

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THRAEMOOR IN THE PARK TOWNHOMES

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, On the Hill Development, Inc., a Colorado corporation (hereinafter called "Declarant"), is the owner of a portion of that certain real property situated in the County of Jefferson, State of Colorado, being more particularly described on Exhibits A and C attached hereto and incorporated herein by this reference; and

WHEREAS, Jeffrey Vogel, Lucy Nalezinski, Isabel M. Nakamura, Donata Suraski and Jack London (collectively the "Lot Owners") are the owners of a portion of that certain real property situated in the County of Jefferson, State of Colorado, being more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Megabank is the holder of a deed of trust encumbering a portion of the real property described in Exhibits A and C; and

WHEREAS, Declarant has chosen the names Thraemoor in the Park Townhomes to refer to the planned community to be created on the property described in Exhibit A and Thraemoor in the Park Townhomes Association, Inc., to refer to the homeowners association to be created to care for the planned community; and

WHEREAS, Declarant has constructed and plans to construct additional multi-unit buildings on the above-described properties, including improvements and appurtenances thereto and thereon, and it desires hereby to provide for the ownership of the same pursuant to the provisions of the Colorado Common Interest Ownership Act of the State of Colorado (the "Act"); and

WHEREAS, a common interest community may be created pursuant to the Act only be recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded; and

WHEREAS, Declarant and Lot Owners desire to subject and place upon the property set forth in Exhibit A, and upon such additional lands as described in Exhibit C as may be hereafter subjected to this Declaration, certain covenants, conditions, restrictions, easements, reservations, rights-of-way and other charges set forth herein for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale

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and ownership of said property, to the end that a harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of the Declarant, its successors and assigns in said property, or any portion thereof, promoted and safeguarded.

NOW, THEREFORE, the Declarant and Lot Owners hereby declare that the property set forth in Exhibit A, together with all improvements, appurtenances and facilities thereto and now or hereafter thereon, shall be subject to the Colorado Common Interest Ownership Act of the State of Colorado, as the same may be amended from time to time, and hereby impose upon all of said property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which shall be deemed to run with the above-described property and all property hereafter annexed to this Declaration and shall be a burden and a benefit to Declarant and Lot Owners, their successors and assigns, and any person acquiring or owning an interest in the above-described property and/or annexed property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

## ARTICLE ONE

### DEFINITIONS

1.1 Agencies. "Agencies" shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

1.2 Allocated Interests. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time. However, the Allocated Interest for each Lot is subject to decrease with the annexation of additional property to this Community as provided in Article Fourteen hereof.

1.3 Association. "Association" shall mean and refer to Thraemoor in the Park Townhomes Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Executive Board and officers. The Association shall be organized prior to the recording of this Declaration.

1.4 Common Area. "Common Area" shall mean and refer to all real property, including the improvements thereon or thereunder, owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described on Exhibit A attached hereto and incorporated herein by this reference. Said term shall also hereinafter mean and refer to any additional real property or real properties as may hereafter be annexed to this Declaration pursuant to the provisions of Article Fourteen, and which are designated as "Common Area" in the recorded instruments for such annexation.

1.5 Common Expense Liability. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot. The Common Expense Liability for each Lot shall be equal to the Allocated Interests of such Lot.

1.6 Declarant. "Declarant" shall mean and refer to On the Hill Development, Inc., a Colorado corporation, its successors and assigns, if such successors and assigns acquire one or more portions of the Property from the Declarant for the purpose of constructing Residences thereon; provided, however, that for the purposes of Sections 3.3, 4.3, 9.4, 13.2, 13.3, and Article Fourteen of this Declaration, no person or entity shall be considered a Declarant under any of the aforesaid provisions, unless such person or entity shall first be designated by On the Hill Development, Inc., as a Declarant for one or more of said purposes by a written instrument duly recorded in the County of Jefferson, Colorado. 3

1.7 Declaration. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Thraemoor in the Park Townhomes as it may be amended from time to time. The Declaration shall be recorded with the Clerk and Recorder for the County of Jefferson, State of Colorado. All plats which depict Lots and Common Area shall be deemed to be a part of the Declaration.

1.8 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Lot and recorded in the records of the office of the Clerk and Recorder of the County of Jefferson, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage," for purposes of Sections 5.10, 5.11, 5.12 and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 hereof, shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of the County of Jefferson, Colorado, show the said Administrator as having the record title to the Lot.

1.9 First Mortgagee. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such first Mortgage.

1.10 Lot. "Lot" shall mean and refer to any separately numbered Lot or plot of land shown upon any recorded subdivision map of the Properties or any portion thereof, as the same may be amended from time to time, with the exception of the Common Area and any public streets, but together with any appurtenances and improvements now or hereafter located thereon. The Property is hereby initially divided into one (1) Lot; provided, however, that such number of Lots may be modified by annexations to this Declaration for a total of sixty-nine (69) Lots.

1.11 Member. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

1.12 Owner. "Owner" shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Lot; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

1.13 Project. "Project" shall mean and refer to the totality of all the Property, Lots, Other Buildings and Common Area.

1.14 Property. "Property" shall mean and refer to that certain property described on Exhibit A attached hereto and incorporated herein by this reference, together with any property which is hereafter annexed to this Declaration pursuant to the provisions of Article Fourteen hereof.

1.15 Residence. "Residence" shall mean and refer to a single-family residential unit constructed by Declarant upon a Lot.

## ARTICLE TWO

### OWNER'S PROPERTY RIGHTS IN COMMON AREA

2.1 Rights of Owner's Easements of Enjoyment and Rights of Ingress and Egress. Every Owner, his family members, guests and licensees shall have a right and easement of enjoyment in and to the Common Area appurtenant to his Lot, plus a right and easement of ingress and egress over, across and upon the Common Area appurtenant to his Lot for the purpose of getting to and from his Lot, parking areas, any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Lot; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations contained in this Declaration and the Bylaws and Articles of Incorporation of the Association;

(b) The right of the Association to suspend the voting rights and any and all rights of any Owner to the use of any facilities which are a part of the Common Area for any period during which any Association assessment against such Owner or against such Owner's Lot remains unpaid and, for any period not to exceed sixty (60) days, as a result of such Owner's infraction, or the infraction by any member of such Owner's family or such Owner's guests, invitees or lessees of any rule or regulation of the Association; and

- (c) The right of the Association to charge reasonable admission and other fees for the use of any facility which is part of the Common Area, which fees may be in addition to the annual assessments and special assessments provided for in this Declaration; and
- (d) The right of the Association to limit the number of guests or invitees of each Owner which may use the Common Area and the right of the Association to limit the number of guests or invitees of each Owner which may use any facilities to which Owners have a right of use; and
- (e) The right of the Association to adopt, from time to time, rules and regulations concerning the Property, Common Area, and/or any property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent;
- (f) Subject to Section 4.6 hereof, the right of the Association to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project;
- (g) The right of the Association, in accordance with the Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan;
- (h) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and
- (i) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer shall be effective unless first approved in writing by the Owners entitled to vote two-thirds of the votes, unless written notice of the proposed agreement and action thereunder is sent to every Owner at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads and/or the purposes reasonably necessary or useful for the proper maintenance and operation of the Property shall not be deemed a transfer within the meaning of this Subsection 2.1; and
- (j) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

2.2 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

### ARTICLE THREE

MEMBERSHIP AND VOTING RIGHTS  
IN THE ASSOCIATION

3.1 Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association and shall remain a Member for the period of his ownership of a Lot; provided, however, that in no event shall the total number of Association votes which are cast with respect to such Lot exceed the total number of votes allocable thereto, as provided in Section 3.2 hereof. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. U

3.2 Voting. The Members shall be all Owners, including the Declarant, and shall be entitled to one vote for each Lot owned. When more than one Owner holds an interest in the same Lot, all such Owners shall be Members and the vote for such Lot shall be cast as the Owners thereof agree, but in no event shall more than one vote per question be cast with respect to such Lot. If the Owners of such Lot do not agree as to the manner in which their vote should be cast when called upon to vote, then they shall be treated as having abstained.

