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**THE VILLAS AT UNIVERSITY PARK
HOMEOWNERS' ASSOCIATION**

NOTICE

Properties within the subdivision known as **The Villas at University Park** are subject to a Declaration of Covenants, Conditions and Restrictions (hereafter referred to as "Declaration") recorded July 7, 2000, Reception No. 201089186.

The Declarant has appointed The Warren Management Group, Inc. as Association Management Company per Section 5.6 of the Declaration. Pertinent information regarding this subdivision should be addressed to:

**The Villas at University Park Homeowners' Association
c/o The Warren Management Group, Inc.
5585 Erindale Drive, Suite 106
Colorado Springs, CO 80918
Phone: (719) 534-0266
Fax: (719) 534-9177**

There are two types of assessments for Association expenses. The annual assessment shall be an obligation of all property owners. Additionally, a special assessment may apply as well. The first Owner, other than the Declarant, is required to make a non-refundable contribution to the Association of an amount equal to the greater of two (2) times the amount of the estimated monthly assessment or \$200.00. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Association pursuant to the Declaration. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

Upon transfer of title of any property within this subdivision, a copy of the warranty deed shall be required to be provided to the Association.

*Give copy of this notice
to closer with
each new commit
(we have not been
incorporated into
the above
notice)*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE VILLAS AT UNIVERSITY PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made and entered as of the date shown below, by **ELITE PROPERTIES OF AMERICA, INC.**, a Colorado corporation hereinafter called "Declarant" for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described on **Exhibit A** attached hereto (hereinafter called the "Property"), and

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. The Declarant further declares that the Project shall be created pursuant to the Colorado Common Interest Ownership Act (C.R.S. § 38-33 3-101 et seq.) and any amendments, repeals or modifications of that Act (the "Act").

ARTICLE I

DEFINITIONS

The terms used herein shall have the meanings stated in the Act, except as otherwise provided herein

Section 1.1 "Association" shall mean and refer to The Villas at University Park Homeowners Association, Inc., a Colorado non-profit corporation, which has been or shall be organized under the laws of the State of Colorado prior to the conveyance of the first Lot in the Project, its successors and assigns.

Section 1.2 "Board" means the Board of Directors of the Association and shall also be the "executive board" as defined under the Act Except as specified herein, or in the Association's Articles of Incorporation or Bylaws or C.R.S. § 38-33.3-303(3), the Board may act on behalf of the Association without any vote or consent of the members.

Section 1.3 "Owner" means any person, corporation, partnership, association, contract sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one (1) or more Lots and shall include the purchaser under any executory land sales contract wherein the Administrator of Veteran's Affairs is seller, whether recorded or not, and whether owned by said Administrator or his assigns The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure This term shall have the same meaning as "unit owner" under the Act.

Section 1.4 "Property" shall mean and refer to that certain real property described on Exhibit A hereto, together with all appurtenances thereto and all improvements now or hereafter thereon

Section 1.5 "Common Area" shall mean and refer to all of the Property, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, together with all improvements and property located on the Lots. Notwithstanding any contrary provision, any items described in C.R.S. § 38-33.3-202 and any parking spaces, driveways, doorsteps, balconies, decks, utility lines, porches, patios, entryways, stairs, or sidewalks leading solely to a Townhome, whether located upon the Common Area or upon any Lot, may be assigned or allocated as a "Limited Common Area" by the Declarant for the exclusive use of the Owners of the Townhomes to which they are assigned, allocated or attached, and they shall be cleaned and kept in good condition and repair by such Owners, rather than by the Association as a common expense, as further described in Article V, Section 5.1(a) Any such allocation or assignment may be made by plat, surveyor's statement, deed or any document recorded by the Declarant or by the Association after the Period of Declarant Control. These terms shall have the same meaning as "common elements" and "limited common elements" under the Act and may be reallocated pursuant to C.R.S. § 38-33.3-207 and C.R.S. § 38-33.3-208 Notwithstanding any other provision contained in this Declaration, skylights shall in all events be the sole and exclusive responsibility of the individual Owners of the Units within which they are located, including but not limited to all maintenance, repair and replacement thereof In addition, the Association's obligation to maintain decks will be limited as provided in Section 5.1 of this Declaration.

Section 1.6 "Lot" shall mean and refer to any lots shown on any recorded plat or plats of the Property (which plats are incorporated herein by this reference and which may be recorded herewith, together with any certifications or other documents), together with all appurtenances thereto and improvements now or hereafter thereon. This term shall have the same meaning as

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"unit" under the Act. The boundaries of any Lot may be relocated pursuant to C.R.S. § 38-33.3-212. The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

Section 1.7 "Declaration" means this Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of the Declarant executing the Declaration. A copy of the Declaration shall be delivered to the assessor of the county in which the Property is located, after recording.

Section 1.8 "Declarant" shall mean and refer to Elite Properties of America, Inc., a Colorado corporation, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. § 38-33.3-304. The Declarant hereby reserves any and all "special declarant rights" and "development rights" as created or set forth in the Act and any other rights as set forth herein. Any such rights shall apply to the Property and shall terminate upon the earlier of ten (10) years from the date of recording hereof or as otherwise provided herein. The "Period of Declarant Control" means that period during which the Declarant, or person designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article III hereof.

Section 1.9 "Improvements" shall mean and refer to all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures, and any alterations, changes or modifications to the foregoing. "Improvements" shall also mean an excavation or fill the volume of which exceeds two (2) cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 1.10 "Maintenance Area" shall mean and refer to that portion of each Lot which is located outside of the exterior building surfaces of a Townhome and, therefore, not within the Common Area, but which is to be repaired, improved, maintained and regulated by the Association as provided in this Declaration. The "Maintenance Area" shall refer to those areas described on Exhibit C attached hereto and incorporated herein by this reference. In general, the Maintenance Area shall include by illustration, the landscaping, sprinkler system, sidewalk, utility lines, retaining walls, Project drainage improvements located within any Lot, any and all Project signs and related landscaping and lighting, if any, which may be located within a Lot, or other improvements located

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within the designated area The Maintenance Area shall be repaired, improved, maintained and regulated by the Association as provided in this Declaration.

Section 1.11 "Member" shall mean and refer to every person or entity who holds membership in the Association or, following termination of the Project, of all former unit Owners entitled to distributions of proceeds under C.R.S. § 38-33.3-218, or their heirs, personal representatives, successors or assigns.

Section 1.12 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the county in which the Property is located, and by which a Lot or any part thereof is encumbered. The term shall include a "security interest" as defined by the Act. The term shall also include any executory land sales contract wherein the Administrator of Veteran's Affairs, an officer of the United States of America, is the original seller, whether such contract is recorded or not (but if not recorded, then written notice thereof shall be delivered to the Board) 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 subsequent assignee who has notified the Board in writing of such assignment.

Section 1.13 "First Mortgage" shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.

Section 1.14 "Mortgagee" means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage The term shall also include the Administrator of Veteran's Affairs, an officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not but if not recorded, then written notice thereof shall be delivered to the Board

Section 1.15 "Project" means all of the Property, together with improvements and rights, and improvements located on the Property and all rights, easements and appurtenances belonging thereto, and shall include any real property subsequently annexed or added to the Project. This term shall have the same meaning as "common interest community" and "planned community" under the Act.

Section 1.16 "Architectural Control Committee" shall mean the committee of three (3) or more persons appointed by the Declarant or Association to review and approve the plans for all improvements constructed on the Property.

Section 1.17 "Townhome" shall mean the residential dwelling improvement constructed and located upon a Lot

Section 1 18 "Owner's Proportionate Share" or "Proportionate Interest" means for each Townhome will constitute 1/40 interest Each Owner hereby acknowledges, however, that assessments will be made in accordance with the terms of Section 4.8 of these Covenants and, as such, each Owner's percentage of assessments, until such time as all of the Townhomes within the Project are subject to assessments, may differ, but will, in all events be subject to the limitations set forth in Section 4.4 of these Covenants. These terms shall have the same meaning as "allocated interest" under the Act

ARTICLE II

PROPERTY RIGHTS IN THE COMMON AREA

Section 2 1 Title to the Common Area. Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all encumbrances, by the Declarant to the Association, prior to the conveyance of the first Lot in any phase

Section 2 2 Non-Division of Common Area The Common Area shall remain undivided and shall not be subject to partition. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

Section 2.3 Owners' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, including without limitation the right ingress and egress to and from the Owner's Lot, his parking area, any street, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference.

Section 2 4 Extent of Owners' Common Area Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained in Article VII of this Declaration and to promulgate and publish rules and regulations which every Owner, his

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family members, guests, tenants, and contractors shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary,

(b) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to use the Common Area for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) 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;

(d) 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, subject to the provisions of Article XI hereof and C.R.S. § 38-33.3-312, and subject to such conditions as may be imposed by the public entity, for example, if any interior streets are private and have not been built to city or county specifications and so might not be accepted by them;

(e) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and, subject to the provisions of Article XI and C.R.S. § 38-33.3-312, to mortgage said property as security for any such loan;

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(g) The right of the Declarant (until termination of the Period of Declarant Control) or the Association's Board (after termination of the Period of Declarant Control) to assign or allocate any part of the Common Area to be a Limited Common Area, for the exclusive use of a particular Owner.

Section 2.5 Other Easements

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment, subject to the restrictions of Section 7.18, and the right to enter into

agreements relating to such utility services and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the Association upon the termination of the Period of Declarant Control, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association. Notwithstanding any other provision contained in this Section 2.5(a), no easements shall be granted pursuant to this Section 2.5(a) which shall unreasonably interfere with an Owner's use of his or her Lot.

(b) Association Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Area and any Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation any maintenance required or permitted hereunder, any inspection, maintenance, repair, replacement, construction or reconstruction of any facilities on the Common Areas or the Maintenance Areas, provided, however, that entry into any Townhome in non-emergency situations shall only be made after service of reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

(c) Emergency Easement. A non-exclusive easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Property, including but not limited to all Lots, Maintenance Areas and Common Areas in the performance of their duties.

(d) Common Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of common wall repair or maintenance, in accordance with Section 5.5 of Article V, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Lot or improvements, including the Townhomes, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

(e) Easement for Encroachments. If any part of the Common Area or any Common Area Improvement or structure encroaches upon a Lot or Lots, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Lot or any Townhome or other structure related thereto encroaches upon the Common Area, or upon any adjoining Lot or Lots, a valid easement for the encroachment and for the

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maintenance of the same, so long as it stands, shall and does exist. In the event that a Townhome or structure related thereto is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachment of parts of the Townhome due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Townhome or related structure constructed on the Property, by error in the plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Common Area or on the Lots. In interpreting any and all provisions of this Declaration, subsequent deeds, Mortgages, or other security instruments relating to Lots and Townhomes, the actual location of a Townhome, and related structures 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, Townhome, and related structure, as indicated on the plat.

(f) Easement for Foundations. Owners of adjoining Lots shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their Improvements rest, and similar easements for support from the Common Area, and for the benefit of the Common Area shall also exist.

(g) Easement for Ingress and Egress. Subject to the provisions of this Declaration, each Owner, his agents and guests are hereby granted a perpetual non-exclusive easement over any streets, roadways, driveways, and sidewalks, which are located upon the Common Area, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot. If any of the streets or roadways upon the Property are private streets, Declarant shall have the right to relocate any portion of them, but only if it provides all Owners with reasonable access to their Lots, and Declarant may also dedicate any portion of any private street or roadway upon the Property as a public right-of-way, in which case, if accepted by a public entity, the Association's obligations for repair and maintenance of the road shall cease. Furthermore, Declarant hereby reserves a non-exclusive easement across, over and under any such private streets or roadways for ingress, egress and the installation of utilities to any part of the Property and over, under and through the Common Area for the exercise of any special Declarant right hereunder or under the Act.

Section 2.6 Delegation of Use. Subject to the provisions of this Declaration and any rules or regulations which may be established from time to time with the Association concerning the Common Area, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

Section 2.7 Non-Dedication of Common Area. Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment

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of Owners for recreation and other related activities. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 2.8 Recorded Easements The Property, and all portions thereof, shall be subject to all recorded licenses and easements including without limitation any as shown on any plat, recorded now or hereafter, affecting the Property, or any portion thereof, and additionally subject to those recorded easements and matters shown on **Exhibit A-1** attached hereto

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership The following shall be members of the Association: the Declarant (so long as the Declarant owns a Lot) and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Except as provided herein, each Lot shall have voting rights based upon that Owner's Proportionate Interest. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint a Board of Directors and to operate the Association until the Period of Declarant Control is terminated, and the Association shall not begin to function through its Members until such time, unless the Declarant otherwise consents in writing.

