matters.

Section 3. Use of Land

Sections 3.1 Easements

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded city or county plat for construction, maintenance, repair, replacement and reconstruction of poles, wires, pipes, and conduits for lighting, heating, electricity, natural gas, telephone, cable and any other public or quasi-government utility service purposes, and for sewer and pipes of various kinds. 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, obstruct, or retard the flow of water in and through drainage channels and the easements. The easement area and all Improvements therein shall be maintained continuously by the Lot Owner, except for those Improvements for which a public authority or one or more utility companies are responsible.

Section 3.2 Water and Sewer

No individual water supply system or sewage disposal system shall be permitted within the Community, and all dwellings must attach to such facilities as may be provided by such water and sanitation district as may serve the area.

Section 3.3 Oil and Mining Operations

No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removal of water, oil, natural gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; with the exception of normal landscaping for personal benefit. Nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.

Section 3.4 Lot Condition

No Lot or Improvement thereon shall be permitted to fall into general disrepair. Each Lot and Improvements thereon shall be kept and maintained in a clean, safe, attractive condition pursuant to these covenants and architectural guidelines, except as necessary during a period of construction, and when approved by the ARC.

Items not part of the permanent landscape such as, and not limited to, clotheslines, garbage cans or storage piles, shall be fenced or walled in or otherwise concealed from the view of other Lots. Plans for all enclosures must be approved by the ARC prior to construction.

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Section 3.5 Nuisance

No activity that is noxious, offensive, dangerous, or constitutes a nuisance shall be conducted or permitted on any Lot.

In defining nuisance, the following are considered, per se, violations:

- a. Power and other normal home Improvement tools, if operated outside the hours of 7:00 AM to 10:00 PM.
 - b. Horns, whistles, bells, and other similar loud sound devices operated for more than occasional activation of short duration.
- The use of any kind of light or surveillance equipment is limited to the primary purpose of illumination or surveillance of the Lot on which it is installed.

Section 3.6 Pets and Animals

Animals may not be kept for any commercial purposes. Lot Owners and guests shall hold the SHHOA harmless from any and all claims resulting from any action of their animals. The right to keep household pets and other animals shall be coupled with: (1) the responsibility to clean up animal waste and properly dispose of it; (2) the obligation to comply with any applicable municipal, Arapahoe County, State of Colorado, or Federal statutes; and (3) the obligation to pay for any damage caused by, or as a result of keeping such animals.

Section 3.7 Equipment Enclosures

No equipment shall be stored or kept on any Lot unless concealed from view of the other Lots by plantings, fences or other approved means.

Section 3.8 Refuse

No refuse, garbage, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot, except for purposes of weekly garbage pick-up and removal. All refuse and refuse receptacles shall be concealed from view by plantings, fences or other approved means except within 24 hours of scheduled pick-up and removal.

Section 3.9 Signage

No signage for personal home-based businesses or advertising of it may be displayed anywhere on the exterior of the structure or anywhere on the Lot. All signs larger than six (6) square feet in dimension are prohibited.

Section 3.10 Antennas

All satellite dishes, radio, television, or other antennas must comply with Federal Communications Commission guidelines and adopted standards of the ARC.

Section 3.11 Auxiliary Residence

Lot Owners may lease or rent the entire residence as a single unit to a single family for periods of not less than six months in duration. All resident Community occupants, whether Owners or renters, are bound by the terms, conditions and guidelines of these covenants. However, the Lot Owner shall be responsible for supplying a copy of these Revised Covenants to the tenant and to ensure that its tenants abide by them. Lot Owners shall be liable for any violations of these Revised Covenants by its tenants.

Section 3.12 Residential Businesses / Home Businesses

The Community is zoned residential, and as such, no commercial business may be operated in the Community without changes in the zoning of the Lots. This does not mean, however, that small businesses, operated from within a portion of the residence are prohibited. The intent of this provision is to minimize traffic flow in the neighborhood, and to preclude advertising displays on the home or Lot being used for a small business. Small home-operated businesses shall be operated primarily during daylight hours, and will not create a nuisance for nearby Lots. No illegal or prohibited businesses, as defined by statute or ordinance, may be operated in the Community.