3.3 Rights of Declarant. Notwithstanding anything contained in this Declaration to the contrary, Declarant, or persons designated by Declarant, shall have the right to appoint and remove officers and members of the Executive Board of the Association. However, not later than sixty (60) days after conveyance of 25% of the Lots that may be created to Owners other than Declarant, at least one member and not less than 25% of the members of the Executive Board must be elected by the Owners other than Declarant. Further, not later than sixty (60) days after the conveyance of 50% of the Lots that may be created to Owners other than Declarant, not less than 33% of the members of the Executive Board must be elected by Owners other than the Declarant.

Declarant's rights to appoint and remove officers and directors under this Paragraph 3.3 shall terminate on the happening of any of the following events, whichever occurs earliest:

- (a) No later than sixty (60) days after conveyance of 75% of the Lots that may be created to Owners other than Declarant;
- (b) Two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business;
- (c) Two (2) years after any right to add new Lots was last exercised;
- (d) On a date which is seven (7) years after the date of recording of this Declaration in the office of the Clerk and Recorder of the County of Jefferson, Colorado; or
- (e) A date certain set forth in written notice from the Declarant; provided, however, that in the event there is more than one Declarant owning property within the Project, such notice must be signed by all of the Declarants.

ARTICLE FOUR

THE ASSOCIATION

4.1 Management and Maintenance Duties. Subject to the rights of Owners as set forth in his Declaration, the Association shall:

(a) be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Area, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner shall be responsible for exclusive maintenance and repair of all fixtures, equipment and utilities installed or located within such Owner's Residence, and all other equipment providing exclusive service thereto or therefor and any service lines therefor to the Residence, including without limitation all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances, compressors, and hot water heaters, if any;

(b) maintain and repair the exterior surfaces of the structures of each Lot (including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, and the maintenance and repair of roofs, stairways and landings, gutters, downspouts, exterior building surfaces, fences, walls, driveways and other exterior improvements, but excluding windows, window washing, window screens or other glass surfaces, garage or other exterior doors (except painting thereof) or any maintenance, repair or replacement as provided in Section 4.2 of this Declaration);

(c) maintain the Common Area, including all private roads, snow removal therefrom, and parking areas; and

(d) maintain the landscaping on the Common Area and those portion of Lots not enclosed by a fence or other structure, including having the grass, weeds, trees and vegetation cut and/or trimmed when necessary. No owner shall change the landscaping of his Lot or any portion of the Common Area by the addition or removal of any items thereon without the prior written approval of the Association.

The expenses, costs and fees of such management, operation, maintenance, repair, replacement and improvement by the Association, as provided in this Section 4.1, shall be part of the annual common expense assessment levied by the Association and the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees, regardless of the amounts thereof.

4.2 Owner's Negligence: Prohibition of Certain Activities.

a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement in the Common Area, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family or by an Owner's guests or invitees (such determination of negligence or willful act or omission, and the amount of the Owner's liability therefor,

having been determined by the Association by a hearing after notice to the Owner), then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Lot and Owner, and the Association may proceed in accordance with Section 5.9 hereof.

(b) Further, nothing shall be done or kept on any Lot, in any Residence or in or on the Common Area, or any part thereof, which would be in violation of any rule or regulation of the Association or of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Area, or any part thereof, shall be committed by any Owner, or by any member of an Owner's family, or by a guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, the members of his family, his guests, invitees or contract purchasers, which is in violation of this Section 4.2(b). At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then after notice and a hearing by the Association, the amounts to be indemnified shall be and constitute a default assessment in accordance with Section 5.9 hereof, and the Association shall enforce the foregoing indemnity in the same manner as provided in Section 8.2 hereof with respect to an Owner's indemnity against mechanic's liens.

4.3 Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.

4.4 Acquiring and Disposing of Real and Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners, tangible and intangible personal property and real property, and may dispose of the same by sale or otherwise. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended provided that such use shall not hinder or encroach upon the lawful rights of other Owners.

4.5 Promulgation of Rules and Regulations. The Executive Board of the Association may promulgate and enforce, including without limitation enforcement by levying and collecting charges for the violation thereof, reasonable rules and regulations governing the use of the Lots, Common Area, and/or any property owned by the Association, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

4.6 Contracts, Licenses and Other Agreements. The Association, through its Executive Board, shall have the right to enter into, make, perform or enforce: contracts, agreements, licenses,

leases, easements and/or rights-of-way, for the use by Owners, other persons, their family members, guests and invitees, of real property, and any facilities or improvements thereto and thereon, for pedestrian and vehicular access, ingress and egress to and from the Project, or any portion thereof, for vehicular parking, or for recreational use and enjoyment; and/or contracts, licenses, leases or other agreements for cable or satellite television service to the Project, or any portion thereof. Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, as provided for in this Section 4.6, shall be upon such terms and conditions as may be agreed to from time to time by the Executive Board of the Association, which may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining and repairing such real property, and the facilities and improvements thereto and thereon, providing such cable or satellite television service, or other amounts which the Board determines are reasonably necessary to secure any such contracts, licenses, leases, agreements, easements and/or rights-of-way, and any such costs shall be treated by the Association as common expenses pursuant to Article Five hereof. 9

## ARTICLE FIVE

### ASSESSMENTS

5.1 Personal Obligation for Assessments. All Owners, including Declarant, covenant and agree, and shall be personally obligated, to pay to the Association: (a) monthly common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 5.6 of this Declaration; and (c) other charges, costs, fees and assessments, including without limitation default assessments, as provided in this Declaration. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees and charge attributable to their Lot. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by non-use of the Common Area or the facilities contained therein or by abandonment or leasing of his Lot. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot, as well as all charges for separately metered utilities servicing his Lot, including without limitation, electrical and gas service. The charges for utilities which are not separately metered to an individual Lot such as water and sewer shall be included in the monthly common expense assessments levied by the Association.