Section 3.2 Declarant Control. The Association shall have one (1) class of voting membership who shall be the Owners. The Owners shall elect all the members of the Board, following the termination of the Period of Declarant Control, as set forth as follows:

(a) Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board and to control the Association during the Period of Declarant Control as follows: During the Period of Declarant Control, the Declarant, or persons designated by Declarant, subject to certain limitations, may appoint and remove the officers and members of the Board. The Period of Declarant Control shall terminate no later than the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than a Declarant, (ii) two (2) years after Declarant has last conveyed a Lot in the ordinary course of business; or (iii) two (2) years after any right to add new Lots was last exercised, but not to exceed ten (10) years after the first Lot in the Project is conveyed to a purchaser. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association or its Board will in no way limit Declarant's rights and

authority with respect to architectural control matters as provided in this Covenant, unless such rights are expressly terminated or waived by Declarant

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than a Declarant, at least one (1) member, and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than a Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than a Declarant, not less than one-third (1/3) of the members of the Board must be elected by Owners other than a Declarant.

(c) Except as otherwise provided above, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote (based upon Proportionate Interest) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present following the termination of the Period of Declarant Control may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(e) Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C R S § 38-33.3-303(9).

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 4.1 Creation of the Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a lien against his Lots as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums 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, fees and other sums provided for herein by non-use of the Common Area or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums,

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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. The charges for any utilities which are master metered, if any, shall be included in the annual common expense assessments levied by the Association.

Section 4.2 Purpose of Assessments The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and to fulfill the purpose and obligation of the Association including, but not limited to, improvement and maintenance in a first class condition of the Common Area, the Maintenance Area, and the Lots as more specifically provided herein.

Section 4.3 Annual Assessments The annual assessment shall specifically include, but shall not be limited to, all Common Expenses as defined by the Act and the following.

- (a) expenses of management of the Association and its activities, including but not limited to fees payable to professional management and maintenance companies;
- (b) taxes and special assessments upon the Association's real and personal property including, without limitation, the Common Area and any Limited Common Area;
- (c) premiums for all insurance which the Association is required or permitted to maintain and any other expenses connected with such insurance,
- (d) common lighting, water and other common utility and sewer service charges; and any other common expenses including maintenance of private streets, driveways and public and private sidewalks to the front door or entry courtyard, and common trash collection if approved by the Board,
- (e) landscaping and care of the Common Areas, Maintenance Areas, and any recreational or other Association facilities or improvements located thereon;
- (f) such repairs and maintenance which are the responsibility of the Association;
- (g) wages for Association employees;
- (h) legal and accounting fees for the Association,
- (i) any deficit remaining from a previous assessment year;
- (j) a working capital fund,

(k) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;

(l) the creation of reasonable contingency reserves for any applicable insurance deductibles, and

(m) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to this Project

Section 4.4 Limit on Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be as shown on **Exhibit B** attached to this Declaration

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (the "Base Year"), the maximum annual assessment may be increased each year, without a vote of the membership, by not more than the greater of ten percent (10%) per annum or the cumulative rise from the Base Year, if any, shown by the most recent annual Consumer Price Index (published by the Department of Labor, Washington, D C or any comparable successor index as shown by an average of the following items or more comparable items: Housing - General Shelter - Homeowners Costs and Fuel and Other Utilities) for the Denver metropolitan area.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the limitation which is set forth in paragraph (a) above by a vote of the Members pursuant to the procedure set forth in Section 4.6 of this Article

(c) The Association's Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4.5 Special Assessments In addition to the annual assessment authorized above., the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement or a capital improvement upon the Common

Area, including fixtures and personal property related thereto, and any improvements and fixtures upon any Lot.

Section 4.6 Procedure for Assessments Under Sections 4 and 5. Any assessment under Section 4.5 or requiring a vote of the Owners under Section 4.4 of this Article shall require the approval, pursuant to a meeting described below, of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at that meeting duly called for that purpose. Written notice of any meeting called for the purpose of taking such action shall be sent to all Owners and First Mortgagees not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes (based upon Proportionate Interests) of membership 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.

Section 4.7 Rate of Assessment. Except as provided for in Section 4.8 of these Covenants, both annual and special assessments shall be set at the Owner's Proportionate Share, sufficient to meet the expected needs of the Association.

Section 4.8 Assessment Procedure

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. The annual budget shall be adopted pursuant to C.R.S. § 38-33 3-303(4). Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determines appropriate, which is not required to credit or pay such surplus funds to the Owners. That annual assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. Subject to the limitations described below, the first annual assessment upon the Lots hereunder shall commence upon the first day of the first month following conveyance of the Common Area from the Declarant to the Association. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year; provided however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation or the Bylaws, the annual and special assessments hereunder shall not commence upon any Lot, whether owned by the Declarant or any other Owner, unless and until a final building permit has been "signed off" by the City for a residential dwelling unit on that Lot, but upon such "sign off" of the building permit for the residential dwelling unit, the Lot and its Owner shall be liable to pay full

assessments as provided in this Declaration, provided further that unless and until full assessments have commenced as provided above, the Lot and its Owner shall not be entitled to receive services from the Association

(b) Special Assessments and Other Sums Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of any Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against such Owner and his Lot and shall be enforceable as provided herein, except that such assessment shall not require any vote of the Members. Any other sum imposed by the Board as provided hereunder shall also be deemed a special assessment but shall not require a vote of the Members.

(c) Notice. Failure of the Board to give timely notice of any assessments as provided herein shall not affect the liability of the Owner or his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given

Section 4.9 Certificate of Payment. Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors and upon written request, the Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. Said certificate may be relied upon by all persons acting in good faith, as conclusive evidence of the payment of any assessments therein stated to have been paid

Section 4.10 Effect of Nonpayment of Assessments-Remedies of the Association

(a) General Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed the amount set forth in the Association's rules and regulations. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot,

and/or may suspend the delinquent Owner's right to vote and the right to use any recreational facilities within the Common Area for any period during which any assessment against his Lot remains unpaid. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with expenses, late charges, and costs of the action.

(b) Lien Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation, with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of not to exceed the amount set forth in the Association's rules and regulations, court costs and all other collection costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien, from and after the levy or assessment thereof, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the county in which the Property is located a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may then have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney's fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. In addition, the Association shall have the right to a statutory lien under C.R.S. § 38-33-3-316. Notwithstanding any other provision contained herein, the Association's foreclosure of any assessment lien against a Lot, and its acquisition of the membership interest related thereto as a result of such foreclosure, shall not constitute a purchase of a membership interest pursuant to C.R.S. 7-126-303.

(c) Authority Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid

at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure

Section 4.11 Working Capital. The Association shall require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to the greater of two (2) times the amount of the estimated monthly assessment or \$200.00, which sum shall be non-refundable to such Owner and shall be placed in the general revenue account of the Association. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold Lots in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits

Section 4.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including without limitation any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract, no such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve any Lot from liability for any assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his ownership of the Lot for assessments due during the period of his ownership nor from the provisions of C.R.S. § 38-33.3-316

Section 4.13 Notice to Mortgagee and Inspection of Books Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to Owners and Mortgagees current copies of the Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association shall provide unaudited, annual financial statements to any First Mortgagee making a written request for it and without expense to such First Mortgagee. The First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available, said financial statement shall be furnished within a reasonable time following such request. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any

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Association Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of assessments described in Article IV hereof.

Section 4.14 Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 4.15 Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

ARTICLE V

MAINTENANCE

Section 5.1 Association Maintenance. The Association shall provide such maintenance and repair in a first class condition as follows:

(a) Paint, repair, replace, maintain and care of roofs, gutters, downspouts, and exterior building surfaces, including without limitation, fences, and patios of the Townhomes and exterior facing surfaces of decks and balconies, including exterior sides, posts and railings of decks and balconies (but expressly excluding deck or balcony surfaces as described below) **but excluding** from the Association's maintenance obligation the following: (i) glass surfaces, (ii) exterior light bulbs, (iii) doors (except for the Association's repainting of the exterior surface of doors, if applicable), (iv) screens, (v) windows, (vi) skylights, (vii) deck and balcony floor surfaces and all other surfaces thereof which face the interior to the applicable limit, (viii) doorsteps, (ix) fenced areas, and (x) stairs leading solely to a Townhome, all of which shall be each Owner's responsibility unless otherwise determined in writing by the Association's Board of Directors. An Owner shall not paint or change the appearance of the exterior of his Townhome without the prior written approval of the Board. The Association shall paint or re-stain the exterior of all Townhomes as often as necessary to keep such exterior from having a weather-beaten or worn-down appearance but at least once every five (5) years.

(b) All repair, replacement, improvement and maintenance of the Common Area and the Maintenance Area, and all improvements located thereon, including without limitation, any landscaping, sprinkler system, any roadways, driveways, utility lines (including any common utilities within a Lot or Townhome which also serve another Townhome, and also any lines located outside of the exterior walls of a Townhome but not including any maintenance which is the responsibility of any public or private utility company or entity), any drainage structures or facilities

or public improvements to the extent applicable and set forth in C.R.S. § 38-33.3-307(1.5), all water lines located within the private streets within the Project and other portions of the Common Area, any light fixtures, sidewalks, and pathways, or other improvements located on the Common Area. Except as provided herein, an Owner shall keep Limited Common Areas cleaned and in good condition; provided, an Owner shall not alter, paint, change, modify, expand, restrict, remove or construct such improvements nor otherwise modify the Common Area or the Maintenance Area or the exterior appearance of the Lot, nor shall any Owner install fences or other improvements on such areas, without the prior written approval of the Architectural Control Committee.

(c) Repair and replacement of any buildings or Improvements upon the Lot insofar as the Association receives insurance proceeds or makes a special assessment to accomplish such repair or replacement.

(d) The Association shall maintain the landscaping, drainage, and sprinkler systems in such a fashion that the soil surrounding the foundations of the buildings and other improvements shall not become so impregnated with water that they cause expansion or shifting of the soils supporting the improvements or other damage to the improvements and do not impede the proper functioning of the drainage, landscaping, or sprinkler system as originally installed. Such maintenance shall include where necessary the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Owners from installing landscaping or using water on the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the Townhome or the other improvements upon the Lots or Common Area. The Association shall indemnify the Declarant as to any breach of this provision.

The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property.

Section 5.2 Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 5.1 of this Article is caused, in the sole discretionary determination of the Board of Directors, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner, shall be added to and become part of the assessment to which the Lot of such Owner is subject and shall become a lien against such Owner's Lot as provided in Article IV of this Declaration.

Section 5.3 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 of this Article and inspections related thereto, the Board of Directors of the Association, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon

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any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees may enter without notice at any time, but the Owner or other occupants thereof shall be notified, as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except for its gross negligence or willful misconduct.

Section 5.4 Owner Maintenance. Except as provided in Section 5.1 of this Article, the Owner shall be responsible for all other maintenance and repairs, including without limitation maintenance of his Lot, Townhome, any fixtures, furnishings, equipment and appliances located thereon. All utilities, fixtures and equipment installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Townhome, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Townhomes which shall be the Association's responsibility as provided in Section 5.1 of this Article. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the landscaping adjacent to or upon his Lot by the addition or removal of any items thereon, including fences, without the prior written approval of the Board. If Owner fails to fulfill his responsibilities under this Section, the Board, at its option, may take such action as it deems appropriate, including without limitation performing the Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Lot and shall be due and payable by the Owner thereof.

Section 5.5 Party Walls

(a) **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Townhomes and placed on or immediately adjacent to the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **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 wall in proportion to such use.

(c) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty and if the Association does not restore such wall with insurance proceeds or a special assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, 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.

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(d) Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.5, each party shall choose one (1) arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Board of Directors 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 attorneys' fees.

Section 5.6 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall be subject to review and approval by the Department of Veterans Affairs or the Federal Housing Administration and shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Control. Furthermore, any contracts and leases during the Period of Declarant Control shall be subject to C.R.S. § 38-33.3-305. If professional management has been previously in effect after being required by any holder, insurer or guarantor at that time or later, any decision to terminate professional management and to establish self management by the Association shall require the prior consent of sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) persons appointed by the Association's Board of Directors, which may appoint itself to be the Committee, provided, however, that until the Period of Declarant Control terminates,

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Declarant shall have the right to appoint the Architectural Control Committee. A majority of the Committee may designate a representative to act for it. It shall be the duty of the Architectural Control Committee, and it shall have the power, by the exercise of its best judgment, to determine that all structures, improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures. For convenience, the Architectural Control Committee shall hereinafter sometimes be referred to in this Article as the "Committee".