Section 3.13 Street Lighting

All Lots and other areas within the Community are bound by tariffs that were filed by Intermountain Rural Electric Association with the Colorado Public Utilities Commission. Intermountain Rural Electric Association is the only provider of electric power and lighting in the Community. Each Lot Owner shall pay a portion of the cost of public street lighting in the Community as billed by Intermountain Rural Electric Association. These rates are on file with the Colorado Public Utilities Commission.

Section 4. Motor Vehicles and Trailers

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Use and parking of motor vehicles shall be consistent with the provisions of the City of Centennial and Arapahoe County ordinances, and these Revised Covenants.

Section 4.1 County Ordinance (Enforced by County)

Arapahoe County Ordinance number 91-1 currently governs and controls the use and parking of motor vehicles on the streets of the Community. Specific provisions in the ordinance include the following:

- a. No oversized vehicles greater than sixty-five hundred (6500) pounds empty weight may be parked on the streets for periods longer than forty-eight (48) hours.
- b. No unattended trailer may be parked on any street for any period of time.
- c. Thoroughfares, streets and cul-de-sacs are governed and maintained by county ordinances consistent with laws of the State of Colorado. Owners concerned with, or in question of, any vehicle parking and use violations should contact the appropriate City of Centennial or Arapahoe County agency for remedies. Any vehicle parked without movement on any street is considered abandoned after seven (7) days and may be reported as such to the appropriate city or county agency.

Section 4.2 Covenant Restrictions

Regarding each Lot, the following restrictions shall apply.

- a. No oversize vehicle, ****larger than sixty-five hundred (6500) pounds empty weight, or commercial vehicle including buses, limousines, tractor/trailers, or similar vehicles may be parked on any Lot or driveways for periods longer than forty-eight (48) hours unless the vehicle is being used for maintenance of the Lot, moving of residential belongings, or engaged in construction for an approved Improvement on the Lot.
- b. No motor home may be used as a residence, temporarily or permanently. If a motor home of any length is parked on any Lot for longer than forty-eight (48) hours, it must be parked behind an approved fence of six (6) feet in height.
- c. Truck inserts, separated from the vehicle, and trailers of any kind may not be parked on any Lot for longer than forty-eight (48) hours, unless they are parked behind an approved fence of six (6) feet in height.
- d. No watercraft of any type, including jet skis, powerboats, or human-propelled boats may be parked on any Lot for longer than forty-eight (48) hours, unless they are parked behind an approved fence of six (6) feet in height.
- e. All-terrain vehicles may not be left visible to the street or adjoining Lots for longer than forty-eight (48) hours, unless they are parked behind an approved fence of six (6) feet in height.
- f. No animal transport trailers may be parked on the Lot visible from the street or to adjoining Lots for longer than forty-eight (48) hours, unless they are parked behind an approved fence of six (6) feet in height. Any unclean trailers parked on the street or residential Lot is subject to the health standards of the City of Centennial, Arapahoe County and the statutes of the State of Colorado.
- g. No commercial vehicle repair business may be performed on any Lot. No motor vehicle components including frames, engines, or body parts, may be left exposed to view of adjoining Lots for periods longer than forty-eight (48) hours unless they are stored behind an approved fence of six (6) feet in height. Covering such parts with a tarpaulin or other material is considered visible and thus prohibited.
- h. Vehicles of any type may not be parked on grass areas of any Lot. Parked vehicles may not extend onto or block sidewalk areas.
- i. No unlicensed, abandoned or inoperable vehicle of any kind may be repaired, constructed or allowed to remain on any Lot so as to be visible from any street or any other Lot. An "abandoned or inoperable" vehicle shall be defined as any vehicle which has not been driven under its own propulsion for a period of fourteen (14) days or longer, or which does not have an operable propulsion system installed therein, unless stored behind an approved fence of six (6) feet in height.

Section 5. Single Family Residences

Intent

In addition and supplemental to the Arapahoe County appropriate zoning ordinance, the following protective covenants and requirements shall apply to and govern all residential Lots within the Community.

Section 5.1 Building Type

No Lots may be improved, used or occupied for any purpose other than a single-family residence. No primary building of any kind shall be erected or maintained on any Lot except private, single family dwelling houses, which are not to exceed thirty-five (35) feet in height. Each residence shall be detached from any other residence, and shall be designed for occupancy by a single family.