#### 5.2 Amount of Monthly Common Expense Assessments.

- (a) The initial monthly common expense assessment for each Lot shall be the amount of One Hundred Sixty Dollars (\$160.00).
- (b) Commencing with the second assessment year and thereafter, the maximum monthly common expense assessment shall be based upon the Association's advance budget of all cash requirements which may be needed by the Association to provide for the payment of

all estimated expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and improvement of the Project, the Common Area, and real or personal property owned by the Association, except as otherwise provided in this Declaration. The maximum common expense assessment per Lot shall be calculated by taking the total amount of the aforesaid advance budget of the requirements estimated to be needed by the Association for the fiscal year, multiplied by a fraction, the numerator of which shall be one (1) and the denominator of which shall equal the sum of all Lots then subject to this Declaration. The fraction of Association common expenses allocable to each Lot which is subject to this Declaration will change upon the annexation of additional Lots pursuant to Article Fourteen hereof. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of common grounds; common lighting and heating; maintenance, repair and renovation of Common Area; wages; common water and sewer charges; taxes, legal and accounting fees; management fees; costs, expenses and liabilities incurred by the Association's Executive Board on behalf of the Owners under or by reason of this Declaration, the Articles of Incorporation or Bylaws of the Association; the creation of reasonable reserves, working capital and/or sinking funds, and any and all other costs and expenses relating to the Common Area, the Project, and/or real or personal property owned by the Association. However, no assessment may increase over 10% of the previously assessed amount unless approved by at least 51% of the Owners.

Within thirty days after adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) The Executive Board of the Association may, at any time and from time to time, upon written notification thereof to each Owner, levy an actual common expense assessment in an amount less than the maximum for any monthly assessment period.

5.3 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those Common Area that must be periodically maintained, repaired or replaced. Such reserves shall be funded through the monthly payments of the common expense assessments.

5.4 Date of Commencement of Monthly Common Expense Assessments. The initial monthly common expense assessment shall commence on the date of conveyance by Declarant of the first Lot. Subsequent monthly common expense assessment periods shall correspond with the fiscal year of the Association. The monthly common expense assessments shall be made due and payable on the first of each month without setoff or deduction, or on such dates as determined by the Board. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share

of the last installment due.

5.5 Rate of Assessment. Both monthly common expense and special assessments shall be fixed at equal rates for each Lot sufficient to meet the advance budget of the Association, and apportioned as provided in Section 5.2 hereof.

5.6 Special Assessments. In addition to the assessments authorized above, the Association may at any time, from time to time, determine, levy and assess, which determination, levy and assessment may be made by the Association's Executive Board with the consent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose, a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Area, specifically including without limitation any fixtures and personal property related thereto or for any other operating deficit, unbudgeted costs or reserve for any maintenance obligation of the Association. The amounts determined, levied and assessed pursuant hereto shall be set against each Lot in accordance with the formula as provided in Section 5.2(b) hereof. Such special assessment(s) shall be due and payable as determined by the Association's Executive Board. "Capital Improvements," as used herein, shall mean the construction, erection or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction, reconstruction, erection, installation, maintenance, repair or replacement of Common Area presently located on the Property or which may hereafter be constructed, erected or installed on the Property by Declarant in its development of the Project. Notice in writing setting forth the amount of such special assessment per Lot and the due date for payment thereof shall be given to the Owners not less than thirty (30) days prior to such due date.

5.7 Notice of Quorum for Action Authorized Under Section 5.6. Written notice of any meeting called for the purpose of voting on a special assessment pursuant to Section 5.6 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of the total votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.8 Lien for Assessments. The assessments, charges and fees, including, without limitation any default assessments, as well as any monthly or other installments thereof, provided for in this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorney's fees which may arise under the provisions of this Declaration), shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Lot to which such assessments apply. To evidence such lien upon a Lot, the Association may prepare a written lien notice setting forth a description of the Lot, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner or Owners thereof and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of

the Executive Board of the Association or by an officer, the Managing Agent or the attorney of the Association and shall be recorded in the office of the Clerk and Recorder of the County of Jefferson, State of Colorado. The recording of any written lien notice shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon each Lot and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed.

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5.9 Effect of Non-Payment of Assessments. Any assessments, charges, costs or fees provided for in this Declaration, including, without limitation, any default assessment arising under the provisions of this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set by the Association from time to time, and the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges, costs or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges, costs or fees, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. In the event that any such assessment, charge, cost or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or crossclaim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Lot, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, any and all late charges and accrued interest under this Section 5.9, the Association's costs, expenses and reasonable attorney's fees incurred for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and/or from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, costs or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

5.10 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, except as provided in this Section 5.11 and Section 5.12 below, the sale or transfer of any Lot shall not affect the lien for assessments, charges, costs or fees levied hereunder, except that sale or transfer of a Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association assessments which became due prior to any such sale or transfer or foreclosure, or any proceeding in lieu thereof: provided, however, that any such foreclosure or proceeding in lieu thereof shall not extinguish the Association's lien for six (6) months of assessments as provided by C.R.S. §38-33.3-316. No such

sale, transfer, foreclosure or any proceeding in lieu thereof, shall relieve any owner from liability for any assessments, charges, costs or fees, or any portion thereof, thereafter becoming due, nor such Owner's Lot from the lien for assessments which attaches thereafter.

5.11 Subordination of Association's Lien for Assessments. The Association's perpetual lien on a Lot for assessments, charges, costs and fees, provided for herein, shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption against all such assessments charges, costs or fees. Said assessment lien shall also be superior to all other liens and encumbrances except: (a) real property ad valorem tax and special assessment liens duly imposed by a Colorado governmental subdivision, and (b) except as provided by Colorado law, specifically C.R.S. Section 38-33.3-316, the lien of any First Mortgage encumbering a Lot and recorded in the records of the office of the Clerk and Recorder of the County of Jefferson, Colorado, prior to the date such assessment became due, including without limitation any and all advances made by a First Mortgagee, and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's lien.

5.12 Certificate of Status of Assessments. Upon receipt of a written request from any Owner, or any First Mortgagee, purchaser, prospective purchaser or prospective mortgagee, of a Lot, and upon payment of a reasonable fee, but in no event less than Fifteen Dollars (\$15.00), the Association, through its Executive Board or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the subject Lot, the amount of the current monthly common expense assessment and the date that such assessment becomes due, the due date of any special assessment then existing against the Lot, the amount of any credit for any advanced payments of assessments and for prepaid items (such as insurance premiums), and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

5.13 Working Capital Fund. The Association or Declarant shall require the first owner of each Lot to make a non-refundable contribution to the Association in an amount equal to the greater of \$320.00 or two (2) times the monthly common expense assessment against that Lot in effect at the closing thereof. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including without limitation to meet unforeseen expenditures or to purchase additional equipment. Such contribution to working capital funds shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee for the aforesaid contribution to working capital fund. Under no circumstances shall the Declarant utilize any working capital funds of the Association to defray any of the Declarant's expenses, reserve contributions or construction costs or to make up any budget deficit while it is in control of the Association.

5.14 First Mortgagees May Pay Assessments and Cure Defaults. In the event any assessment on any Lot shall not be paid by the Owner thereof within thirty (30) days after the same

is due, or if a default by any Owner of any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association, shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such assessment, together with any other amounts secured by the Association's lien created by this Article Five, and may (but shall not be required to) cure any such default.

5.15 Liens. In accordance with the requirements of the Colorado Common Interest Ownership Act, as amended, Declarant hereby states that it is possible that liens other than mechanics' liens and assessment liens may be obtained against the Common Area.