Section 6.2 Review by Committee After the purchase of a Lot from the Declarant, no Improvements shall be constructed or maintained upon the Property; no alterations to, re-staining or repainting the exterior of a Townhome or Lot shall be made, no landscaping performed; and no Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, unless the following, if applicable, shall have been submitted to and approved in writing by the Committee: complete plans, specifications, and Lot plans therefor, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and grading plan. A copy of such plans and specifications as finally approved shall be deposited with the Committee. The provisions of Sections 6.1, 6.2 and 6.3 of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

Section 6.3 Procedures.

(a) The Committee shall approve or disapprove all plans and requests within sixty (60) days after requests have been submitted. In the event the Committee fails to take action within sixty (60) days after plans have been received by the Committee, approval will not be required, and this Article will be deemed to have been fully complied with. Notwithstanding the above, in no event will improvements be deemed approved which are in violation of the restrictions contained in this Declaration or other applicable rules, regulations or governing laws. A majority vote of the members of the Committee is required for approval or disapproval of proposed Improvements. The Committee shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the Committee shall take into consideration the design, style and construction of the proposed Improvements or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed Improvements or alteration is consistent with the general terrain, the architecture of other Improvements located upon the Property subject to this Declaration and whether or not the construction or alteration of said Improvements will adversely affect or decrease the value of other Lots and/or dwellings because of its design, location, height or type of material used in construction. The Committee may make reasonable requirements of the Lot Owner, including the submission of additional plans, to ensure conformance of such Improvements or alteration, when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot or the Common Area will conform to the approved plans and specifications. The Committee may require such changes

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as may be necessary to conform to the general purposes as herein expressed. The Committee shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Committee shall have authority to grant variances from the provisions of this Article VI in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not said hardship exists.

(c) Whenever the Committee disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Committee.

(d) All plans submitted to the Committee shall be left on file with the Committee.

(e) It is the intent of this Declaration that the Committee shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

(f) The Committee shall resolve all questions of interpretation under this Article. They shall be interpreted in accordance with their general purpose and intent as herein expressed.

Section 6.4 Declarant Can Remedy Violations Until the expiration of the Period of Declarant Control, Declarant may, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Board or Declarant to invoke this Section unless within a period stated in the notice (not less than ten (10) calendar days), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Committee or Declarant (whichever gives the notice) may cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Committee for the purpose of entering on a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and costs of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection, and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot Owner

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to enforce these Covenants pursuant to Section 12.2 or as otherwise may be provided by law or equity; provided, however, that only the Declarant and the Committee shall have the right to proceed under this Section 6 5 In the event that the Declarant or Committee elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or improvements thereon that is unrelated to the remediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or Committee. In no event shall there be any liability for damage to a structure that is in violation of these Covenants.

Section 6 5 Declarant's Rights to Complete Development of the Property. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Property or nearby areas and to subdivide, resubdivide, or rezone any portion of such Property, to grant licenses, easements, reservations and rights-of-way; to construct or alter improvements on any property owned by Declarant within the Property; to maintain model homes, offices for construction, sales, management or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property and to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant, to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation, or view, or to construct, alter, demolish or replace any improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Property, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Control Committee or of the Association for any such activity or improvement to property by Declarant on any property owned by Declarant or by the Association. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration.

Section 6 6 Provisions Regarding Exercise of Declarant's Reserved Rights Declarant may exercise the reserved rights of Declarant as to the Property The exercise by Declarant of some of the reserved rights of Declarant hereunder shall not require Declarant to exercise any other of Declarant's reserved rights hereunder.

ARTICLE VII

RESTRICTIONS

Section 7 1 General Plan It is the intention of the Declarant to establish and impose a general plan for the Improvement, development, use and occupancy of the Property, all thereof in order to enhance the value, desirability, and attractiveness of the Property and serve and promote the sale thereof.

Section 7.2 Leases Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and the Board of Directors may require the use of its approved lease form or the insertion of particular provisions and may require that a copy of any lease be provided to it by the Owner. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has repeatedly violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval ownership shall be permitted.

Section 7.3 Residential Use. Each Lot shall be occupied and used as a private dwelling for the Owner, and members of his family, guests and tenants for residential purposes only, and the Board of Directors may make rules which limit the maximum occupancy permitted upon Lots in the Project and additional rules which restrict the ages of occupants as determined by the Board in its sole discretion. Other than the rental of private dwellings for residential purposes, no Lot shall be used for any business, manufacturing or commercial purpose; provided, however, if the appropriate zoning so allows and if prior written approval of the Board is obtained, an Owner may use a specifically designated portion of his Lot as a home business office, which approval may thereafter be withdrawn or terminated by the Board at any time.

Section 7.4 Animals No horses, snakes, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot, except that, if specifically permitted by the Board's rules and regulations or written consent, any Owner may keep two (2) bona fide household pets, so long as such pets comply with the Board's rules and regulations, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any rules and regulations of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. All dogs shall be kept on leash and attended by their Owners when present in the Common Area. The Board may institute such rules as it deems advisable for the control of pets, including without limitation prohibitions and restrictions, and may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

Section 7.5 Structures. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property, and no subsequent buildings or structures other than Townhome buildings joined together by a common exterior, roof and foundation, shall be constructed. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth, provided.

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however, that the foregoing shall not apply to the Declarant. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 7.6 Signs, Hot Tubs and Other Miscellaneous Structures. Except as permitted in writing by the Committee or pursuant to its rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot or within any Townhome other than a name plate of the occupant and a street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Owners' use of the Common Area until all Lots are sold by the Declarant. Hot tubs will be allowed within the exterior of Lots 7 through 16, inclusive, and Lots 18 through 34, inclusive, within the Property. Hot tubs shall not be permitted within any other Lot, Maintenance Area or Limited Common Area, other than within the interior of a Townhome unit itself, except as otherwise specifically approved in writing by the Declarant. Any permitted hot tub shall be maintained solely by the Owner thereof and not the Association. All types of refrigerating, cooling or heating apparatus shall be concealed, except as installed by the Declarant.

Section 7.7 Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that same are visible from any neighboring Lot or street, except as necessary during the period of construction by Declarant. No condition shall be permitted within any Townhome, balcony, porch, patio or deck which is visible from other Townhomes or the Common Area and which is inconsistent with the design integrity of the Project as determined by the Board in its sole discretion; such conditions include, but are not limited to, window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Common Area or visible through a window. The Board may regulate by rule the color and appearance of drapes, shades, blinds and window coverings.

Section 7.8 Lots Not to be Subdivided. No Lot or Lots shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. No less than one entire Lot, as conveyed, shall be used as a building site.

Section 7.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

Section 7.10 No Antennae or Devices. Except as provided below, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on any Lot or upon the exterior of any Townhome or the Common Area appurtenant to any Townhome, without the prior written consent of the Board of Directors or its designated committee, if applicable. Notwithstanding the above, an antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or

diagonal measurement, or (iii) that is designed to receive television broadcast signals (the "Antenna"), as defined by the Federal Communications Commission or the Telecommunications Act of 1996, shall be permitted at the pre-wired location or such other location permitted by the Declarant or Approving Authority, as applicable, so long as the means, method and location of such Antenna at other than the pre-wired location comply with the rules adopted from time to time by Declarant or the Approving Authority. No unreasonable delay or unreasonable increase in the cost of installation or maintenance shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an Antenna at other than the pre-wired location, other than for health and safety reasons.

Section 7.11 No Hazardous Activities. No activities shall be conducted on the Property and on improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfire or picnic fires in an area designated for such by the Association

Section 7.12 No Annoying Light, Sounds or Odors Other than in connection with model Townhomes which will be constructed within the Project and which shall have exterior lighting in excess of an occupied Townhome, no light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of the neighboring Townhomes. Ornamental post lights must be approved by the Architectural Control Committee.

Section 7.13 Restrictions on Parking and Storage. Except as specifically authorized by the Board of Directors, no part of the Property, including but not limited to public or private streets, drives, or parking areas, and no part of the streets adjoining the Property shall be used as a parking, storage, display, or accommodation area for any type of housetrailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 3/4 ton, bus, or self-contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of Townhomes or the maintenance of the Common Area or Lots or making deliveries or performing services. No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the Owner thereof cannot be reasonably ascertained), and if the unused vehicle is not removed within seventy-two (72) hours thereafter, the

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Board shall have the right to remove the vehicle at the sole expense of the Owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, housetrailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of five (5) days or longer. The Board of Directors may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and requiring that all Owners park their vehicles inside their assigned spaces, rather than in driveways, streets or other parts of the Property. Neither Owners, tenants, guests, family, nor other invitees shall park within or obstruct any prohibited area, including without limitation any fire lane. Any vehicle or other item which is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the Owner of such vehicle. Notwithstanding any other provision contained herein, no vehicles of any type shall be parked on any private street within the Property

Section 7.14 Clotheslines and Storage Outside clotheslines, carports, patio covers or similar structures, any wood piles and storage areas shall not be allowed unless approved by the Architectural Control Committee in its sole discretion. All such approved structures shall be located out of view of the street or of any neighboring Townhomes. Service or storage areas shall be so located as not to be visible from a street or road; there shall be no storage under any deck, unless enclosed by the Declarant or with the prior written approval of the Committee

Section 7.15 Garbage and Refuse Disposal No garbage, refuse, rubbish or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in an appropriate, clean container suitably located, solely for the purpose of garbage pickup by a commercial trash vendor. All trash and refuse containers, except when placed as noted above are the sole purpose of garbage pickup, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited; it being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

Section 7.16 Repair No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing

Section 7.17 Tanks and Doors. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any Lot except for customary barbecue grill tanks or tanks inside of Townhomes. No storm or screen door of any kind shall be installed, placed or permitted within a Lot, unless approved by the Architectural Control Committee in its sole discretion.

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Section 7.18 Underground Electric Lines All electric, television, radio and telephone line installations and connections shall be placed underground, except for power substations and switching stations which shall be adequately screened from view and except for customary surface devices for access or control and except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction and which shall be subject to Declarant's prior written approval.

Section 7.19 Use of Common Area

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

(b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Common Area which will deny ingress and egress for a substantial period of time to those Owners having access to a public street, to their Lots, to their parking areas, or to any recreational facilities completed upon the Common Area.

Section 7.20 Sales and Construction Facilities and Activities of Declarant Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractor shall have all rights set forth in C.R.S. § 38-33 3-215 and shall be permitted to maintain during the period of any construction on and sale of the Lots, upon such portion of the Common Area as Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, and to the development of the Project, including without limitation, storage of equipment and vehicles, a business office, use of a Lot or even a clubhouse, if applicable, for a sales office, storage area, construction yards, signs of any size and type, model Townhomes, sales offices, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots; the Declarant may promptly remove any of the above items if Declarant ceases to be a Lot Owner. In addition, Declarant, its agents, employees, financiers, any contractor involved in the construction or sale of said Improvements and Lots, or in the development of the Property, shall have all rights set forth in C.R.S. § 38-33 3-216, and shall have the right to ingress and egress over the Common Area as in Declarant's discretion may be necessary to complete the Project. Notwithstanding any provision of this Section, no right under this Section shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot, his parking area, any public street, or any recreational facility completed upon the Common Area.

Section 7.21 Access Limitations Direct access to and from Rockhurst Boulevard from any Lot will be denied to all of the Lots and the Owners of said Lots are required to and shall arrange

and maintain their drives, dwellings and other Structures so that ingress and egress to and from their Lots is exclusively from an adjoining street other than Rockhurst Boulevard.

ARTICLE VIII

INSURANCE

Section 8.1 Common Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the following risks:

(a) Property. Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurance replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Such insurance must include all personal property owned by the Association and any improvements and fixtures located upon the Common Area and the Maintenance Area, and such insurance shall include the Townhomes and the Lots, together with all fixtures, structural portions, building service equipment and any appliances which are attached thereto. Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a one hundred percent (100%) of current replacement cost basis without deduction for depreciation or coinsurance, and including, to the extent available and applicable, an "Agreed Amount," an "Inflation Guard Endorsement," a "Demolition Costs Endorsement," a "Building Ordinance or Law Endorsement," an "Increased Cost of Construction Endorsement of Building Laws" and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and, if applicable, "Steam Boiler Coverage Endorsement" providing that the insurer's maximum liability per accident shall equal the lesser of the insurable value of any building housing such boiler or machinery or Two Million Dollars (\$2,000,000.00). Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are covered by the standard extended coverage endorsement, including without limitation endorsements for vandalism and malicious mischief, and

(ii) all other perils customarily covered for similar types of Projects, including without limitation those covered by the standard "all risk" endorsement.

