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THE
CONDOMINIUM DECLARATION
FOR
THE SHADOW CREEK CONDOMINIUMS

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**THE
CONDOMINIUM DECLARATION
FOR
THE SHADOW CREEK CONDOMINIUMS**

PREAMBLE

THIS DECLARATION, made and entered by WONDERLAND HILL DEVELOPMENT COMPANY, a Colorado Corporation, hereinafter referred to as the "Declarant";

WHEREAS, the Declarant is the owner of the real property situated in the County of Boulder, State of Colorado, which is described as:

See legal description attached hereto as Exhibit "A" hereinafter referred to as "THE PROPERTY"; and

WHEREAS, the Declarant desires to establish a Condominium Project under the Condominium Ownership Act of the State of Colorado, to wit: Colo. Rev. Stat. Ann. §38-33-101, et seq.; and

WHEREAS, the Declarant does hereby establish a plan for the separate fee simple ownership of real property estates consisting of Condominium Apartments in The Buildings, both as hereinafter defined, and the co-ownership by the separate owners thereof, as tenants in common, of all the remaining property, which is hereinafter referred to as the Common Elements.

NOW, THEREFORE, the Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, a benefit to the Declarant, its successors and assigns, and any person acquiring or owning their grantees, successors, heirs, personal representatives, administrators, devisees or assigns.

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ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ARTICLES means the Articles of Incorporation of the Association.

1.2 ASSESSMENTS (Annual Assessment for Common Expenses) means all monies due the Association from the Members ad duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE FIVE hereof.

1.3 ASSOCIATION means THE SHADOW CREEK CONDOMINIUM ASSOCIATION, a Colorado Corporation, not for profit, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of The Project; the Members of which shall be all of the Owners of the Units in The Project.

1.4 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The terms Board of Directors as used herein shall be synonymous with the term Board of Managers as the latter term is used in the Colorado Act, Colo. Rev. Stat. Ann. §38-33-106. The Board of Directors is the governing body of the Association.

1.5 BYLAWS means the Bylaws of the Association as amended from time to time.

1.6 COMMON ELEMENTS means all of The Project, as hereinafter defined, except the portions thereof which constitute Condominium Apartments, and also means all parts of The Buildings or any facilities, improvements and fixtures which may be within a Condominium Apartment which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of The Buildings or any part thereof or any other Condominium Apartment therein and includes those Common Elements which are assigned to the exclusive use of one or more, but not all of the Condominium Apartment Owners. The term Common Elements as used herein shall be synonymous with the term General Common Elements as the latter term is used in the Colo. Rev. Stat. Ann. §38-33-103(3).

Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- (a) all of the land, landscaping court yard, plaza, private driveways and easements which are a part of The Project; and

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(b) all foundations, columns, girders, beams and supports of The Buildings; and

(c) the exterior walls of The Buildings, the main or bearing walls within The Buildings, the main or bearing subflooring and the roofs of The Buildings; and

(d) all stairs, stairways and walkways not within a Condominium Apartment; elevator; lobby and swimming pool and

(e) all utility, service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, incineration, or similar utility, service or maintenance purposes, including furnaces, apparatus, installations, facilities, all of which serve more than one Apartment and are not located within an Apartment, and

(f) the exterior of the firebox within a fireplace or stove located in an Apartment together with the flues and flue chases. The space within the firebox is a Limited Common Elements; and

(g) all other parts of The Project necessary in common use or convenient to its existence, maintenance and safety.

1.7 COMMON EXPENSES means expenditures made by, or financial liabilities incurred by the Association, together with any allocations to reserves, all as may be found to be reasonable and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

1.8 CONDOMINIUM APARTMENT or APARTMENT (Individual Air Space Unit) means the individual air space of such Condominium Apartment which is contained in an enclosed room or rooms occupying all or part of a floor or floors in The Buildings as hereinafter defined, not including, however, any of the Common Elements located within such air space. Each Condominium Apartment is shown on The Map as hereinafter defined and is identified thereon with a number.

1.9 CONDOMINIUM PROJECT or THE PROJECT means all of The Property, The Buildings, and all improvements submitted to this Declaration.

1.10 CONDOMINIUM UNIT or UNIT means the fee simple interest and title to a Condominium Apartment together with the undivided interest in the Common Elements appurtenant to such Condominium

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Apartment and all other rights and burdens created by this Declaration.