## ARTICLE SIX

### INSURANCE

6.1 Insurance on Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements contained in this Article Six, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then existing requirements of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages secured by real property located within the Property.

(a) A policy of property insurance covering all insurable improvements located on the Common Area (except for land, foundation, excavation and other matters normally excluded from coverage), in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," "Contingent Liability from Operation of Building Laws Endorsement," a "Vacancy Permit Endorsement" or the equivalent, and/or coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance shall afford protection against at least the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
- (2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering the Project, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death

to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Project, legal liability arising out of lawsuits related to employment and management contracts of the Association, and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible or handling funds of the Association, in an amount at least equal to the estimated maximum amount of funds, including maintenance reserves in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than the greater of three (3) months aggregate assessments on all Lots, plus such reserve funds, or one hundred and fifty percent (150%) of the Association's estimated annual operating expenses and reserves. Such fidelity coverage or bonds shall meet the following requirements:

- (1) all such fidelity coverage or bonds shall name the Association as an obligee;
- (2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c)

(d) If the Project, or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage has been made available under the National Flood Insurance Program ("NFIP"), a "master" or "blanket" policy of flood insurance on the structures and any other property covered by the required form of policy (herein "insurable property") in an amount deemed appropriate, but not less than the lesser of

- (1) the maximum coverage available under the NFIP for all structures and other insurable property within any portion of the Project located within a designated flood hazard area; or
- (2) one hundred percent (100%) of current replacement cost of all structures and

other insurable property within any portion of the Project located within a designated flood hazard area.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association and, if appropriate, coverage for loss or damage resulting from steam boiler equipment or conditioning equipment accidents in an amount not less than \$2,000,000.00 per accident per location or such greater amount as may be deemed prudent by the Association based on the nature of the property.

6.2 Insurance on Structures on Lots. The Executive Board of the Association or its agents may, but shall not be obligated to, obtain and maintain to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each Lot, except for land, foundation, excavation and other items normally excluded from coverage, in an amount not less than that necessary to comply any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement". The Association may also purchase a "Demolition Endorsement" and "Increased Cost of Construction Endorsement", a "Contingent Liability From Operation Of Building Laws Endorsement" and/or a "Vacancy Permit Endorsement" or the equivalent. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

- (a) Loss or damage by fire or other perils normally covered by standard extended coverage endorsements; and
- (b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

6.3 General Provisions of Insurance Policies. The policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of the First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees, upon request. Any such Owner policy shall also contain waivers of

subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association and no act or omission by any Owner unless acting within the scope of such Owner's authority on behalf of the Association shall void a policy or be a condition to recovery under the policy.

6.4 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000.00 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property between an Owner and The Association, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of a Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment.

6.5 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interest may appear.

6.6 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner; provided that if such amount(s) are not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total of such amount(s), from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Lot and Owner, and the Association may proceed in accordance with Section 5.9 hereof. Any such Owner's policy shall also contain waivers of subrogation.

6.7 Acceptable Insurance Companies. Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagee or

mortgagee's designee or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Executive Board, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

6.8 Insurance to be Maintained by Owners. Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper and other items of personal property belonging to an Owner, public liability coverage of each Lot and hazard insurance coverage on the structures located on each Lot (unless such coverage is maintained by the Association), shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Executive Board and/or the managing agent of the Association shall have no responsibility therefor. Owners shall also be responsible for obtaining such policies of title insurance related to any sale of a Lot other than the purchase by the initial Owner from the Declarant.

6.9 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

6.10 Payment and Disbursement of Insurance Proceeds. Any loss covered by a property insurance policy described in Paragraphs 6.1 or 6.2 above must be adjusted with the Association, but the proceeds may be paid to any insurance trustee for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds for the Owners and lienholders as their interests may appear. Except as provided in Paragraph 11.2 below, the insurance proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Association terminated.

## ARTICLE SEVEN

### PARTY WALLS

7.1 Definition. For purposes of this Article Seven, "Party Wall" shall mean and refer to any wall which is part of the original construction of the structures located on Lots, is placed on or immediately adjacent to a Lot line, and which separates two (2) or more structures.

7.2 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.3 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use.

7.4 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.5 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.6 Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

7.7 Arbitration. In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request therefor by an Owner, the Executive Board of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorney's fees.

## ARTICLE EIGHT

### MECHANIC'S LIENS

8.1 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Lot with the consent or at the request of the Owner thereof, his agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Area, or any part thereof, for labor performed and/or for materials furnished in work on the first Owner's Lot.

8.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and

hearing, shall enforce the indemnity provided by Section 8.1 hereof by collecting from the Owner of the Lot on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Lot on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 8.2 and such amount to be indemnified shall automatically become a default assessment determined and levied against such Lot, and the Association may proceed in accordance with Section 5.9 hereof.

8.3 Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is effected against two or more Lots, the Owner(s) of any of the affected Lots may pay to the lienholder the amount of the lien attributable to such Owner's Lot and the lienholder shall release such Lot from the lien. The amount required to be paid by any such Owners in order to obtain release of their Lot from any such lien shall be equal to the quotient of (i) the amount of the lien, divided by (ii) the total number of Lots affected by the lien. Partial payment and release of any such lien with respect to any Lot(s) shall not prevent the lienholder from enforcing his rights against any Lot for which payment has not been received.

## ARTICLE NINE

### EASEMENTS

9.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Property, or any portion thereof. Further, the Property or portions thereof, is now or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on Exhibit B attached hereto and incorporated herein by this reference.

9.2 Encroachments. In the event that any portion of the Common Area encroaches upon any Lot(s) or in the event that any portion of a Lot encroaches upon any other Lot(s) or upon any portion of the Common Area, or in the event any encroachment shall occur in the future as a result of: (i) settling of a structure, or (ii) alteration or repair to the Common Area, or (iii) repair or restoration of one or more structures after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the structures or other improvements comprising part of the Common Area are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or on the Lots for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other security

instruments relating to Lots, the actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Lot as indicated on the plat.

9.3 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon the Common Area in the proper performance of their duties.

9.4 Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Area and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, cables, satellite reception dishes, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Area without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section 9.4 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Area.

9.5 Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Area and a right to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Area maintenance and storage facilities for use by the Association.

9.6 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels located thereon so as to improve the drainage of water therefrom.

9.7 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Area is or may be located within Lots or structures located on Lots or may be conveniently accessible only through the Residences. The Owners of other Residences shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Lot and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Area located therein or accessible there from, or for making emergency repairs therein, necessary to prevent damage to the Common Area or to any Lot or structure located on any Lot. The Association shall also have such right, independent of any agency relationship. Subject to the provisions of Section 6.2 hereof,

damage to the interior of any part of a structure resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Area or as a result of emergency repairs within any structure at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the structures wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations the occupants of the affected structures shall be warned of impending entry as early as is reasonably possible.

9.8 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the complete construction of the Project; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, his family members, guests or invitees to or of his Lot or the Common Area.

9.9 Easements for Appurtenances. A general easement is hereby created and granted to the Declarant, the Association and all Owners for the placement or encroachment upon the Common Area of the following items: building eaves and overhangs; mailboxes, signage approved by the Association Executive Board; and any and all other equipment and items necessary and useful for the operation of the Project and approved by the Association Executive Board.