(b) Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and the Maintenance Areas and deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board member. The Owners

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shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Board of Directors of the Association may from time to time determine, but not in an amount less than One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury, and/or for property damage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Area and the Townhomes by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(c) Workmen's Compensation. Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of either any sum required under C.R.S. § 38-33 3-306(3) or the sum of three (3) months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided however, any managing agent which handles funds of the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including but not limited to, employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression

(e) Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(f) Flood If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency

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as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is the lesser of the maximum amount of insurance available under the Act or one hundred percent (100%) of the current replacement cost of all buildings and other insurable common and individual property owned in common by the Lot Owners and located within the Property.

(g) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

(h) Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

Section 8.2 Annual Review At least annually and prior to obtaining any insurance policy required under Section a.1 of this Article, the Board of Directors shall obtain an estimate of the full replacement value of all improvements on each Lot, including all buildings, fixtures, improvements and service equipment located thereon, and of the Common Area Improvements including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of twenty percent (20%) or more Lots that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M A I. appraiser and will conform the hazard insurance to the value indicated by that appraisal

Section 8.3 Form of Issuance.

(a) All insurance shall be carried in blanket policy form, shall name the Association (pursuant to Article IX, Section 9.1) as the insured, as trustee and attorney-in-fact pursuant to Article IX hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interests of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Areas

(b) To the extent possible, all insurance policies shall.

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against someone other than First Mortgagees shall not become a lien on the Property superior to the First Mortgagee

(c) On written request the Association shall furnish, by certificate or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment of premiums. Further, an insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. The

deductible for an individual Townhome should not exceed One Thousand Dollars (\$1,000.00) unless a greater deductible is allowed by secondary lenders. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Declaration.

(e) The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustments. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association.

Section 8.4 Owner's Personal Property and Liability Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his expense, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his Townhome. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall not be affected or diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of the 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.

ARTICLE IX

DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

Section 9.1 Attorney-in-Fact. All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. § 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including without limitation the repair, replacement and improvement of any buildings, fixtures, improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal property installed by the Owners). 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. 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 instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers

herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. 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, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-seven percent (67%) of the First Mortgagees. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

Section 9 2 Damage or Destruction of Common Area Any portion of the Project for which insurance is required under C.R.S. § 38-33 3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to that statutory section

Section 9 3 Damage to or Destruction of Townhomes

(a) In the event of damage to or destruction of a Townhome due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the Improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvements. The annual assessments set forth in Article IV shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Townhomes, 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 only against the Owners of the damaged or destroyed Townhomes and their Lots. Such special assessment shall be made by the Board of Directors without a vote of the Owners and shall be a debt of each such Owner and a lien on his Lot and may be enforced and collected as is provided in Article IV. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or reconstruction of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment.

(c) Notwithstanding any provision to the contrary, but subject to C.R.S. § 38-33 3-313(9) to the extent applicable, if sixty-seven percent (67%) of the First Mortgagees (based

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upon one (1) vote for each First Mortgagee held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, have given their prior written approval, the Association shall provide that the Owners and First Mortgagees of any or all of the destroyed or damaged Townhomes may agree that such Townhomes shall forthwith be demolished and all debris and rubble caused by such demolition removed from the Lot, and the Lot regraded and landscaped to the satisfaction of the Board. The cost of such demolition work and landscaping, together with all taxes, liens and encumbrances and any costs in repairing any party walls, shall be paid for by any and all available insurance proceeds, with any deficiency thereof to be paid by the Owner(s) of the applicable Townhome. Any excess insurance proceeds shall then be disbursed to such Owner and his First Mortgagee jointly and said Owner shall convey merchantable title to his Lot to the Association, free and clear of all liens, encumbrances, assessments, and taxes (except as prorated), for its fair market value as determined by an M.A.I appraisal, the cost of which shall be paid by the Owner of the applicable Townhome, with the appraiser thereof to be named by the Association. Upon the Association's acquisition of the Lot, said Lot shall become part of the Common Area

Section 9 4 Condemnation If a Lot, or any part thereof, is acquired by eminent domain, the provisions of C R S. § 38-33 3-107. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereon), as reasonably determined by the Association in excess of Five Thousand Dollars (\$5,000.00), the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Area or Improvement thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Area or any part thereof or any interest therein, or any Improvement thereon or any part thereof or interest therein, is relinquished without giving all First Mortgagees of Lots and all Owners at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be paid to the Association as provided by C R S. § 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy-five percent (75%) or more of the Owners and at least fifty-one percent (51%) of First Mortgagees do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Lot, except that any award attributable to the acquisition of a limited common element shall be paid solely to the Owner thereof and that Owner's First Mortgagee

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Section 9.5 Repair and Reconstruction Unless otherwise agreed by sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and with the original plans and specifications, and shall restore any Townhome or other improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage

Section 9.6 Excess Insurance Proceeds. With the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstructions are completed shall be paid to each Owner and his First Mortgagee jointly at the rate of one equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

Section 9.7 Notice of Loss to First Mortgagees. Provided that a First Mortgagee has, in writing, requested the following information with respect to a Lot upon which said First Mortgagee holds the First Mortgage and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of (a) any improvement on the Lot on which such First Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Common Area which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Common Area as described in Section 9.4 of this Article in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such First Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of insurance proceeds or condemnation awards for loss to or taking of Lots or Common Area, or both

Section 9.8 Merger. The Association may merge with one or more homeowners' association in the surrounding area on such terms and conditions as may be agreed to by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and by sixty-seven percent (67%) of all First Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

ARTICLE X
PRESERVATION AREAS

The Owners hereby acknowledge that certain preservation areas have been established by the Plat within the Project as depicted on **Exhibit D** attached hereto and incorporated herein by this reference (the "Preservation Areas") The Preservation Areas will required to be maintained as required by the City and in a manner consistent with the Plat of the Project.

ARTICLE XI
ADDITIONAL RESTRICTIONS

Section 11.1 Restrictions Upon Association and Owners. Unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and the Owners (other than Declarant) by vote or agreement of Owners of Lots of which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to do any of the following.

(a) by act or omission, seek to abandon or terminate this Declaration or any scheme or architectural control, or enforcement thereof, as set forth in this Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Lots, improvements thereon, or the Common Areas, or the maintenance of the common property, party walls or common fences and roads, or the upkeep of lawns and plantings in the Project;

(b) by act or omission, seek to abandon, partition, subdivide, mortgage, encumber, sell or transfer any of the Common Area, except for the granting of utility easements as provided by Section 2 5(a) of Article II hereof, any conveyance or encumbrance of the Common Area shall also comply with voting requirements of C R S. § 38-33 3-312.

(c) fail to maintain full current replacement cost fire and extended insurance coverage on the Lots and Common Area, and such other insurance as is required under this Declaration;

(d) use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements as herein provided,

(e) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or

(f) a material change in any of the following provisions of this Declaration voting rights; assessment liens or the priority of assessment liens, reserves for maintenance, repair,

and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas, or rights to their use, redefinition of any Lot boundaries; convertibility of Lots into Common Areas or vice versa; expansion or contraction of the Project, or the addition, annexations, or withdrawal of Property to or from the Project; insurance or fidelity bond, leasing of Lots, imposing any restrictions on an Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder, restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holder, insurer, or guarantor.

Section 11.2 Additional Restrictions During Declarant Control. In addition to the provisions of Section 11.1 of this Article, after the Declarant has obtained evidence of approval for guaranteed or insured loans by Federal Housing Administration or the Department of Veterans' Affairs and continuing until such time as the Period of Declarant Control has terminated, the prior written approval of the Department of Veterans' Affairs or the Federal Housing Administration of the U.S. Department of Housing and Urban Development shall be required for any of the following:

- (a) Amendment of this Declaration,
- (b) Amendment of the Articles of Incorporation of the Association;
- (c) Annexation of all or any part of any additional property to this Declaration;
- (d) Encumbering or mortgaging of all or any part of the Common Area;
- (e) Dedication of all or any part of the Common Area, except for the granting of utility easements as provided by Section 2.5(a) of Article II hereof; and
- (f) Merger, consolidation or dissolution of the Association. Any merger or consolidation shall also comply with C.R.S. § 38-33.3-221.

Section 11.3 Implied Approval by Mortgagee. Notwithstanding any provision of this Declaration, any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, if the First Mortgagor has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the Mortgage.

Section 11.4 Selection of an Alternative Dispute Resolution Process and Rejection of Litigation as a Remedy By an Owner's purchase of a Townhome and by the Association's receipt of title to any Common Area, the Owner and the Association (which, together with the Declarant, will be referred to in this Declaration as "Party" and "Parties") acknowledge that he is agreeing to submit all disputes arising out of any alleged construction defect within the Project to the Dispute Resolution Process set forth in this Section 11.4, and further that he is waiving certain rights, including rights (1) to proceed in any action against Declarant or its respective former and present employees, agents, officers, directors, partners, successors, assigns, sub-contractors and affiliates in any court, (2) to a trial by jury; and (3) to certain types of damages, including exemplary damages, consequential damages and damages for emotional distress and pain and suffering. The parties expressly recognize the many benefits of electing alternative dispute resolution, including potentially reduced costs, and faster resolution of disputes. The Dispute Resolution Process consists of three phases including 1) Notification, Inspection, and Neutral Evaluation. 2) Mediation, and 3) binding Arbitration. **Notwithstanding any other provision contained in this Section 11.4, prior to the Association commencing the alternative dispute process described in this Section 11.4, the Association shall obtain the consent thereto of at least 75% of the Owners.**

a. **First Phase: Notification, Inspection, and Neutral Evaluation.** Notification, Inspection and Neutral Evaluation are condition precedents to mediation and arbitration

i. **NOTIFICATION.** Any Party claiming to have suffered an injury, or claiming to have discovered a defect in the construction of any portion of his Lot or a Common Area shall file a written notice as provided in this section 11.4 a i. within one hundred eighty (180) days after the date of the discovery of the injury, regardless of whether the Party then knew all of the elements of a claim or of a cause of action for such injury ("Notice") Compliance with the provisions of this section 11.4 a i shall be a condition precedent and prerequisite to any further action brought against the Declarant. Failure of compliance shall forever bar any such action. The Notice shall contain the following.

- A. The name and address of the claimant and the name and address of his attorney, if any;
- B. A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;
- C. The name and address of any person responsible, if known;
- D. A concise statement of the nature and the extent of the injury claimed to have been suffered or defect claimed, and
- E. A statement of the amount of monetary damages that is being requested, and other remedy sought.

Notice shall be sent to the Declarant in one of the following manners: by registered mail or upon personal service by an uninterested third party upon the Declarant as provided in the Colorado Rules of Civil Procedure Rule 4

ii. **INSPECTION.** Within ten (10) days of receipt of Notice, as set out in Section 11.4 a i, the Declarant shall contact the complaining Party to set up an inspection of the applicable Lot or Common Area. After said inspection, the Declarant and the complaining Party(ies) shall meet to determine whether they can agree to a course of action to address the concerns in a manner agreeable to all Parties. If the Parties cannot agree on a course of action, the Parties shall proceed to obtain a "Neutral Evaluation," as described in Section 11.4 a iii below.

iii. **NEUTRAL EVALUATION.** The Parties shall select a neutral third party "evaluator" with expertise in the area in question to come to the applicable Lot or Common Area and inspect and evaluate the claimed defects. If the Parties are unable to agree upon a single "evaluator" each Party shall select one evaluator, and the two evaluators shall select a third. The Parties shall share equally in the evaluator(s)' fees and expenses. After selecting the evaluator(s), the evaluator(s) shall conduct an inspection and make an initial determination including (a) whether there is a defect and (b) the most appropriate remedy for the defect. The Parties shall then meet to determine whether they can agree to a course of action to address the concerns. If the dispute is not resolved, the Parties shall proceed to mediation as provided in Section 11.4 b below.

b. **Second Stage: Mediation** If the dispute cannot be resolved pursuant to the proceedings set forth in Sections 11.4 a above, mediation is a condition precedent to any further action. The Parties shall agree upon a neutral mediator, and attend a mediation with said person. If the Parties cannot agree upon a mediator, either Party may file an action, exclusively to cause the El Paso District Court to appoint a neutral mediator. The Parties shall share equally in the mediator's fees and expenses, and all costs related thereto.

c. **Final Stage: Binding Arbitration.** If mediation is not successful, and either Party wishes to pursue the dispute further, the Parties shall proceed to binding arbitration. The Parties shall select a neutral arbiter. If the Parties are unable to agree upon a single arbiter, each Party shall select one arbiter, and the two evaluators shall select a third. The Parties shall share equally in the arbiter(s)' fees and expenses. If the two arbiters are unable to select a third arbiter, either Party may file suit for the sole purpose of asking a Court of competent jurisdiction to select the third arbiter. The Court shall be given a list of three arbiters by each Party. Arbitration shall be valid and binding pursuant to C.R.S. § 13-22-203. In matters of construction standards, arbitrators will render a decision based upon whether the Declarant has met the NAHB Residential Construction Performance Guidelines. The arbitrator's decision will be final and binding upon the Parties who are subject to this Declaration and result in final resolution of the disputed items between the Parties. Judgment upon any award rendered by the arbitrator may be entered by any state or federal court, as appropriate. The decision of the arbitrator shall be final, and not appealable, except for as provided under C.R.S. § 13-22-201 et. seq.