1.11 DECLARANT means WONDERLAND HILL DEVELOPMENT COMPANY, a Colorado Corporation, its successors or assigns, if such successors or assigns shall acquire any portion of The Project for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant for the purpose hereof by a duly recorded written instrument. Any such designation by the Declarant or a successor Declarant may include the right of redesignation by such successor or further successors.

1.12 DECLARATION means this CONDOMINIUM DECLARATION FOR THE SHADOW CREEK CONDOMINIUMS as may be amended from time to time, together with any and all Supplementary Declarations that may be recorded from time to time pursuant to the provisions of ARTICLE TWELVE hereof.

1.13 FIRST MORTGAGEE means any person, corporation, partnership, trust, company, association or other legal entity which owns, holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering a Condominium Unit within The Project. A First Mortgagee shall also include the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is Seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

1.14 GUEST means any agent, tenant, guest, licensee or invitee of an Owner and the members of such Owner's household.

1.15 LIMITED COMMON ELEMENTS means those Common Elements which are reserved for the use of certain Owners to the exclusion of others, such as, for example, balconies, entry ways and parking spaces.

1.16 MANAGING AGENT means the person employed and paid by the Board to perform the management and operational functions of The Project.

1.17 MEMBER means all those who are Members of the Association as provided in Paragraph 4.4 hereof.

1.18 OWNER means the person owning a Condominium Apartment in fee simple together with an undivided interest in fee simple in the Common Elements in the percentage specified and established in this Declaration, whether one or more persons or entities, including the Declarant so long as any Unit remains unsold, excluding however, those having an interest merely as security for the performance of an obligation.

1.19 PERSON means individual, corporation, partnership,

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association, trustee or any other legal entity or any combination thereof.

1.20 RESERVED COMMON ELEMENTS means such portions of the Common Elements which the Declarant or Board of Directors may designate as such from time to time pursuant to Paragraph 2.16 hereof.

1.21 RULES means the Rules and Regulations adopted by the Board of Directors as amended from time to time.

1.22 THE BUILDINGS means the multiple unit buildings comprising part of The Project.

1.23 THE MAP means THE CONDOMINIUM MAP OF THE SHADOW CREEK CONDOMINIUMS which may be filed in whole or in part, and if filed in part shall be supplemented as determined by the Declarant, depicting thereon:

(a) The legal description of the surface of The Project; and

(b) The linear measurements and location, with reference to the exterior boundaries of The Project, of The Buildings and all improvements built on The Project; and

(c) The floor plans and elevation plans of The Buildings within The Project showing the location, the designation and the linear dimensions of each Condominium Apartment, Parking Spaces and the designation of all of the Common Elements, Limited Common Elements and Reserved Common Elements; and

(d) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plan, and the linear measurements showing the thickness of the exterior or perimeter walls of the Apartments and of The Buildings.

The Map, and any supplements thereto, shall contain a statement of an architect, engineer or registered land surveyor certifying that The Map fully and accurately depicts the layout, measurements and location of all of the improvements, the Condominium Apartment designations, the dimensions of such Condominium Apartments and the elevations of the floors and ceilings and that The Map was prepared subsequent to substantial completion of the improvements.

Declarant hereby reserves unto itself the right, from time to time, without the consent of any Owner or First Mortgagee being required to amend The Map and any supplements thereto in accordance with ARTICLE TWELVE hereof, so long as such amendment is made not later than five years from the date of the recording of this Declaration in the Boulder County, Colorado Records.

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Declarant hereby reserves unto the Board of Directors of the Association the right, from time to time, without consent of any Owner or First Mortgagee being required to amend The Map to (a) insure that the language and all particulars used on The Map and contained in the Declaration are identical, (b) establish, vacate and relocate outside The Building(s) utility easements, driveway easements, and parking spaces, and (c) establish certain Common Elements as Limited Common Elements.

In all other cases The Map may be amended in accordance with Paragraph 13.2 hereof.

The Map and any supplements thereto is hereby incorporated herein by reference as if set forth in its entirety.

1.24 VA AND/CR FHA APPROVAL shall mean that The Project has been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Unit within The Project.

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ARTICLE TWO: NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

2.1 Division into Units, Estates of an Owner. Subject to the provisions of ARTICLE TWELVE hereof, The Project is hereby divided into twelve Units, each consisting of a separate fee simple estate in a particular Condominium Apartment, and an appurtenant undivided fee simple interest in the Common Elements. The undivided interest in the Common Elements appurtenant to a particular Condominium Apartment has been determined by the Declarant on the basis of the proportion which the approximate square footage finished area of all Apartments in The Project and is as set forth in Exhibit "B" attached hereto and incorporated herein.