9.10 Easement for Ingress and Egress. All Lot Owners shall have a perpetual, non-exclusive easement and right of use of and to the Common Area for the purpose of pedestrian ingress and egress to and from their Lots and any Common Area.

9.11 Easements Deemed Created. All conveyances of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article Nine, even though no specific reference to such easements or to this Article Nine appears in the instrument for such conveyance.

## ARTICLE TEN

### RESTRICTIVE COVENANTS

10.1 Residential Use. Subject to Section 10.2 hereof, Lots shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use, and no structures of a temporary character, trailer, shack, barn or other outbuilding shall be used or permitted to be kept or stored on any portion of the Project at any time, either temporarily or permanently. However, an Owner may use his Lot for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconveniences to other residents of the Lots is created thereby.

10.2 Declarant's Use. Notwithstanding anything to the contrary contained in this

Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development of the Project, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units, sales and leasing offices, parking areas and lighting facilities; provided, however, that the rights retained by Declarant in this Section 10.2 shall terminate upon conveyance by Declarant of the last Lot to the first purchaser thereof (other than Declarant). Declarant shall at any one time maintain only one sales or leasing office, one management office and two construction offices, and said offices may be located on a Lot, in a temporary building or trailer and may be relocated from time to time by the Declarant. Declarant shall be entitled to maintain sales and leasing models in such number and locations as it deems proper. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Project in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot or the Common Area, the parking areas or to a public right of way.

10.3 Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Project; provided, however, that a reasonable number of dogs, cats or other household pets may be kept on any Lot, so long as they are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to other Owners. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 10.3, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s). Pets shall be under the Owner's control at all times, and shall be leashed when walking on the Common Area.

10.4 Use of Common Area. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written approval of the Association. No bicycles, scooters, baby carriages or similar vehicles or toys or other personal articles shall be allowed to stand unattended in any portion of the Common Area. Except for those improvements erected or installed by Declarant in its construction and completion of the Project, nothing shall be altered on, constructed in or removed from the Common Area without the prior written approval of the Executive Board of the Association.

10.5 Exterior Changes. Except for those improvements erected or installed by Declarant in its construction and completion of the Project, no exterior additions to, alterations or decoration on any Lot, including but not limited to any structural alterations to any structure, nor any changes in fences, hedges, walls or other structures, nor any change in the color or stain of the exterior, including the exteriors of all doors, nor installation of window mounted air conditioning units or any exterior television, radio or other communication antennas of any type, shall be commenced,

erected, placed or maintained, without the prior written approval of the Executive Board of the Association.

10.6 Interior Changes and Use Restrictions. No Owner of any Lot shall make or order any modification or alteration within his Residence affecting any bearing or party wall without the prior written approval of the Association. No Owner shall cause to be installed or used in his structure items which shall place a greater load upon the Residence floor than 60 pounds per square foot the "live floor load limit." In particular any use of waterbeds is at the sole risk of the Owner and the Declarant shall not in any way be responsible for any damage or nuisance caused thereby.

10.7 Signs and Advertising. No signs (except one (1) sign of not more than six (6) square feet per Lot advertising that the Lot is for sale or for rent), advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Lot, nor shall any sign(s) be permitted in or on the Common Area, without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with its sale or rental of Lots, or otherwise in connection with its development of the Project, shall be permissible, as approved by the Association provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Common Area, their Lots, or their ingress and egress from a public way to the Common Area or their Lots.

10.8 Commercial Vehicles. Subject to Sections 9.8 and 10.2 hereof, no commercial vehicles, boats, trailers, campers, recreational vehicles or trucks shall be parked within the Project except while temporarily engaged in transport to or from a Lot or if parked within a garage, and except such construction vehicles and equipment which may be necessary or incidental to the construction of improvements within the Property by Declarant. For the purposes of this Section 10.8, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.

10.9 Abandoned or Inoperable Vehicles. No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Project, except within a garage. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, housetrailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or any vehicle which does not have an operable propulsion system installed therein; provided, however, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Owners while on vacation or during a period of illness. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.10 Leases. The term "lease", as used herein, shall include any agreement for the leasing or rental of a Lot and shall specifically include, without limitation, a month-to-month rental. The

Owner of a Lot shall have the right to lease his Lot under the following conditions:

(a) All leases shall be in writing.

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and Rules and Regulations and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

(c) No lease shall be for less than thirty (30) days.

(d) No Lot shall be rented by its Owner for transient or hotel purposes.

10.11 Nuisances. No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

10.12 Exterior Appearance of Curtains in Residences. All curtains, shades and/or blinds in each Residence shall be white or lined with white material so as to appear white from the building exterior.

10.13 Patios. Any decks or patios of any structure on any Lot shall be kept in a clean, sightly and orderly condition, and the hanging of garments or cleaning of rugs or other household items thereon or the use thereof for storage purposes is expressly prohibited.

10.14 Landscaping. The installation, maintenance and replacement of all landscaping which is located within any fenced area of any Lot shall be the responsibility of the Owner of said Lot. Said owner shall maintain the landscaping in a clean and orderly condition. In the event that any Owner fails to so maintain said landscaping, the Association, after reasonable notice to the Owner, may undertake such steps as are reasonably required to properly maintain the landscaping, including but not limited to moving of grass, removal of weeds, trimming of trees and shrubs and installation of grass or other ground cover. All costs and expenses incurred by the Association in maintaining the landscaping as provided above shall be the personal obligation of the Owner of such Lot; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such costs and expenses, then the failure to so repay shall automatically become a default assessment determined and levied against such Lot and Owner, and the Association may proceed in accordance with Section 5.9 hereof.

## ARTICLE ELEVEN

DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

11.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any structure on any Lot, Other Buildings, Common Area or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided as attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence or condemnation, shall be appointed. Such appointment must be approved by the Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more of the Lots and at least sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each such mortgage held).

11.2 Damage or Destruction. "Repair and reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration or replacement, in accordance with the provisions hereinafter set forth:

(a) In the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such repair and reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance policy covering a loss is a policy of insurance carried by the Association pursuant to Section 6.2 hereof and such insurance proceeds are insufficient to repair and reconstruct the improvement(s), such damage or destruction shall be promptly repaired and

reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment, to be made, notwithstanding anything to the contrary contained in Section 5.6 hereof, without a vote of the Owners, against all of the Owners and their Lots. Such special assessment shall be assessed against all Lots in accordance with Section 5.6 hereof, and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s), using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on his Lot, and may be enforced and collected as provided in Section 5.9 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(c) Notwithstanding the foregoing provision of this Section 11.2 but subject to the provisions of Article Fifteen hereof, the Owners may agree not to repair or reconstruct the improvements; in such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of the County of Jefferson, Colorado, setting forth such facts and upon the recordation of such notice executed by the Association President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, and the Articles of Incorporation and Bylaws of the Association. In the event such a sale of the Project is attempted, those Lots which have been substantially or totally destroyed shall be demolished within 45 days of the decision to sell the Project and the land upon which they stood shall be attractively replanted and restored. All such costs wherefore shall become part of the assessment for common expenses shared by all owners as provided in Article Seven hereof. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, combined with all sale proceeds, and all such proceeds shall be divided into portions by the Association, each portion representing one Lot, with the amount of each portion to be reasonably, and in good faith, allocated by the Executive Board of the Association to each Lot based on the comparative value of the Lots as they existed immediately prior to the damage and destruction, using such evidence of the appraised values as is then available, including but not limited to recent appraisals of the Property, portions thereof, or comparable property. Such divided proceeds shall be paid into separate accounts, with each such account in the name of the Association and further identified by the Lot designation and the name of the Owner(s) and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account without contribution from one account to another, toward payment of the liens encumbering the Lot represented by such separate account, in the following order:

- (1) For payment of taxes and special assessment liens in favor of any assessing entity;

- (2) For payment of the lien of any First Mortgage;
- (3) For payment of unpaid Association common expense assessments, other assessments, charges and fees, and all costs, expenses and fees incurred by the Association, including customary expenses of sale;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the Owner(s) of the Lot.