Section 11.5 **Master Covenants** In addition to the provisions contained in this Declaration, including but not limited to the assessments provided for in Article IV hereof, each Owner hereby acknowledges that the entire Project is subject to the terms and conditions contained in that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded at Reception No.

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098005438 of the real property records of El Paso County, Colorado on January 15, 1998 (the "Master University Park Covenants") The Master University Park Covenants have been expressly amended to include the Project within the Master University Park Covenants and to provide that each Unit to be constructed within the Project will have a vote pursuant to the Master University Park Covenants equal to **one half of one vote** assigned to each Lot used for single family detached residence pursuant to the Master University Park Covenants Similarly, the assessments provided in Section 9.6 of the Master University Park Covenants shall be based upon the above-described allocation of votes to each Unit contained within the Project, which assessments shall be in addition to, and not in lieu of, the assessments provided for in Article IV of this Declaration.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Acceptance of Provisions of All Documents. The conveyance or encumbrance of a Lot or the improvements thereon shall be deemed to include the acceptance of all provisions of this Declaration, the Articles of Incorporation of the Association and the Association's Bylaws and rules and regulations, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, tenants, successors and assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance The Association and the Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Declaration.

Section 12.2 Enforcement The Board, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to promulgate rules and regulations to enforce or apply this Declaration, and all Owners and other parties subject thereto shall strictly comply therewith In addition to all other remedies, the Board of Directors shall have the right, after notice and an opportunity of hearing, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and regulations All rights and remedies provided in this Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity, and may be exercised concurrently, independently or successively

Section 12.3 Non-Waiver Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 12.4 Cumulative. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 12.5 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 12.6 Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 12.7 Duration and Amendment. Each and every provision of this Declaration shall be binding upon each and every Owner, his heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as is otherwise provided herein, this Declaration shall not be revoked or terminated unless all of the Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. § 38-33.3-218. Following the Period of Declarant Control, this Declaration may be amended or modified by written document signed by Owners of Lots to which at least sixty-seven percent (67%) of the Proportionate Interests in the Association are attached and not less than sixty-seven (67%) of the First Mortgagees, provided, however, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (b) that this section may be amended by an instrument signed by Owners owning not less than ninety percent (90%) of the Lots, and one hundred percent (100%) of the First Mortgagees who have given the Association notice of their lien, and (c) that the Declarant hereby reserves the right, until the Period of Declarant Control is terminated, but without the vote of the Owners, to make such amendments to this Declaration, the Articles of Incorporation and/or the Bylaws, as may be permitted by the Act or as may be necessary to make clarifications which are deemed necessary and advisable by Declarant or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Department of Veterans' Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and Mortgagee by accepting a deed, Mortgage or other instrument affecting a Lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's and/or Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of First Mortgagee approval is obtained, each First

Mortgagee shall have one (1) vote for each First Mortgage owned. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the Grantee's index in the name of the Project and the Association and in the Grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the persons or parties as set forth in C.R.S. § 38-33-3-217(6). The Association shall notify any First Mortgagee who has requested notice in writing of any proposed action under this Declaration which would require the consent of a specified percentage of First Mortgagees.

Section 12.8 Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at his registered address.

Section 12.9 Assignment of Declarant's Rights. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

Section 12.10 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 12.11 Captions. The captions to the Articles and Sections 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 the Declaration or the intent of any provisions hereof.

Section 12.12 Governing Law. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

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**EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE VILLAS AT UNIVERSITY PARK**

[Legal Description of the Property]

Lots 3 and 4, University Bluffs Filing No. 1, to be platted as The Villas at University Park
Filing No 1, El Paso County, Colorado.

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**EXHIBIT A-1
TO
DECLARATION OF
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OF
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Any and all matters recorded in the real property records of El Paso County,
Colorado.

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**EXHIBIT B
TO
DECLARATION OF
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OF
THE VILLAS AT UNIVERSITY PARK**

[Owner's Proportionate Share or Proportionate Interest]

<u>Unit</u>	<u>Proportionate Share</u>	<u>Initial Maximum Assessment as of Recordation of Covenants</u>
1	1/40th	\$2,400 per year / \$200 per month
2	1/40th	\$2,400 per year / \$200 per month
3	1/40th	\$2,400 per year / \$200 per month
4	1/40th	\$2,400 per year / \$200 per month
5	1/40th	\$2,400 per year / \$200 per month
6	1/40th	\$2,400 per year / \$200 per month
7	1/40th	\$2,400 per year / \$200 per month
8	1/40th	\$2,400 per year / \$200 per month
9	1/40th	\$2,400 per year / \$200 per month
10	1/40th	\$2,400 per year / \$200 per month
11	1/40th	\$2,400 per year / \$200 per month
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26	1/40th	\$2,400 per year / \$200 per month
27	1/40th	\$2,400 per year / \$200 per month
28	1/40th	\$2,400 per year / \$200 per month
29	1/40th	\$2,400 per year / \$200 per month

<u>Unit</u>	<u>Proportionate Share</u>	<u>Initial Maximum Assessment as of Recordation of Covenants</u>
30	1/40th	\$2,400 per year / \$200 per month
31	1/40th	\$2,400 per year / \$200 per month
32	1/40th	\$2,400 per year / \$200 per month
33	1/40th	\$2,400 per year / \$200 per month
34	1/40th	\$2,400 per year / \$200 per month
35	1/40th	\$2,400 per year / \$200 per month
36	1/40th	\$2,400 per year / \$200 per month
37	1/40th	\$2,400 per year / \$200 per month
38	1/40th	\$2,400 per year / \$200 per month
39	1/40th	\$2,400 per year / \$200 per month
40	1/40th	\$2,400 per year / \$200 per month

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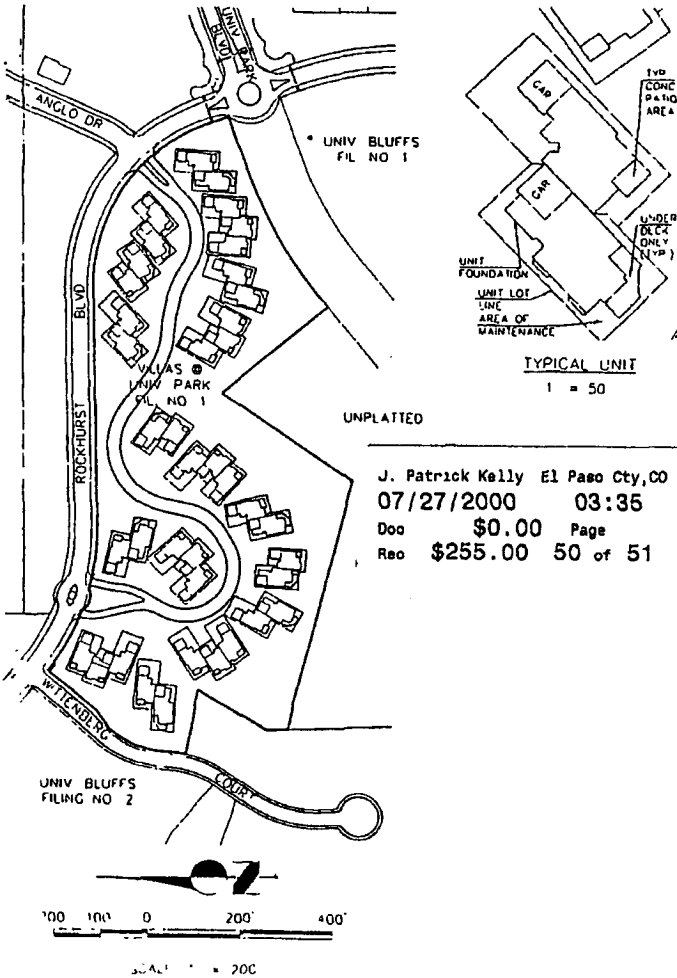
**EXHIBIT C
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE VILLAS AT UNIVERSITY PARK**

[The Maintenance Area]

JR ENGINEERING
A Subsidiary of Weston

1100 W. UNIVERSITY PARK BLVD. SUITE 100
EL PASO, TEXAS 79968

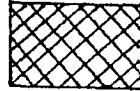
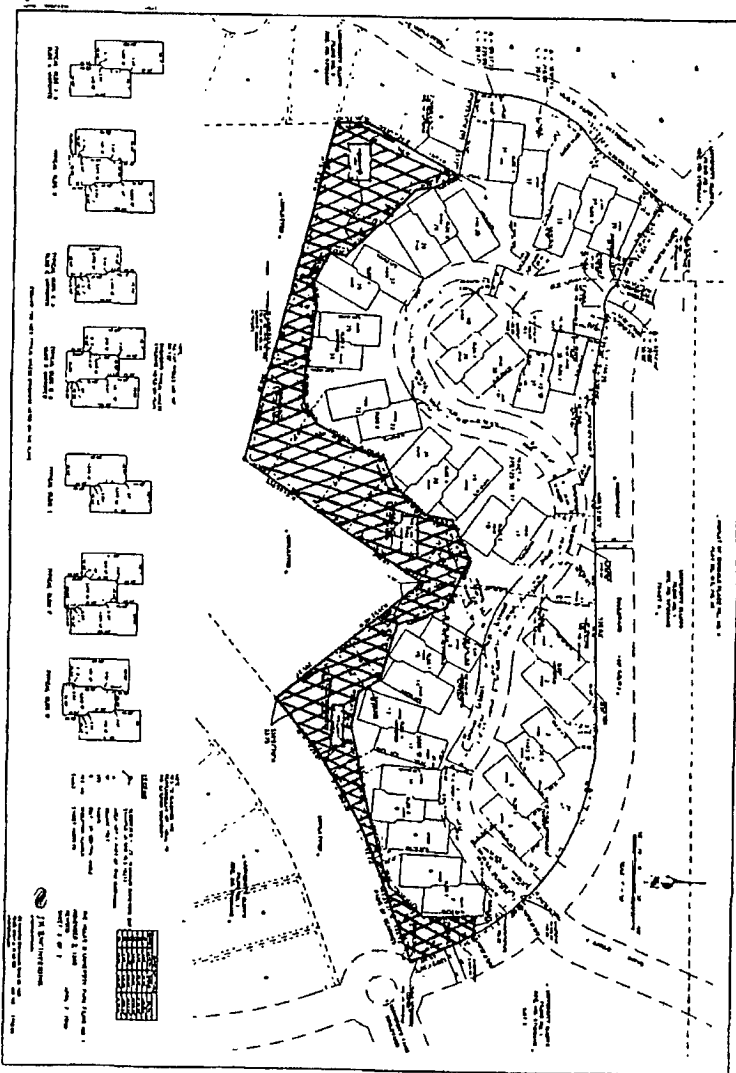
MAINTENANCE AREA EXHIBIT
VILLAS @ UNIV PARK FIL NO 1
JOB NO 8760 50
5/30/00
SHEET 1 OF 1



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EXHIBIT D
TO
DECLARATION OF
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[The Preservation Areas as contained on the Plat and depicted herein for information purposes]



Cross-hatched
areas = The
Preservation
Areas.