2.2 Title. A Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

2.3 Description of a Condominium Unit. Every contract for the sale of a Unit written prior to the filing for record of The Map and this Declaration may legally describe a Unit by its identifying Unit number designation followed by the words "THE SHADOW CREEK CONDOMINIUMS" with further reference to The Map thereof to be filed for record and the Declaration to be recorded. Upon recordation of The Map and the Declaration in the records of the Clerk and Recorder of Boulder County, Colorado such description shall be conclusively presumed to relate to the therein described Units.

Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Unit by its identifying number followed by the words THE SHADOW CREEK CONDOMINIUMS:

A sufficient description of a Condominium Unit shall be as follows:

Condominium Unit No. , THE SHADOW CREEK CONDOMINIUMS according to THE CONDOMINIUM MAP FOR THE SHADOW CREEK CONDOMINIUMS recorded on Film as Reception No. , and as defined by THE CONDOMINIUM DECLARATION FOR THE SHADOW CREEK CONDOMINIUMS recorded on Film as Reception No. , in the Office of the County Clerk and Recorder, Boulder, Colorado.

Every description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment, but also the Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a nonexclusive easement for appropriate ingress and egress throughout The Project and for the use of appropriate exclusive use of the Limited Common Elements; and all other

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casements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

The reference to The Map and Declaration in any instrument shall be deemed to include any supplements or amendments to The Map or Declaration, without specific references thereto.

2.4 Apartment Boundaries. The interior unfinished surfaces of the perimeter walls, lowermost floors and uppermost ceilings shall mark the perimeter boundaries of a Condominium Apartment and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Condominium Apartments, and all other portions of the walls, floors, or ceilings are part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any fixtures lies partially within and partially outside the designated boundaries of a Condominium Apartment, any portion thereof serving only that Apartment is a Limited Common Element allocated solely to that Apartment, and any portion thereof serving more than one Apartment or any portion of the Common Elements is a part of the Common Elements.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Condominium Apartment, but located outside the Apartment's boundaries, are Limited Common Elements allocated exclusively to that Apartment.

Subject to the above, all spaces, interior partitions, and other fixtures and improvements located within the boundaries of a Condominium Apartment are a part of the Apartment.

2.5 Right to Combine Units. Declarant hereby reserves the right to physically combine the area and space of one Unit with the area or space of one or more adjoining Units; provided, however, that Declarant shall not exercise said right without the written consent of any Mortgagee having an interest in said Units. In the event of any such physical combining of Units to create a combined Unit, such combined Units shall also include the combining of the fixtures and improvements and of the undivided interests in Common Elements appurtenant to the Units so combined. Declarant reserves the right to designate and convey to any purchaser of any such combined Units, as additional Limited Common Elements appurtenant thereto, any walls, floors or other structural separations but for the combination of such Units; provided however, that such walls, floors or other structural separations for such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the future. This reserved right in Declarant shall

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terminate upon the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof.

2.6 Physical Boundaries. In interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever, or in connection with any matter, the existing physical boundaries of any Condominium Apartment or Common Elements shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movements of The Building, and regardless of variances between boundaries as shown on The Map and the actual boundaries of The Building.

2.7 Inseparability of a Unit. An Owner's undivided interest in the Common Elements shall not be separated from the Condominium Apartment to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Condominium Apartment even though the interest is not expressly mentioned or described in a deed or other instrument.

2.8 No Partition. The Common Elements shall remain undivided, and no owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for the physical partition or subdivision of a Condominium Apartment or a Unit between or among the Owners thereof, provided, however, an action of partition of a Unit shall be permitted by a sale and the division of the sale proceeds.

2.9 Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither The Building, The Property nor any of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

2.10 Limited Common Elements. Subject to the definition thereof, the Limited Common Elements shall be identified on The Map. Any balcony, door, window, entry way, and the space within the firebox located within the fireplaces which are accessible from, associated with and which adjoins a Condominium Apartment identified as Limited Common Elements on The Map shall without further reference thereto, be used in connection with such Condominium Apartment to the exclusion of the use thereof by the other Owners except by invitation.

2.11 Compliance with Provisions of Declaration, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations

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and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner.