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11.3 Obsolescence.

(a) Sixty-seven percent (67%) of the Owners may agree that the Common Area is obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, notice of such plan shall be recorded in the County of Jefferson, Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid common expense assessment for the renewal and reconstruction of the Common Area shall be a debt of each Owner and a lien on his Lot, and may be enforced and collected as provided in Section 5.9 hereof.

(b) Subject to the provisions of Article Fifteen hereof, the Owners may agree that the Lots are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the office of the Clerk and Recorder of the County of Jefferson, Colorado, a notice setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, and the Articles of Incorporation and Bylaws of the Association. The sale proceeds shall be divided by the Executive Board of the Association as more fully provided in Section 11.2(c) hereof and paid into separate accounts, each such account representing one Lot. Each such account shall be in the name of the Association and shall be further identified by the Lot designation and the name of the Owner(s) thereof. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 11.2(c) hereof.

11.4 Condemnation. If at any time or times during the continuance of ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 11.4 shall apply:

- (a) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.

(b) In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Executive Board of the Association as more fully provided in Section 11.2(c) hereof; provided, however, that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 11.2(c) hereof.

(c) Subject to the provisions of Article Fifteen hereof, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Area shall be apportioned among the Owners in accordance with the formula set forth in Section 5.2(b) hereof; (ii) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Lot, and to the improvements an Owner has made within his Lot, shall be apportioned to the particular Lot involved; and (iv) the total amount allocated to consequential damages and any other taking or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Lot shall be based on the comparative values of the affected Lots as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including but not limited to recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 11.2(c) hereof.

(d) In the event a partial taking results in the taking of a complete Lot, the Owner(s) thereof shall automatically cease to be a Member, shall cease to hold any right, title or interest in the remaining Common Area, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Lots for amendment of this Declaration as provided in Article Fifteen hereof. The Condemnation Award as to each such completely taken Lot

shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 11.2(c) hereof.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 11.2 hereof.

## ARTICLE TWELVE

### BURDENS AND BENEFITS OF DECLARATION

12.1 Covenants Running with Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

12.2 Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity.

## ARTICLE THIRTEEN

### AMENDMENT OF DECLARATION

13.1 Amendment. Except for those matters governed by Sections 13.2, 13.3 and 15.1(b) hereof, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by an instrument (which instrument may be executed in identical counterparts, subject to the provisions of Section 16.10 hereof) approved in writing by not less than fifty-one percent (51%) of the Members; provided, however, that the foregoing approval required by this Section 13.1 shall not be required for, and with respect to, any annexations to this Declaration by the Declarant pursuant to the provisions of Article Fourteen hereof; and further provided, however, that any amendment of Sections 3.2, 5.5, 9.4, 9.8, 10.2, 10.6, Article Thirteen, Article Fourteen, or any of them, shall require the prior written approval of the Declarant.

13.2 Technical Amendment. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Lot in the Project by Declarant to the first Owner thereof (other than Declarant) or seven (7) years from the date this Declaration is recorded in the County of Jefferson, Colorado, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any of such documents.

13.3 Special Amendment. Declarant hereby reserves and is granted the right and power to record special amendments to this Declaration, the Articles of Incorporation and/or Bylaws of the

Association, at any time prior to the conveyance of the last Lot in the Project by Declarant to the first Owner thereof (other than Declarant) or seven (7) years from the date this Declaration is recorded in the County of Jefferson, Colorado, whichever occurs first, in order to comply with any requirements of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee First Mortgages.

13.4 Recording of Amendments. To be effective, all amendments to or revocation or termination of this Declaration must be recorded in the office of the Clerk and Recorder of the County of Jefferson, Colorado, and must contain evidence of the required approval thereof.

13.5 Secretary's Certificate. One method of satisfying the requirements of Section 13.4 hereof shall be the recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Lots, and that the requisite percentage of First Mortgagees, have given notarized written consent to the amendment. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

ARTICLE FOURTEEN

ANNEXATIONS

14.1 Annexations by Declarant. The Declarant may annex to this Declaration additional property within the lands described on Exhibit C, attached hereto and incorporated herein by this reference, until that date which is seven (7) years after the date of recording of this Declaration in Jefferson County, Colorado, without the consent or approval of any other Owners, security interest holders, or any other Person. Each such annexation shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording in the office of the Clerk and Recorder of Jefferson County, Colorado a deed from the Declarant that provides for conveyance of a portion of the property described in the attached Exhibit C to any Person other than the Declarant, in which case each such Lot so conveyed shall constitute a Lot and the Allocated Interests shall thereupon automatically be reallocated to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the Property upon recording of such deed, and any other portion(s) of such property so annexed shall constitute Common Elements. All provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording a deed, as aforesaid.

14.2 Declarant's Rights. The Declarant may exercise its development rights in all or any portion of the property described in the attached Exhibits A and C over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of any such Development Rights.

ARTICLE FIFTEEN

FIRST MORTGAGEES

15.1 Member and First Mortgagee Approval. Subject to Sections 13.2, 13.3 and 14.1 hereof, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members and sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage held):

(1) seek to abandon or terminate the Project, whether by act or omission, except:

(A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty; or

(B) in the case of a taking by condemnation or eminent domain, in which event the provisions of Section 11.4 of this Declaration shall control; or

(C) for amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or improvements thereon;

(2) change the pro rata interest or obligations of any individual Lot for the purpose of:

(A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(3) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the Project);

(4) partition or subdivide any Lot; or

(5) use hazard insurance proceeds for losses to any property (whether to Lots or Common Area) for other than the repair, replacement or reconstruction of such property in accordance with the procedures set forth in Section 11.2 hereof, except as may be provided by statute in the case of substantial loss to such Lots and/or Common Area.

(b) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members, and fifty-one percent (51%) of the First Mortgagees (based upon one vote for each First Mortgage owned), add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish,

provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than 25%;
- (3) reserves for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;
- (4) responsibility for maintenance and repair, of any portion of the Project;
- (5) boundaries of any Lot;
- (6) convertibility of Lots into Common Area or of Common Area into Lots;
- (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (8) insurance, including but not limited to fidelity bonds;
- (9) leasing of Lots;
- (10) imposition of any restriction on the right of any Owner to sell or transfer his Lot;
- (11) any decision by the Association to assume self-management of the Association, when professional management has previously been required by any First Mortgagee or any insurer or guarantor of a First Mortgage;
- (12) any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association;
- (13) any action to terminate the legal status of the Project after substantial destruction or condemnation; or
- (14) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages.
- (15) allocation of rights to use Common Areas.
- (16) any scheme of regulation or enforcement of standards for maintenance,

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architectural design or exterior appearance or improvements on any Lot.