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**FIRST AMENDMENT
TO
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAS AT UNIVERSITY PARK**

This First Amendment to Covenants, Conditions and Restrictions for The Villas at University Park is dated as of January 31, 2002 (the "Amendment").

RECITALS

A. Elite Properties of America, Inc., a Colorado corporation, as Declarant ("Declarant"), executed and recorded its Declaration of Covenants, Conditions, and Restrictions for The Villas at University Park on 7-27-2000 at Reception No. 200087944 (the "Covenants").

B. All capitalized terms used in this Amendment without definition shall have the meaning set forth in the Covenants.

C. The Declarant, as the Declarant under the Covenants and as the owner of at least sixty-seven percent (67%) of all of the Lots, desires to amend the Covenants to reflect changes in the administration of covenants by the Department of Veterans Affairs and the Federal Housing Administration and to allow for more flexible use of the working capital funds.

Amendment

NOW THEREFORE, Declarant, as the Declarant and owner of all of the Property and pursuant to the provisions of Section 11.7 hereby amends the Covenants:

1. Working Capital. Section 4.11 of the Covenants is hereby deleted in its entirety and the following language is substituted in its place:

"Section 4.11 Working Capital. Following the date of this Amendment to the Covenants, the Association may, at its option, require the first Owner of a Lot following Declarant's ownership thereof to make a non-refundable contribution to the Association of an amount established from time to time by the Board of the Association, but in no event will the amount exceed two times the then current monthly common assessments charged by the Association. All such contributions shall be maintained in a non-segregated working capital account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures or purchasing additional equipment, property or services. The working capital contributions shall be in addition to the Assessments, and shall not relieve the Owners from paying all assessments as they come due."

2. Management Agreements and Other Contracts. Section 5.6 of the Covenants is hereby amended by deleting the following sentence from Section 5.6:

"Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association



CONSENT OF LENDER

GUARANTY BANK hereby consents to the foregoing First Amendment to Covenants, Conditions and Restrictions for The Villas at University Park.

IN WITNESS WHEREOF, the undersigned has executed this document as of January 31, 2002.

ATTEST:

GUARANTY BANK

Carrie Olin

By: [Signature]
Title: Vice President

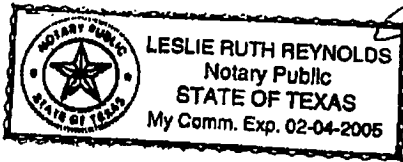
STATE OF Texas)
COUNTY OF Dallas) ss.

The foregoing instrument was acknowledged before me this 31st day of January 2002, by Linda Garcia as Vice President and Paul Kinok as Senior Vice President of **GUARANTY BANK**, as Lender.

Witness my hand and official seal.

My Commission Expires: 02/04/2005

(SEAL)



[Signature]
Notary Public

J. Patrick Kelly El Paso Cty, CO
02/06/2002 08:42 202020401
Doc \$0.00 Page
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No. 394778)
 Warranty Deed) year of our Lord one thousand nine hundred and twenty
 The Colorado Springs Company) beneath the Colorado State of the State of Colorado
 to) under the laws of the Territory, and under the laws
 F. M. Bouck) the laws of the State of Colorado, do hereby certify that
 Filed for Record 11:14 A.M.) F. M. Bouck party of the second part,
 Dec. 2, 1926.)
 G. H. Furrew, Recorder.)

of the second part; and also for the benefit of the said party of the second part
 hereto, for themselves, their heirs, successors, and assigns, that no liquors
 liquors shall never be manufactured, sold, or otherwise disposed of, on any part of the land
 of public resort, in or upon the premises hereby granted, or any part thereof, and that
 and hereby expressly reserved by the said party of the first part that in case any of the above
 conditions concerning intoxicating liquors are broken by the said party of the second part, his
 assigns or legal representatives, then this deed shall become null and void, and all claims, title
 and interest of, in and to, the premises hereby conveyed shall revert to the said party of the
 first part, its successors and assigns, and

deed, for himself, his heirs, assigns, legal representatives, successors, and assigns, that no
 reservations and conditions aforesaid; and that, in case any of the above conditions
 of the second part shall have been broken or violated by the said party of the second part
 the first part on account of any such violation, then the said party of the first part shall
 water pipes, roadways, telegraph, telephone or electric or power lines, which pass over, under
 pass through, the land described in this conveyance.

has granted, retained, sold and conveyed, and by these presents does grant, bargain, sell
 and convey unto the said party of the second part, his heirs, successors, and assigns, all the
 lands and premises, in the County of _____

The South half of the Northwest quarter of Section Twenty-eight, Township _____, Range _____,
 of the Northwest quarter and the Southeast quarter of Section Twenty-eight, Township _____, Range _____,
 South half of Section Twenty-eight bounded on the East by the Garden Park Road and on the
 the East by Palmer Park; that part of the South half of Section Twenty-eight bounded on the
 West and North by the Garden Ranch Road and on the East and South by the Colorado Springs
 Park System Parkway known as the Garden Park Road, and on the East and South by the
 bounded on the West and North by the Garden Ranch Road and on the East and South by the
 Colorado Springs Park System Parkway known as the Garden Park Road, and on the East and South by the
 one-half acre tract of land containing _____

Deed dated January 28th, 1909. All of the above described lands being in the _____
 (13) South, Range Sixty-six (13) West of the _____
 hundred and six and fifteen hundredths (106 15/100) acres, more or less.

And save and excepting what there is hereby reserved to the party of the first part, his
 successors and assigns, the ownership of all deposits of coal, oil, gas, and other minerals
 with the right to go upon said lands, without compensation to any person, to prospect for and
 crops thereon of the second part, his heirs, successors, and assigns, and to use the same
 lands in prospecting for and to remove and dispose of the same, and to use the same
 such deposits, if any, from said lands, and to use the same, and to use the same, and to use the same,
 thereof as may be reasonably necessary for the purpose of the said party of the first part,
 any, is being mined and removed from said lands, and the right of the said party of the first part
 of the said lands by any person, his heirs, successors, and assigns, and to use the same, and to use the same,

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part shall pay the party of the second part for the same, and shall pay the same as they may agree upon in writing, and the value of the same shall be determined by a valuation, shall be determined by a valuation...

TO HAVE AND TO HOLD the same with all the powers, legal and equitable, and all the right, title and interest of the said party of the first part, solely to the use and benefit of the said party of the second part, his heirs and assigns, subject nevertheless to the conditions and reservations hereinafter made, and to the true intent and meaning thereof.

And the said party of the first part further covenants and warrants to the said party of the second part, that at the time of the enclosing and delivery of these presents he is well seized of the premises above conveyed as of good, sure, perfect, lawful and independent tenor, and that he is in law and fee simple, and has good right, title and interest therein, and that he can and lawfully sell and convey the same, in manner and form therein expressed, and that he is not bound by any former and other grants, bargains, sales, leases, tenures, mortgages, or incumbrances of any kind and nature soever, except taxes and assessments for the year 1918 and following years, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim in title or any part thereof, the said party of the first part shall and will warrant, defend and save.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and caused the same to be signed and sealed by the said Secretary, the day and year first above written.

ATTEST: THE COLORADO SPRINGS COMPANY, BY Geo. A. Krause, President.

State of Colorado,) County of El Paso.) ss.

I, J. Milton Fisher, a Notary Public in and for said County, in the State of Colorado, do hereby certify that Geo. A. Krause, President and Secretary of the Colorado Springs Company, who are personally known to me, and who are duly authorized subscribers to the annexed instrument in relation to the said premises, appeared before me this day in person, and acknowledged to me the execution of the said instrument in writing they were respectively the President and Secretary of the said corporation; that the seal of the said corporation, and that they signed, sealed and delivered the same in writing as their free and voluntary act, and as the free and voluntary act of the said Colorado Springs Company, for the use and purpose therein set forth.

Given under my hand and seal of office this 1st day of June, 1918. My commission expires June 1st, 1920.

J. Milton Fisher, Notary Public, County of El Paso, State of Colorado.

No. 585894

A G R E E M E N T

Frank M. Houck

with

Colorado Springs Company

Filed for Record 2:00 P. M.

November 22, 1937.

Charles Oslas, Recorder.

A G R E E M E N T

This Agreement, Made and entered into this 3rd day of September A.D. 1937, by and between F. M. Houck, hereinafter called the "First Party" and the Colorado Springs Company, a corporation, hereinafter called the "Second Party".

W I T N E S S E T H :

That, Whereas, the First party is the owner of certain real estate, the greater portion of which was purchased from the Second Party, and which is described as follows:

The South Half of the Northeast Quarter of Section Twenty; the Southwest quarter of the Northwest quarter and the Southwest quarter of Section Twenty-one; that part of the South Half of Section Twenty-eight bounded on the West by the Garden Ranch Road and on the East by Palmer Park; that part of the South Half of Section Thirty-two bounded on the West and North by the Garden Ranch Road and on the East and South by the Colorado Springs Park System Roadway known as the Faceo; that part of the West half of Section Thirty-three bounded on the West and North by the Garden Ranch Road and on the South and East by the Colorado Springs Park System Roadway known as the Faceo and by Palmer Park and the two and one-half acre tract of land adjoining Palmer Park and conveyed to Anna Elizabeth Kent by Deed dated January 25th, 1935. All of the above described land being in Township Thirteen (13) South, Range Sixty-six (66) West of the Sixth Principal Meridian, and containing Six Hundred and Six and fifteen hundredths (606.15) acres, more or less.

WHEREAS, the Second Party is the owner and entitled to the use and benefit of all minerals and mineral rights pertaining to the property above described, and

WHEREAS, the First Party has for many years received the benefit of water pumped from its mining operations by the Second Party carried on beneath the surface of the above described premises, which waters have been used for irrigation and other beneficial uses upon said lands above described by the First Party, and which waters and the use thereof have materially increased the value of said lands, and

WHEREAS, the parties are desirous of liquidating any possible damages that may hereafter result to the First Party by reason of the sinking of the surface of said lands as the result of the mining operations conducted thereunder by the Second Party and to eliminate the uncertainties and questions connected with the increased value of said lands due to the water derived from the mining operations of the Second Party.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That the First party in consideration of the payment of Ten Dollars by the Second Party receipt of which is hereby acknowledged and confessed, the use, benefit and value of the waters heretofore furnished and to be hereafter furnished by the Second Party to the First Party for use upon the above described property; and for other good and valuable considerations, receipt of which is hereby acknowledged by the First Party, agrees as follows:

- 1. That if there shall be any cave-ins on the surface of said lands owned by the First Party, which cave-ins shall be due to the mining operations of the Second Party, either past, present or future, and which cave-ins shall be on and which mining operations

shall be under that portion of the above described lands lying North of a line running in a Southeastary direction from Dr. Houck's present beach house, through the North end of his present lower reservoir to the center of the South Half of the North and South center line of Section 33, Township 13 South, Range 67 West of the 6th P. M., compensation for such cave-ins and damages incidental thereto shall be made in one of the following manners at the sole election of the Second Party, that is to say:

(a) All of said cave-ins shall be filled in by the Second Party at its sole expense to the level of the surrounding ground which did not cave in, and with a proper and sufficient amount of good surface soil on top, or

(b) Such damages shall be computed on the basis of \$50.00 per acre for such area as shall have caved in, and payment made accordingly by the Second Party to the First Party as soon as said computation is made, and agreed upon, in full final settlement of all damages and claims for damages which might occur as a result of said cave-ins.

2. The foregoing basis of adjusting any and all damages shall apply both while the mines of the Second Party are in operation, as well as in event of the cessation of said operations by the Second Party, and in event of such cessation of operations by the Second Party the First Party shall have the right and privilege of pumping said waters from any portion of the mining premises of the Second Party at any point. All such pumping operations after cessation of mining operations by the Second Party shall be solely at the expense and risk of the First Party.

3. In consideration of the aforesaid and covenants hereinabove contained, Second Party agrees:

(a) That it will keep its workings in and under said premises above described well timbered when coal mining is being the same and shall exercise reasonable care to keep all parts of the workings where coal is not exhausted free from excess waters and waste material, and shall exercise reasonable care and caution to protect all its workings against fire, explosions, floods, creeps and squeezes, and when any such shall occur shall make reasonable effort to check the same in a manner in keeping with coal mining, and will at all times carry on its operations in a careful, workmanlike manner, exercising proper and reasonable care and caution. Nothing herein, however, shall be construed as requiring the Second Party to leave its timbers in areas where pillars have been withdrawn and coal exhausted and the same are no longer used for mining operations.