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Section 5.2 Dwelling and Site

The ground floor area of the main structure, exclusive of one-story porches and garages, shall not be less than eight hundred (800) square feet for one-story structures, and the main floor and top level of tri-levels, and seven hundred twenty-five (725) square feet for two-story structures and mid-entry homes (both exclusive of basements).

Section 5.3 New Construction

All construction within the Community shall be new construction and no previously erected building, structure, or Improvement shall be moved and set upon any Lot from any other location. Any new construction within the Community shall be consistent with the existing architectural styles and shall be approved by the ARC prior to construction. There shall be only one primary residence per Lot.

Section 5.4 Roofs

Any deviation or modification to existing material must be reviewed and approved by the ARC prior to installation.

Section 5.5 Exterior Materials

The exterior materials of any residence, driveway or outbuilding shall be of a material conforming to original construction materials approved by the ARC. Any deviations from or modifications to those materials in type or appearance must be reviewed and approved by the ARC.

Section 5.6 Outbuildings and Garages

All garages shall be part of, or attached directly to the residence. Every garage shall conform in style and architecture to the residence to which it is attached. No outbuildings shall be located closer to the front of the Lot than the primary structure. Any plans for construction of outbuildings must be submitted to and approved by the ARC prior to construction.

Section 5.7 Grades and Retaining Walls

If a Lot Owner desires to change Lot elevations, retaining walls shall be constructed in a manner to prevent dirt from falling or washing down to the adjoining Lot. If grading or elevation changes adversely affect any adjoining Lots, the offending Lot Owner shall be responsible for any and all remedies and costs thereof. No changes to existing Lot elevations may be made by any Lot Owner without the review and approval of the ARC.

Section 5.8 Landscaping

All Lots, to the edge of the street surface, shall be suitably landscaped, with the exception of such parts of the Lot to be constructed as and used for driveways. It shall be the duty of each Lot Owner to keep the grass, vegetation, and landscape properly irrigated, cut, pruned, weeded, and neat in appearance at all times. The Lot Owner shall be responsible for maintaining all the landscaping up to the Lot line. No trees or vegetation shall be allowed to grow into or encroach upon any sidewalk or street.

Section 5.9 Mailboxes

All mailboxes and supports shall be maintained in accordance with the United States Postal Service requirements, and shall not encroach upon any sidewalk or street.

Section 6. Zoning

Zoning resolutions, rules and regulations are considered to be a part of these covenants, and to any extent that these Revised Covenants might establish requirements which are more stringent than the minimum requirements established by zoning rules, regulations, and resolutions, the Revised Covenants shall prevail.

Section 7. Agriculture

The use of any Lot for commercial agriculture purposes is prohibited. This does not prohibit gardens used for personal purposes that are maintained in backyards. Front yard agriculture of any kind is prohibited.

Section 8. The Smoky Hill Homeowners Association

Section 8.1 Membership

Members of the SHHOA shall be comprised of every record Owner of a Lot subject to these Revised Covenants. The SHHOA shall have one (1) class of voting Membership. Membership shall terminate on transfer of a fee simple title by the Lot Owner, but may not be severed from the Ownership of a Lot. The purposes and powers of the SHHOA and the rights and obligations with respect to Members set forth in this Declaration shall be provided in accordance with the Articles of Incorporation ("Articles") and Bylaws of the SHHOA ("Bylaws")

To the extent that there are any conflicts between the Revised Covenants and the Articles and Bylaws, the Revised Covenants shall prevail. To the extent that there are any conflicts between the Articles and Bylaws, the Articles shall prevail.

Section 8.2 Voting Rights

Each Member is entitled to one (1) vote for each Lot owned. If more than one (1) person holds such interest, the vote for such Lot shall be exercised as the persons holding such interest shall determine among themselves, provided that in no event shall more than one (1) vote be cast with respect to any Lot. Votes not cast by any Lot Owner shall be considered abstained votes.