(17) merging or consolidating the Association.

(18) making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget.

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15.2 Notice of Action. Upon written request therefor, a First Mortgagee, insurer or guarantor of a First Mortgage, shall be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Project or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(b) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Executive Board of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

(c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposal to terminate the Declaration or dissolve the Association at least 30 days before any action is taken.

(e) notice of any extraordinary actions by the Association.

(f) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article Fifteen.

15.3 Rights of First Mortgagees. First Mortgagees shall have the following rights in addition to the rights set forth in other provisions of this Declaration:

(a) to inspect Association documents and records on the same terms as Owners.

(b) to demand professional management of the Association by a majority of the First Mortgagees.

(c) to demand an audit of the Association's financial records by a majority of the First Mortgagees.

## ARTICLE SIXTEEN

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MISCELLANEOUS

16.1 Period of Ownership. The ownership created by this Declaration shall continue until this Declaration is terminated in any manner provided in this Declaration or by law.

16.2 Conveyance of Lots. All Lots shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

16.3 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association, Declarant and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect charges for the violation of any provision of any of the aforesaid documents, which charges shall be a perpetual lien in favor of the Association against each Lot, as more fully provided in Article Five hereof. In any such action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court.

16.4 Registration of Mailing Address. Each Owner and each First Mortgagee, insurer or guarantor of a First Mortgage, shall register his mailing address with the Association, and notices or demands intended to be served upon any such Owner, First Mortgagee, insurer or guarantor shall be delivered by messenger or sent by mail, postage prepaid, addressed in the name of such person or entity, at such registered address.

16.5 Non-Waiver. Failure by the Declarant, the Association, any Owner, First Mortgagee, or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

16.6 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

16.7 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

16.8 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

16.9 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws of the Association, the Articles of Incorporation shall control.

16.10 Counterparts. This Declaration, any Statements of Intention to Annex, any amendments, or any documents of consent, may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for the recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.

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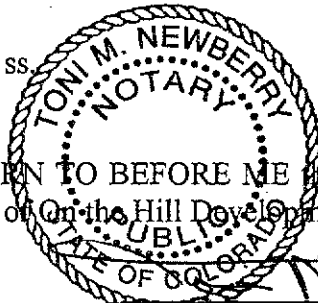
IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal this 30<sup>th</sup> day of March, 2000.

CORPORATION ON THE HILL DEVELOPMENT, INC., A COLORADO

Date: 03/30/00

By: [Signature]  
Jack Howard, President

County of Jefferson )  
 ) ss.  
State of Colorado )



SUBSCRIBED AND SWORN TO BEFORE ME this 30<sup>th</sup> day of March, 2000, by Jack Howard as President of On-the-Hill Development, Inc.

Witness my hand and seal.

[Signature]  
Notary Public  
My Commission Expires 10/28/2001

My commission expires: \_\_\_\_\_

Date: 4/4/00

MEGABANK

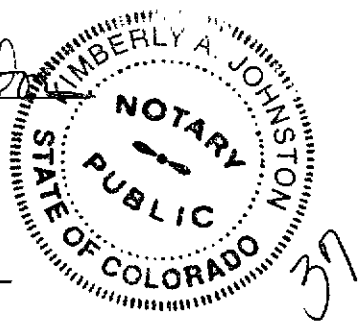
By: [Signature] ve  
Ryan R. Kowalski, Executive Vice President  
Candice L. White, Vice President

County of Apache )  
 ) ss.  
State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 4<sup>th</sup> day of April 2000, by ~~Ryan R. Kowalski~~, Executive Vice President of Megabank.

Candice L White  
Witness my hand and seal.

Kimberly A. Johnson  
Notary Public



My commission expires: My Commission Expires 4/30/2002

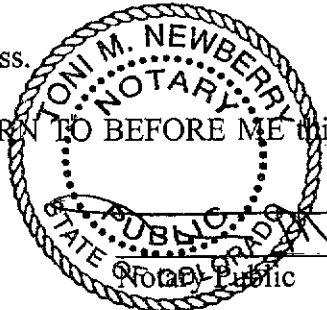
Date: 04-03-00

Jeffrey Vogel  
Jeffrey Vogel  
6795 W. Yale Ave.  
Lakewood, CO 80227

County of Jefferson )  
 ) ss.  
State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 3<sup>rd</sup> day of April 2000, by Jeffrey Vogel.

Witness my hand and seal.



Toni M. Newberry  
Notary Public

My commission expires: My Commission Expires 10/28/2001

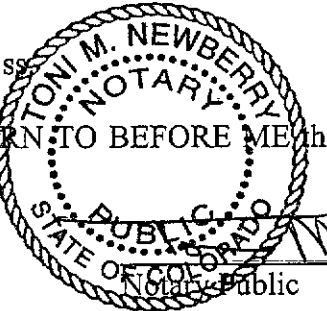
Date: 03-30-00

Lucy Nalezinski  
Lucy Nalezinski  
6797 W. Yale Ave.  
Lakewood, CO 80227

County of Jefferson )  
 ) ss.  
State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 30<sup>th</sup> day of March 2000, by Lucy Nalezinski.

Witness my hand and seal.



Toni M. Newberry  
Notary Public

My commission expires: My Commission Expires 10/28/2001

Date: 4/1/00

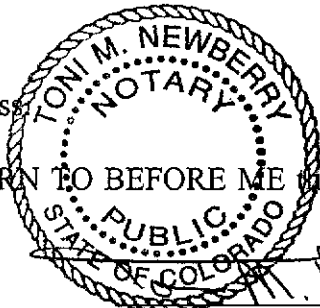
Isabel M. Nakamura  
Isabel M. Nakamura  
6799 W. Yale Ave.  
Lakewood, CO 80227

County of Jefferson )

State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 1st day of April, 2000, by Isabel M. Nakamura.

Witness my hand and seal.



Notary Public  
My Commission Expires 10/28/2001

My commission expires: \_\_\_\_\_

Date: 03-30-00

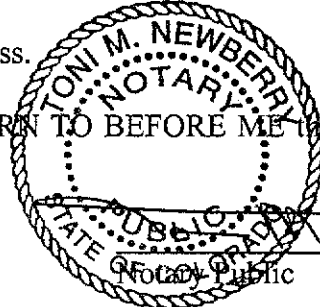
Donata Suraski  
Donata Suraski  
6805 W. Yale Ave.  
Lakewood, CO 80227

County of Jefferson )

State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 30th day of March, 2000, by Donata Suraski.

Witness my hand and seal.