(b) That Second Party, its lessees or assigns, will not mine within seventy-five (75) feet in any direction of the present dairy barn and present attached buildings, and present upper reservoir located north of Gray shaft. That the basis of adjusting any and all damages as outlined previously in this contract shall not apply in these two particular areas.

4. This agreement shall be forever binding upon the heirs, administrators, assigns, successors, personal representatives, lessees, sub-lessees, contractors, and sub-contractors of either of the parties hereto and shall apply with like force to all licensees, permittees and successors in interest of either of said parties.

IN WITNESS WHEREOF, the First Party has set his hand and seal and the Second Party has caused its corporate name to be signed hereto by its President and its corporate seal to be affixed and these presents attested by its Secretary, being duly authorized thereto by resolution of said company.

Frank E. Houck (Seal)
First Party

Colorado Springs Company,
by Geo. A. Krause
President.

Attest: Geo. H. Krause.
Secretary.



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No. 588917
Vacation of a Portion of
The County Road
By
Board of County Commissioners
Filed for Record 8:00 A. M.
November 23, 1937
Charles Elias, Recorder

Whereas The hereinafter described real property was here-
before a County Road and has been abandoned by
moving the road wholly to the East and
Whereas It is the desire of the Board of County Commis-
sioners of Alamosa County, Colorado, to vacate
said property as a road.
Therefore It is resolved by the Board of County Commis-
sioners of the County of Alamosa and State of Colorado

that the following described real property is as the following:

"Beginning at the Northeast corner of Lot 1 in Subdivision No. 2 as recorded in the Office of the Clerk and Recorder of said Alamosa County and running thence N. 17°12' W. along and coincident with the West line of said Lot 1 and the East line of Lot 7 in said subdivision, a distance of 244.15 feet, thence N. 10°37' W. a distance of 69.05 feet to the intersection with the West line of County Road, a public highway, as at present established, thence N. 2°00'30" E. along and coincident with the West line of County Road, a distance of 236.5 feet to the place of beginning.

In being the intention to do so is hereby all the portion of the public highway now known as Grants Road, lying between its West line as formerly established, and its West line as at present established, between the North and South lines of Lots No. 2 and 3 of said Subdivision No. 2 extended westerly in a straight line to hereby vacated."

The above resolution is a true and accurate copy of that portion of the Minutes of the meeting of the Board of County Commissioners of Alamosa County held November 23rd, 1937.

Charles Elias
County Clerk

by G. A. Thompson
Sec. to Board



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No. 5
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QUIT CLAIM

151817
MAY 5 1961

That the City of Colorado Springs, Colorado, a municipal corporation, acting by and through its duly appointed Mayor and President of the City Council of said City, and its duly appointed Commissioner, in consideration of the sum of \$100.00 (one hundred and 00/100 dollars) and other good and valuable consideration, the receipt of which is hereby acknowledged, well and quit claim to the following described plat-of-way or easement situated in the South half of the Southeast Quarter of Section 20, Town 13 North, Range 70 West of the 6th P.M. in the County of El Paso and State of Colorado to wit:

Said plat-of-way being 20 feet in width, shall extend also on the South line of said Section 20, which is 1132 feet long from the Southeast corner of said Section 20; thence North-easterly 10 feet, more or less, to a point on the East line of the water storage site of the City of Colorado Springs, which is 10 feet north of the South line of said Section 20 and 20 feet West of the East line thereof, except in however, that part of the above described plat-of-way which crosses a portion of said water storage site, described in detail recorded in Book 142 at Page 22 under Section No. 11891 of the records of El Paso County, Colorado.

Also beginning at a point on the East line of the water storage site of the City of Colorado Springs, which is 187 feet West of the South line of said Section 20, and 23 feet West of the East line of said Section 20; thence North-easterly 350 feet, more or less to a point on the East line of said Section 20, which is 570 feet West of the Southeast corner thereof.

It is hereby certified that the City of Colorado Springs, Colorado, has caused its corporate seal to be hereunto affixed and these presents to be signed and delivered by its duly authorized Mayor and President on this 25th day of April, 1961.



Attest:
[Signature]
City Clerk

[Signature]
Notary Public

CERT. FEE \$ None CPE

(SEAL)
SWAY (10000000)
COMM (10000000)

This foregoing instrument was recorded and before me on this 4th day of April, 1961, by WILLIAM C. [Signature], Mayor and President of the City of Colorado Springs, Colorado, and [Signature], City Clerk of the City of Colorado Springs, Colorado.

[Signature]
Notary Public
My Comm. Expires Apr. 9, 1962

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**BYLAWS
OF
THE VILLAS AT UNIVERSITY PARK HOMEOWNER'S ASSOCIATION**

These Bylaws are hereby adopted as the bylaws of The Villas at University Park Homeowner's Association


**ARTICLE I
OBJECT**

- 1 The Villas at University Park Homeowner's Association shall be a nonprofit corporation
- 2 The purpose for which this nonprofit Association is formed is to govern the property that has been submitted to the provisions of the Declaration of Covenants, Conditions, Restrictions and Easements of The Villas at University Park to be recorded in the El Paso County, Colorado Records (the "Declaration") Terms defined in the Declaration shall have the same meanings herein unless otherwise defined
- 3 All present or future owners, tenants, future tenants or any other person that might use in any manner the property described in the Declaration are subject to the regulations set forth in these Bylaws The mere acquisition or rental of any of the Lots or the mere act of occupancy of any of said Lots will signify that these Bylaws are accepted, ratified and will be complied with

**ARTICLE II
MEMBERSHIP, VOTING, MAJORITY
OF OWNERS, QUORUM AND PROXIES**

- 1 Membership Membership in the Association shall be as set forth in the Articles of Incorporation of the Association and the Declaration Such membership shall terminate without any formal Association action whenever such person ceases to be the Owner of a Lot, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with this Association during such ownership and membership in the Association, or impair any rights or remedies that the Lot Owners have, either through the Board of Directors of the Association or directly, against such former Owner and Member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto
- 2 Voting Each membership shall have the vote(s) appurtenant thereto as described in the Declaration When more than one person holds the membership, they shall appoint one of their co-members as proxy to cast the vote for that membership Such vote shall be cast as the Owners thereof agree, but in no event shall more than one vote per question be cast with respect to any one membership If the co-members cannot agree as to the manner in which their vote should be cast when called upon to vote, then they will be treated as having abstained
- 3 Quorum Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members holding ten percent (10%) of the votes entitled to be cast shall constitute a quorum Unless otherwise specifically provided by the Declaration, the Articles of Incorporation of the Association, or these Bylaws, all matters coming before a meeting of members at which a proper quorum is in attendance, in person and/or by proxy, shall be decided by the vote of a majority of the votes validly cast at such meeting Nothing contained in these Bylaws or the Articles of Incorporation of the Association shall limit or prohibit the exercise by Declarant of the reserved rights of Declarant under the Declaration

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ARTICLE III
ASSOCIATION MEETINGS

1 Association Responsibilities The affairs of The Villas at University Park Homeowner's Association (herein referred to as "Association"), will be managed by its Board of Directors (hereinafter referred to as the "Board")

2 Place of Meeting Meetings of the Association shall be held at such place within the State of Colorado as the Board may decide

3 Annual Meeting The annual meeting of Members of the Association shall be held on the second Tuesday in February of each year commencing in 2000. At such Meetings there shall be elected by ballot of the Members a Board of Directors according to the requirements of Section 4 of Article IV of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

4 Special Meetings The President may call a special meeting of the Members upon his own initiative or as directed by resolution of the Board or upon receipt of a petition signed by at least five percent (5%) of the Members. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business except as stated in the notice shall be transacted at a special meeting unless by consent of a majority of the Members present, either in person or by proxy. Any such meetings shall be held at such place and time as the President decides within thirty (30) days after receipt by the President of such resolution or petition.

5. Notice of Meetings The Secretary shall cause to be mailed or delivered a notice of each annual or special meeting, stating the purpose of it and the time and place it is to be held, to each Member of record, at the registered address of each Member, at least fifteen (15), but not more than thirty (30) days before such meeting. The mailing of a notice in the manner provided in this Section or the delivery of such notice shall be considered notice served, and the certificate of the Secretary that notice was duly given shall be prima facie evidence of it.

6 Adjourned Meetings If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting, to a time not less than forty-eight (48) hours from the time the original meeting was called.

7 Order of Business The order of business at all meetings of the Members shall be as follows:

- (a) Roll call and certifying proxies
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of Minutes of preceding meetings
- (d) Reports of Officers
- (e) Reports of Committees
- (f) Election of Directors
- (g) Unfinished business
- (h) New business
- (i) Adjournment

8 Proxies At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his Lot.

ARTICLE IV
BOARD OF DIRECTORS

1 Number and Qualification The initial Board shall have three (3) members, who shall be appointed by the Declarant. At the first annual meeting after the reserved rights of Declarant to appoint and remove officers and directors of the Association terminates (as provided in Article 5, Section 5.5 of the Declaration) there shall be elected at least seven (7) but not more than eleven (11) Members of the Association to the Board who shall govern the affairs of this Association until their successors have been duly elected and qualified. To be eligible to be a member of the Board of Directors, a person must be a representative of Declarant or an Owner.

2 Powers and Duties The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Community Area. Such powers and duties of the Board shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the Owners of the Lots:

(a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the Bylaws of the Association and supplements and amendments thereto.

(b) To establish, make and enforce compliance with such rules and regulations as may be necessary to carry out the Association's purposes, with the right to amend the same from time to time. A copy of such rules and regulations shall be delivered or mailed to each Member upon the adoption thereof.

(c) To incur such costs and expenses as may be necessary to keep in good order, condition and repair all of the areas in the Community Area required to be maintained by the Association.

(d) To obtain and maintain all insurance required or permitted under the Declaration or otherwise deemed advisable by the Association.

(e) To prepare a budget for the Association in the manner set forth in the Declaration to determine the amount of the common expense assessments payable by the Owners to meet the common expenses of the Community Area, and allocate and assess such common expenses among the Owners as set forth in the Declaration and to adjust, decrease or increase the amount of the common expense assessments and to levy and collect special assessments.

(f) To collect delinquent assessments by suit or otherwise and to enjoin or seek damages from a Member as is provided in the Declaration and these Bylaws. The Board shall have the duty, rights, power and authority to suspend the voting rights of any Member in the event that any assessment made remains unpaid more than thirty (30) days from the due date for payment of it. Such rights may also be suspended for a period not to exceed sixty (60) days for infraction of published rules and regulations of the Association.

(g) To borrow funds to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board may deem necessary and, upon the written consent of the members entitled to vote, to give security therefor. Such indebtedness shall be the several obligations of all of the Members in the manner set forth in the Declaration. The persons who shall be authorized to execute promissory notes and security instruments on behalf of the Association shall be the President or Vice President and Secretary or Assistant Secretary.

(h) To enter into contracts to carry out their duties and powers and to hire and fire all personnel necessary for the operation, maintenance, repair and replacement of the areas for which the Association is responsible under the Declaration

(i) To establish a bank account or accounts for the common treasury and for all separate funds of the Association that are required or may be deemed advisable

(j) To make repairs, additions, alterations and improvements to the areas required to be maintained by the Association

(k) To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to allow examination thereof at any reasonable time by each Member and First Mortgagees of Lots, and to cause a certified public accountant to prepare a compilation or review financial statement of the books and records of the Association at the end of each fiscal year. At the option of the Board, an annual review or audited financial statement may be required

(l) To prepare and deliver annually to each Member the reports prepared under subsection (k) above

(m) To meet at least annually.

(n) To supervise all officers, agents and employees of this Association, and to see that their duties are properly done,

(o) As more fully provided in the Declaration, to

(1) Fix the amount of the annual common expense assessment against each Lot;

(2) Send written notice of each annual common expense assessment to every Owner subject thereto in the manner and at the times set forth in the Declaration, and

(3) Foreclose the lien against any Lot for which assessments are not paid within such time period determined by the Board of Directors and in accordance with the Declaration and applicable law after the due date or bring an action at law against the Owner personally obligated to pay the same,

(p) Subject to the provisions of the Declaration to issue or to cause an appropriate officer to issue, upon demand by a person, a certificate setting forth whether any assessment has been paid, a reasonable charge may be made by the Board of Directors for the issuance of these certificates, if a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment to that person who relies thereon to his detriment,

(q) To cause all officers and employees having fiscal responsibilities to be bonded, if and as it may deem appropriate,

(r) Employ the services of a manager or managing agent, or both, and such independent contractors or other employees as they deem necessary, and delegate any of their duties to such persons, provided, however, when so delegated, the Board of Directors shall not be relieved of its responsibilities under the Declaration, the Articles of Incorporation or these Bylaws; and

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(s) In general, to carry on the administration of this Association and to do all of those things necessary and reasonable to carry out the governing and the operation of the Community Area.