Section 8.3 Board of Directors

The SHHOA shall have a Board of Directors duly elected pursuant to the Bylaws of the Association. Except as otherwise provided in these Revised Covenants or the Bylaws, the Board of Directors may act in all instances on the behalf of the SHHOA.

Section 8.4 Member Dues

Each and every Lot Owner shall be obligated to pay dues that are assessed by the SHHOA to every Lot on an annual basis. The SHHOA Board of Directors shall prepare an annual budget and mail said budget to all Lot Owners in conjunction with the annual dues statement. The budget shall determine the amount of the annual funds needed to provide for the administration and performance of SHHOA Board duties. These dues shall be used for efforts to promote the aesthetics of the Community, for administrating compliance with covenants and architectural guidelines, to provide for administration of the SHHOA Board's duties, and for other purposes that foster the welfare of the Community and its Members. The initial amount assessed each Lot shall not exceed fifty-three dollars and no cents (\$53.00).

Section 8.5 Assessment of Dues

Dues shall be fixed at a uniform rate to each Lot, in an amount sufficient to meet the expected needs of the SHHOA and its duties. Prior to increasing the assessment, the Board of Directors shall prepare a budget that will show, in reasonable detail, the categories of expenses, and will reflect any expected income for the coming calendar year, along with any expected surplus or loss from the previous year.

Increases of up to four percent (4%) of the current year dues amount may be enacted for the upcoming year, by a majority vote of the Board of Directors. Any increase amount greater than four percent (4%) must be approved by fifty percent of the Lot Owners plus one Lot (50% + 1). Should the SHHOA board desire to increase the dues by an amount greater than four percent (4%), a special approval vote shall be scheduled by the SHHOA Board for vote by the Lot Owners at least sixty (60) days prior to enactment of the new rate structure, normally to be effective at the start of a new fiscal year. Lot Owners may overrule any proposed increase in dues by the SHHOA Board by vote or written petition of fifty percent of the Lot Owners plus one Lot (50% +1).

Section 8.6 Late Fees

All sums for enforcement of dues shall be paid at the start of the fiscal year. Dues not paid within sixty (60) days of the due date shall be assessed a ten dollar (\$10.00) late fee, with an additional ten dollar (\$10.00) penalty assessed if payment is not received within ninety (90) days of original due date.

Section 8.7 Assessment Lien

All sums for dues, or any other additional expenses chargeable to any Lot Owner, remaining unpaid after this time shall constitute a lien on such Lot superior to all other liens, except for tax or first mortgage liens and any applicable homestead. The SHHOA Board of Directors or the SHHOA Managing Agent may prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness and the name of the Lot Owner of said Lot. Such notice shall be signed by at least one Member of the Board and recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado. Notice of intent to file said lien shall be sent to any affected Lot Owner by certified mail thirty (30) days prior to recording to be effective. The Lot Owner shall have seven (7) days from time of written notification of intent to lien to pay any and all outstanding balances. In addition, the lien shall include any and all filing costs and reasonable attorney fees for the preparation and enforcement. No Lot Owner may be exempt

from liability for payment of the annual dues by waiver of the use or enjoyment of the SHHOA benefit, by abandonment of the Lot to which the dues are levied, or because of dissatisfaction with the SHHOA's performance.

Section 8.8 Remedies for Non-Payment of Assessments

In the event of non-payment of assessment dues SHHOA may bring an action for collection or foreclosure of assessment lien pursuant to C.R.S. 38-33.3-316 or both against the Lot Owner in Court and in such event may recover all sums due hereunder, plus interest on past due sums at eighteen percent (18%) per annum plus reasonable attorney fees. Attorney fees may also be recovered by SHHOA in the event counsel is hired whether or not suit is filed.

Section 9. Enforcement of Protective Covenants

Section 9.1

The Board of Directors or any Lot Owner shall have the right to enforce, by any proceeding at law or in equity, the provisions of this Declaration, subject to the procedures described in section 9.

Section 9.2

No right of action shall accrue, nor shall any manner of action be brought or maintained by anyone against a Lot Owner unless the Lot Owner has received notice and has been presented with the opportunity of a hearing before the Board.