Notary Public  
My Commission Expires 10/28/2001

My commission expires: \_\_\_\_\_

Date: 4-1-00

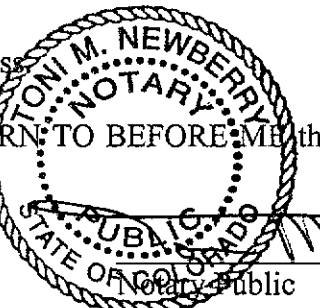
Jack C. London  
Jack London  
6807 W. Yale Ave.  
Lakewood, CO 80227

County of Jefferson )

State of Colorado )

SUBSCRIBED AND SWORN TO BEFORE ME this 1st day of April, 2000, by Jack London.

Witness my hand and seal.



Notary Public  
My Commission Expires 10/28/2001

My commission expires: \_\_\_\_\_

**EXHIBIT A  
TO  
DECLARATION FOR  
THRAEMOOR IN THE PARK TOWNHOMES**

All of Block 1, Thraemoor in the Park Townhomes,  
except Lots 1, 2, 5 through 60 and 63 through 69,  
County of Jefferson,  
State of Colorado.

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**EXHIBIT B  
TO  
DECLARATION FOR  
THRAEMOOR IN THE PARK TOWNHOMES**

Easements

1. EASEMENT AND RIGHT OF WAY TO BE RESERVED BY ON THE HILL DEVELOPMENT, INC., IN THE DEED CONVEYING THE COMMON AREAS TO THRAEMOOR IN THE PARK TOWNHOMES ASSOCIATION.
2. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE RIGHT OF WAY GRANTED TO COLORADO WYOMING GAS CO., RECORDED JULY 24, 1929, IN BOOK 317 AT PAGE 217.

NOTE: ASSIGNMENT OF ABOVE RIGHT OF WAY TO THE PUBLIC SERVICE COMPANY OF COLORADO RECORDED FEBRUARY 9, 1952 IN BOOK 749 AT PAGE 589 AND 592.

3. TERMS, CONDITIONS, PROVISIONS, AGREEMENT AND OBLIGATIONS SPECIFIED UNDER THE DEED RECORDED MAY 25, 1934 IN BOOK 365 AT PAGE 283.
4. RIGHT OF WAY EASEMENT GRANTED TO CENTRAL COLORADO POWER COMPANY BY INSTRUMENT RECORDED JANUARY 18, 1935 IN BOOK 369 AT PAGE 253.
5. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE DEED RECORDED DECEMBER 30, 1947 IN BOOK 588 AT PAGE 9.
6. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED FEBRUARY 18, 1972 IN BOOK 2342 AT PAGE 774 AND OCTOBER 19, 1972 IN BOOK 2437 AT PAGE 39.
7. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE SETTLEMENT AGREEMENT RECORDED NOVEMBER 3, 1972 IN BOOK 2441 AT PAGE 829.
8. NON-EXCLUSIVE EASEMENT TO CONSTRUCT, OPERATE AND MAINTAIN UTILITIES, TOGETHER WITH INGRESS AND EGRESS EASEMENT AS CONTAINED IN INSTRUMENT RECORDED NOVEMBER 10, 1972 IN BOOK 2444 AT PAGE 895.
9. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE DEED RECORDED MARCH 19, 1973 IN BOOK 2484 AT

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PAGE 611 AND PAGE 613.

10. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE DOCUMENT RECORDED NOVEMBER 13, 1973 IN BOOK 2567 AT PAGE 715.
11. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED IN THE EASEMENT AGREEMENT FOR WATER LINE FROM HENRY SWAN, II TO JACK E. HOWARD RECORDED NOVEMBER 16, 1983 AT RECEPTION NO. 83110143. H
12. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT AGREEMENT RECORDED NOVEMBER 16, 1983 AT RECEPTION NO. 83110144 AND 83110145.
13. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE DEED RECORDED FEBRUARY 4, 1974 IN BOOK 2589 AT PAGE 645.
14. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE RESOLUTION 85-112 RECORDED MAY 30, 1986 AT RECEPTION NO. 86057240.
15. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE SUBDIVISION PUBLIC IMPROVEMENTS AGREEMENT OF THRAEMOOR IN THE PARK SUBDIVISION RECORDED MAY 30, 1986 AT RECEPTION NO. 86057241. FIRST AMENDMENT RECORDED APRIL 27, 1998 AT RECEPTION NO. F0599265.
16. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE PERMANENT EASEMENT RECORDED MAY 30, 1986 AT RECEPTION NO. 86057243.
17. THE EFFECT OF THE ALTA LAND TITLE SURVEY RECORDED JANUARY 8, 1996 AT RECEPTION NO. F0168727.
18. ANY TAX, ASSESSMENT, FEE OR CHARGE RESULTING FROM THE INCLUSION OF THE SUBJECT PROPERTY IN THE ALAMEDA WATER AND SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED APRIL 29, 1996 AT RECEPTION NO. F0224536.
19. TERMS, CONDITIONS, PROVISION, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE AGREEMENT RECORDED AUGUST 16, 1996 AT RECEPTION NO. F0287398.

20. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE RESTRICTED ACCESS AGREEMENT RECORDED AUGUST 16, 1996 AT RECEPTION NO. F0287399.
21. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT AGREEMENT RECORDED NOVEMBER 26, 1996 AT RECEPTION NO. F0334965 AND F0334966.
22. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE ORDINANCE RECORDED MAY 23, 1997 AT RECEPTION NO. F0417890.
23. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT AGREEMENT RECORDED MAY 12, 1998 AT RECEPTION NO. F0610349.
24. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE PERMANENT UTILITY, SERVICE AND VEHICLE ACCESS EASEMENT RECORDED MAY 12, 1998 AT RECEPTION NO. F0610350.
25. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS SPECIFIED UNDER THE PERMANENT SERVICE AND EMERGENCY VEHICLE ACCESS EASEMENT RECORDED MAY 20, 1998 AT RECEPTION NO. F0615488. CORRECTION AGREEMENT RECORDED DECEMBER 4, 1998 AT RECEPTION NO. F0750427.
26. AN EASEMENT FOR UTILITIES AND INCIDENTAL PURPOSES GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY THE INSTRUMENT RECORDED JANUARY 4, 1999 AT RECEPTION NO. F0770711 UPON THE TERMS AND CONDITIONS SET FORTH IN THE INSTRUMENT.
27. AN EASEMENT GRANTED TO MOUNTAIN STATES VIDEO, INC., BY THE INSTRUMENT RECORDED OCTOBER 21, 1999 AT RECEPTION NO. F0965028 UPON THE TERMS AND CONDITIONS SET FORTH IN THE INSTRUMENT.
28. EASEMENTS, NOTES, TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS AS SHOWN ON THE PLAT OF THRAEMOOR "IN THE PARK" SUBDIVISION RECORDED MAY 30, 1986 AT RECEPTION NO. 8657242.
29. EASEMENTS, NOTES, TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS AS SHOWN ON THE PLAT OF THRAEMOOR IN THE PARK TOWNHOMES RECORDED MARCH 28, 1997 AT RECEPTION NO. F0391032.

**EXHIBIT C  
TO  
DECLARATION FOR  
THRAEMOOR IN THE PARK TOWNHOMES**

Legal Description of All Property Subject to Annexation

Block 1, Thraemoor in the Park Townhomes,

County of Jefferson,

State of Colorado.

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