3 No Waiver of Rights The omission or failure of the Association or any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Declaration, the Articles of Incorporation, these Bylaws or the Rules and Regulations adopted pursuant hereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board or the managing agent shall have the right to enforce the same thereafter

4 Election, Term of Office and Compensation Except as is otherwise provided by these Bylaws, the Directors shall hold office for a term of three years or until their successors have been elected and hold their first meeting. The terms of the Board of Directors elected at the first annual meeting of the Board held after the reserved rights of the Declarant to appoint and remove officers and directors of the Association terminates shall be staggered with three (3) members being elected for one (1) year and, if the total number of directors is eleven (11), four (4) members being elected for three (3) years and four (4) members being elected for two (2) years, or, if the total number of directors is seven (7), two (2) members elected for three (3) years and two (2) members elected for four (4) years. As the terms of such members of the Board expire, their successors shall be elected for terms of three (3) years. No Director shall be entitled to receive any compensation for the performance of his duties, but shall be entitled to reimbursement for reasonable and necessary expenses incurred by him for the benefit of the Association. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors before each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the board of Directors as it shall in its discretion decide, but not less than the number of vacancies that are to be filled. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

5 Vacancies Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, although they may constitute less than a quorum, and each person so elected shall be a Director until his successor is elected.

6 Removal of Directors At any regular or special meeting of Members duly called, any one or more of the Directors (other than Directors appointed by Declarant) may be removed with or without cause by a vote of a majority of the Members, and a successor may then be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting before voting thereon.

7 Organizational Meeting The first meeting of a newly elected Board shall be held within ten (10) days following each annual meeting of the Members at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly-elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

8. Regular Meetings Regular meetings of the Board may be held at such time and place as shall be decided, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to

each Director, personally or by mail, telephone or telegraph, at least five (5) days before the day named for such meeting.

9. Special Meetings Special meetings of the Board may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of two (2) or more Directors.

10. Waiver of Notice Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place of it. If all of the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

11. Board of Directors' Quorum At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

12. Fidelity Bonds The Board may require that any officer and/or employee of the Association and any managing agent who handles or is responsible for Association funds furnish adequate fidelity bonds. The premiums on such bonds, regarding the Association's officers and employees only, shall be a common expense.

ARTICLE V OFFICERS

1. Designation The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board, and such assistant officers as the Board shall, from time to time, elect. Except the President, such officers need not be members of the Board of Directors, but each shall be an Owner, an officer or director of a corporate Owner of a Lot in the Community Area, a general partner in a partnership that owns a Lot, a member or manager of a limited liability company that owns a Lot, or the Declarant or its representative(s), if Declarant is a Member. Any two or more offices may be held by the same person, except the office of President and Secretary.

2. Election of Officers The officers of the Association shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

3. Resignation, Removal, Vacancies, and Multiple Offices Any officer may be removed from office with or without cause upon an affirmative vote of the Board of Directors. Any officer may resign any time after giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office may be filled by appointment by the Board at any regular meeting or special meeting called for that purpose. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

4. President The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties that are usually vested in the office of president of an association, including but not

limited to the power to appoint committees from among the Owners as from time to time he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association

5 Vice President The Vice President shall have all the powers and authority and perform all the functions and duties of the President in the absence of the President, or his inability for any reason to exercise such powers and functions or perform such duties, and shall exercise and discharge such other duties as may be required of him by the Board.

6 Secretary The Secretary shall keep all the minutes of the meetings of the Board and the minutes of all meetings of the Association, he shall have charge of such books and papers as the Board may direct, and he shall, in general, perform all the duties incident to the office of secretary.

The Secretary shall compile and keep up to date at the principal office of the Association a complete list of Members and their registered addresses as shown on the records of the Association. Such list shall also show opposite each Member's name the number or other appropriate designation of the Lot. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours. In addition, a list of all Mortgagees of Lots shall be maintained to the extent such Mortgagees provide written notice to the Association of their mortgage interest. The records referred to in this subsection may be maintained by a managing agent.

7 Treasurer The Treasurer shall have the responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, provided, however, that when a managing agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer's responsibility shall be to review the accounts of the managing agent not less often than quarterly.

ARTICLE VI
INDEMNIFICATION OF OFFICERS,
DIRECTORS AND MANAGING AGENT

1 Indemnification The Association shall indemnify every Director and officer, their respective successors, personal representatives and heirs, against all loss, costs and expenses, including attorneys' fees, reasonably incurred by them concerning any action, suit or proceeding to which they may be made parties because of their being or having been a Director or officer of the Association, except as to matters as to which they shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In case of a settlement (which must be approved by the attorney for the insurers if paid out of insurance funds), indemnification shall be provided only concerning such matters covered by the settlement about which the Association is advised by the Association's attorneys that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duties as such Director or officer in relation to the matter involved. These rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association because of, arising out of, or concerning the foregoing indemnification provisions shall be treated and handled by the Association as common expenses, provided, however, that nothing in this Article VI shall be deemed to obligate the Association to indemnify any Member(s) or Owner(s) of a Lot, who is or has been a Director or Officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of such person's status as a Member or Owner under the Declaration, Articles and Bylaws.

2 Other Contracts or other commitments made by the Board of Directors, officer(s) or the managing agent shall be made as agent for the Association, and they shall have no personal responsibility on any such contract or commitment.

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ARTICLE VII
AMENDMENTS

These Bylaws may be amended by the Directors at a duly constituted meeting of the Directors for such purpose. The Bylaws may contain any provisions for the regulation or management of the affairs of the Association not inconsistent with Colorado law, the Declaration or the Articles of Incorporation. Amendments to the Bylaws may be recorded in the records of the Clerk and Recorder of El Paso County, but such recordation shall not be a requirement for the validity of such amendments.

ARTICLE VIII
MORTGAGES

1 **Notice to Association** A Member who mortgages his Lot shall notify the Association through the Association's Secretary, giving the name and address of his Mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Lots."

2 **Notice of Unpaid Common Expenses** This Association, whenever so requested in writing by a Mortgagee of a Lot, shall promptly report any then unpaid common expenses due from the Owner of its mortgaged Lot, or any other default by, the Owners of a mortgaged Lot, which delinquency in payment or other default is not cured within sixty (60) days from the date of the occurrence.

3 **Notice of Default** When giving notice to a Member of a default in paying common expenses or other default, the Board shall send a copy of such notice to each holder of a mortgage covering such Lot if the Association has actual knowledge of said Mortgage and such Mortgagee has requested such notice in writing.

4 **Examination of Books** Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00), and upon ten (10) days' written notice to the Board or the managing agent of the Association, any Owner shall be entitled to obtain a certificate of status of assessments setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. Current copies of the Declaration, Articles of Incorporation and Bylaws of the Association, rules and regulations governing the Association, and other books, records and financial statements of the Association, shall be made available to Owners, First Mortgagees of Lots and insurers or guarantors of any such First Mortgage. Current copies of the Declaration, Articles of Incorporation, Bylaws, rules and regulations, and the latest financial statement of the Association shall be available for examination by prospective purchasers of Lots. The word "available," as used herein, shall at least mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

ARTICLE IX
EVIDENCE OF OWNERSHIP,
REGISTRATION OF MAILING ADDRESS AND
DESIGNATION OF VOTING REPRESENTATIVE

1 **Proof of Ownership** Any person on becoming an Owner of a Lot and a Member of the Association shall furnish to the secretary of the Association a copy of the recorded instrument vesting that person with an interest or ownership in the Lot, which copy shall remain in the files of the Association.

2 **Registration of Mailing Address** The Owners or several Owners of an individual Lot shall have the same registered mailing address to be used by the Association for mailings to Members and/or Owners of statements, notices, demands and all other communications, and such registered

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address shall be the only mailing address of a person or persons, firm, corporation, partnership, limited liability company, association or other legal entity or any combination thereof to be used by the Association. Such registered address of a Member or Owner shall be furnished to the Secretary of the Association within fifteen (15) days after transfer of title, or after a change of address, and such registration shall be in written form and signed by all of the Owners of the Lot or by such persons as are authorized by law to represent the interest of the Owners thereof. Unless otherwise notified by the Owner, the registered mailing address shall be the address of the Lot of such Owner.

3 Designation of Voting Representative - Proxy If a Lot is owned by one person, his right to vote shall be established by his record title thereto. If title to a Lot is held by more than one person or by a firm, corporation, partnership, limited liability company, association or other legal entity, or any combination thereof, such Owners shall execute a proxy appointing and authorizing one person or an alternate person to attend all annual and special meetings of members and thereat to cast whatever vote the Owner himself might cast if he were personally present. Such proxy shall be effective and remain in force unless voluntarily revoked, amended or sooner terminated by operation of law, provided, however, that within thirty (30) days after such revocation, amendment or termination, the Owners shall reappoint and authorize one person or alternate persons to attend all annual and special meetings as provided by this Section 3.

The requirements herein contained in this Article IX shall be first met before an Owner of a Lot shall be deemed in good standing and entitled to vote at any annual or special meeting of Members.

ARTICLE X OBLIGATIONS OF THE OWNERS

1 Maintenance and Repair

(a) Except for those repairs for which the Association is responsible pursuant to the Declaration, every Member shall perform promptly, at his own expense, all maintenance and repair work within his Lot as required by the Declaration, or which, if omitted, would affect the appearance or the aesthetic integrity of part or all of the Community Area.

(b) A Member shall be obligated to reimburse the Association promptly upon receipt of its statement for any expenditure incurred by it in repairing or replacing any part of the areas required to be maintained by the Association damaged by such Owner's actions or negligence or by the actions or negligence of the Owner's tenants, employees, agents, guests or invitees.

2 General

(a) Each Member shall comply strictly with the provisions of the recorded Declaration, the Articles of Incorporation and these Bylaws and amendments thereto.

(b) Each Member shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which the project was created.

3. Rules and Regulations

The Board reserves the right to establish, make and enforce compliance with such rules and regulations as may be necessary for the operation, use and occupancy of the Community Area with the right to amend the same from time to time. Copies of such rules and regulations shall be furnished to each owner prior to the date when the same shall become effective.

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ARTICLE XI
ASSOCIATION NOT FOR PROFIT

1 Association Not for Profit This Association is not organized for profit. No Member, member of the Board, officer or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board, officer or Member, provided, however, always that any Member, Director or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association. The provisions herein are not applicable to the managing agent or other service provider to the Association, regardless of whether such provider is related in any way to the Declarant, who shall perform its manager's duties, functions or services according to a written agreement for the compensation stated therein.

ARTICLE XII
DOCUMENT CONFLICT

In the case of a conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In the case of any conflict between the Declaration and these Bylaws or between the Declaration and the Articles of Incorporation, the Declaration shall control.

ARTICLE XIII
ASSESSMENTS

1 Assessment Procedure in General As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Owner's Lot. Any assessments which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from 30 days following the date of delinquency at the rate of eighteen percent (18%) per annum, the Association may assess a monthly late charge of ten percent (10%) of the delinquent assessment. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot. Interest, late charges, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment or leasing of his Lot.

2 Special Assessments Special assessments shall only be assessed as set forth in the Declaration upon a vote of the Board of Directors.

ARTICLE XIV
CORPORATE SEAL

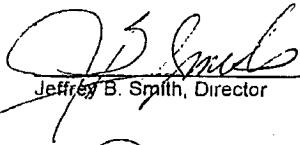
The Association shall have a seal in circular form having within its circumference the words "The Villas at University Park Homeowner's Association."

ARTICLE XV
MISCELLANEOUS

1 Fiscal Year The fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

2 Action By Members of Directors Without a Meeting Any action required to be taken at a meeting of the Members or Directors of the Association or any action which may be taken at a meeting of the Members or Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the Members or all the Directors entitled to vote with respect to the subject matter thereof, as the case may be. This consent shall have the same force and effect as a unanimous vote.


IN WITNESS WHEREOF, the undersigned, being the members of the Initial Board of Directors of The Villas at University Park Homeowners' Association, have hereunto set their hands effective as of May 18, 2000



Jeffrey B. Smith, Director



Douglas M. Stimple, Director



Joe Loidolt, Director

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