Section 9.3

Upon presentation to the Board or the ARC, by any Lot Owner, of any complaint concerning a violation of one or more of the provisions of these Revised Covenants, the Board shall:

- a. Notify the Lot Owner, who is the subject of the complaint, by certified mail, return receipt requested or personal delivery with signed receipt by Lot Owner, of the nature of the complaint.
- b. Afford the Lot Owner an opportunity to respond to the complaint in writing, or by hearing, before the ARC or the designated property management company employed by the SHHOA within thirty (30) days of the date of the notice. The Lot Owner may submit letters or present the testimony of other Lot Owners to challenge the complaint.

If the Lot Owner fails to respond to the notice of hearing, or the ARC or its designated property management company employed by the SHHOA, the ARC or the designated property management company employed by the SHHOA determines that the complaint is valid, the SHHOA, the ARC, or designated property management company employed by the SHHOA, the ARC, or the designated property management company employed by the SHHOA shall notify the Lot Owner to cease and desist the actions or situation that resulted in the complaint. Such notice shall be sent certified mail, return receipt requested. If the Lot Owner fails to correct the action or situation that resulted in the complaint within thirty (30) days of the date of the notice, the Board of Directors may institute, maintain and prosecute an action in the Court. In any action instituted or maintained for enforcement of these Revised Covenants, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred pursuant thereto, as well as damages or other sums awarded by the Court. Reasonable attorney fees shall include counsel's pre-litigation work as well as charges incurred after the filing of the suit.

Failure by the SHHOA, the ARC, or designated property management company employed by the SHHOA or any Lot Owner to enforce any covenant, restriction or other provision contained in these Declarations shall in no event be deemed a waiver of the right to do so thereafter.

Section 10. Covenant Terms and Amendments

The covenants, conditions, restrictions and provisions set forth in these Revised Covenants shall run with and bind the land for a period of twenty-five (25) years and continued thereafter for like terms, provided however, that said Revised Covenants may be amended at any time by an instrument signed by a majority of the Lot Owners defined as fifty percent of the Lot Owners plus one Lot (50% + 1). Any amendment must be recorded in the office of the Clerk and Recorder of Arapahoe County, State of Colorado.

Section 11. Validity-Severability

If any of the covenants, easements, reservations or other provisions of this Declaration and Agreement are invalidated by any law, rule, regulations, judgment, court order, or otherwise, it shall in no way affect any of the other covenants, reservations, restrictions, easements or provisions which shall remain in full force and effect.

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Section 12. Effective Date

This Declaration shall be effective, upon recordation with the Clerk and Recorder of Arapahoe County, Colorado, and shall bind by its terms and provisions all Lots within the Community as described on Exhibit A attached hereto.

Section 13. Section and Paragraph Headings

The section and paragraph headings are inserted only as a matter of convenience and for reference and are not to be construed as limiting the meaning of the section or paragraph, or used in the interpretation of the section or paragraph.

Section 14. Gender

The use of any gender shall be applicable to all genders.

Section 15. Approval

The undersigned, all being Lot Owners in the Community, have read and approved the above Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Smoky Hill 400, City of Centennial, Arapahoe County, Colorado.

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AFFIDAVIT OF BALLOT COUNT

I, Eileen K. Kelly-Sharpe, an individual, state and affirm the following:

I have counted each of the individual ballots provided to me by Wayne Turnbow, on behalf of the Smoky Hill Homeowners Association. The ballots indicate the approval of revised covenants for the Smoky Hill Homeowners Association. I verified the names signed and printed on each ballot to the names posted as the official property owner from the records of the Arapahoe County Tax Assessor. My count of these ballots took place from January 16, 2003 through January 30, 2003. The results of my count of the 833 ballots are as follows:

Property owner signed approval ballots:	687
Property owners opposed ballots:	7
Duplicate ballots from property owners:	87
Ineligible ballots of non property Owners of record or ballots not signed:	52
Total ballots counted:	<u>833</u>

I reside in Jefferson County, am a citizen of the State of Colorado, and have no interest in the Smoky Hill Homeowners Association. I am also a notary public commissioned by the Secretary of State of Colorado and my commission expires: 7/31/04

Dated this 30th day of January, 2003.

Eileen K. Kelly Sharpe

Eileen K. Kelly-Sharpe
126 Zang Way
Lakewood, CO 80228