2.12 Liens Against Condominium Apartments - Removal From Lien-Effect of Part Payment. Upon the completion of The Project by the Declarant and payment of all of the costs thereof, then, no lien shall arise or be effective against The Project. Liens or encumbrances shall only arise or be created against each Condominium Apartment and the percentage of undivided interest in the Common Elements appurtenant to the Condominium Apartment, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel or real property subject to individual ownership; provided, however, that no labor performed or materials furnished, with the consent or at the request of an Owner or his agent shall be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Unit to the Board in the case of emergency repairs. Labor performed or materials furnished for the Common Elements, if duly authorized by the Board of Directors in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner, and shall be the basis for the filing of a lien pursuant to law against each of the Units within The Project.

In the event a lien is effected against two or more Units, the Owners of each of the separate Units may remove their Condominium Apartment and the percentage of undivided interests in the Common Elements appurtenant to said Condominium Apartment from the lien by payment of the fractional or proportional amount attributable to each of the Units affected. Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit not so released or discharged.

Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in the course of work performed on such Owner's Unit. At the written request of any Owner, the Board shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien and all costs incidental thereto,

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including reasonable attorneys' fees by an Individual Assessment against such Owner in accordance with Paragraph 5.3(b) hereof.

2.13 Sale of a Condominium Unit. The right of an Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

2.14 Restrictions on Mortgaging Units. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his Unit. There is no requirement for the use of a specific lending institution or particular type lender.

2.15 Parking and the Use of Parking Spaces. Certain Parking Spaces contained within The Project shall be a part of the Limited Common Elements. Such Parking Spaces together with the right of ingress and egress in and to such Parking Spaces shall be limited to and reserved for the exclusive use of the Owners of a particular Condominium Unit as designated by the Board of Directors; provided however, that the Board of Directors shall maintain control thereof and shall have the continuing right to assign and reassign Parking Spaces to Owners within The Project. A Parking Space is not appurtenant to a Unit purchased.

Certain Parking Spaces contained within The Project shall be a part of the Common Elements and shall be designated as "Open" or "Guest" Parking Spaces or at the sole discretion of The Board of Directors such Parking Spaces may be leased to Owners upon such terms and conditions as the Board sees fit. All Parking Spaces and their appropriate designations shall be depicted on The Map.

2.16 Reserved Common Elements. Reserved Common Elements are those parts of the Common Elements which the Declarant until the conversion of the Class B Membership in accordance with Paragraph 4.5 hereof and thereafter the Board of Directors may designate from time to time for use by less than all of the Owners for specified periods of time. Such designation shall not be construed as a sale or disposition of such portions of the Common Elements.

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ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in Limited Common Elements. Subject to the provisions of Paragraphs 2.15 and 2.16 hereof, each Owner and his or her Guests shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on The Map as appurtenant to the Unit owned by such Owner.

3.2 Owner's Easement for Access, Support and Utilities. Each Owner shall have a nonexclusive easement for access between his Condominium Apartment and the roads and streets within and adjacent to The Project. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Apartment. Each Owner shall have a non-exclusive easement in and over the Common Elements within the Condominium Project including the Common Elements within the Condominium Apartment of another Owner, for horizontal and lateral support of the Condominium Apartment which is part of his or her Unit, and for utility service to the Condominium Apartment, including water, sewer, gas, electricity, telephone and television service.

3.3 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Condominium Apartment, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Apartment encroaches or shall hereafter encroach upon the Common Elements, or upon another Condominium Apartment, the Owner of that Condominium Apartment shall and does have an easement for such encroachment and for the maintenance of same. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Apartment. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of The Building, by error in The Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of The Project or any part thereof or by any other movement of any portion of the improvements located upon The Project.

3.4 Easements in Condominium Apartments for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Condominium Apartment. All Owners shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, whether the Owner is present or not, for access through each Condominium Apartment to all Common Elements, from time to time, as authorized by the Board of Directors, whether the Owner is present or not, for access through each Condominium Apartment to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement of any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Condominium Apartment. For routine maintenance and non-

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emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

The Board of Directors or its agents is granted the authority to use such reasonable force as is necessary to gain entry into the Apartment in the event of an emergency, if no other means of entry are available in view of the circumstances. The Association shall bear the full responsibility and expense of all damages incurred to the Apartment and/or Common Elements because of such forcible entry.

All damage to the interior or any part of a Condominium Apartment resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as part of the Annual Assessments for Common Expenses by all of the Owners. No diminution or abatement for Annual Assessments for Common Expenses shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of such repairing such damage. In the event the Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board of Directors may pay for said damages and charge the Owner responsible as an Individual Assessment in accordance with Paragraph 5.3(b) hereof.

3.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing The Project, to enter upon all driveways located in The Project, in the performance of their duties.

3.6 Utility Easements. The Board of Directors has the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of The Project.

3.7 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve reasonable easements and rights-of-ways over all Common Elements and all Apartments not conveyed for the sole purpose of constructing improvements to The Project and/or making repairs required pursuant to the Declaration or pursuant to contracts of sale made with Unit Purchasers, but only if access thereto is otherwise not reasonably available. Such easements and rights-

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of-way however shall not inhibit the use of the Common Elements by the Owners and their Guests. The Declarant shall be fully responsible for any damage to the Common Elements caused by its use of such easements and rights of way.

These reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such reservations shall terminate without further act or deed not later than:

- (a) the completion of all of the improvements and repairs to The Project; or
- (b) five years from the date of the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

Until the termination of these reservations as provided for above, any amendment to this Paragraph 3.7 must have the prior written assent of the Declarant.

3.8 Recording Data Regarding Easements. The recording data for recorded easements and licenses appurtenant thereto, or included in The Project or to which any portion of The Project is or may become subject are identified on Exhibit "E" attached hereto.

3.9 Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be perpetual and appurtenant to the Unit of that Owner and all conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appear in any such conveyance.

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ARTICLE FOUR: THE ASSOCIATION

4.1 General Purposes and Powers. The Association through its Board of Directors shall perform functions and manage The Project as provided in this Declaration so as to further the interests of all of the Owners of Units within The Project and Members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. It shall have all the powers necessary or desirable to effectuate such purposes.

4.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.3 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and the Bylaws of the Association. In the event the Articles or the Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.4 Membership. Each Owner of a Unit, including Declarant so long as it shall be an Owner, shall automatically become a member of the Association. Said membership is appurtenant to the Unit of said Owner and title to the ownership of the membership for that Unit shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his or her Unit. If the fee simple title to a Unit is held by more than one person, all such persons shall be members.

4.5 Voting Rights. The Association shall have two classes of voting memberships:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned; provided however, the Declarant shall be a Class A Member after the conversion of the Class B Membership to Class A Membership in accordance with this Paragraph and shall thereafter be entitled to one vote for each Unit owned.

The vote for such Unit, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest of the Unit is made prior to the completion of the vote, in which case the vote for such Unit shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Unit be unable, within a

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reasonable time, to agree upon how they will vote on any issue, they shall be passed over and their right to vote on such issue shall not be lost. In no event shall more than one vote be cast with respect to any such Unit.

Class B. Class B Members shall be the Declarant who shall be entitled to three votes for each Unit owned. Class B Membership may be converted to Class A Membership at the option of the Declarant by its written notice to the Secretary of the Association but in any event shall be converted to Class A Membership without further act or deed not later than:

(a) four months after the date seventy-five percent of the Units in The Project (including Units added by the expansion of The Project in accordance with ARTICLE TWELVE hereof) have been conveyed to Purchasers other than the Declarant; or

(b) five years from the date of the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

4.6 Indemnification. The Association shall indemnify every director, officer, agent or employee, and any former director, officer, agent, or employee against loss, costs, and expense, including counsel fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer, agent or employee of the Association, except as to matters concerning which such person shall be finally adjudged to be liable for gross negligence or fraud. Any such indemnification shall be limited to and may only be paid out of the insurance proceeds provided by an insurer furnishing Officers and Directors Errors and Omission insurance coverage or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage, it being the intent and purpose of this provision to limit all payments or settlements in indemnification to the actual proceeds of insurance policies received by the Association; provided however, any deductible shall be paid by the Association.

No officer, director, agent or employee of the Declarant, its successors or assigns, nor of any managing agent who is an independent contractor, shall be protected by these indemnification provisions; nor by any insurance policies obtained by the Association in relation thereto, but any such protection is the sole and separate responsibility of the Declarant, its successors and assigns, and any managing agent who is an

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independent contractor or any other independent contractor as one of their expenses of doing business.

In the event of a settlement, the settlement shall be approved by the insurance carrier and paid for by the insurance carrier out of the insurance proceeds.

4.7 Association Agreements. Any agreement for professional management of The Project or any contract providing for services of the Declarant or an Affiliate of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice provided however the Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into prior to the conversion of the Class B Membership to the Class A Membership in accordance with Paragraph 4.5 hereof unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such conversion upon not more than thirty days' notice to the other party thereto.

When professional management has been required by any First Mortgagee any decision to establish self management by the Association shall require the prior written consent of the Owners of Units to which at least eighty percent of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of Units subject to first mortgages within The Project.

4.8 Certain Rights and Obligations of the Association.

(a) **Association as Attorney-in-Fact for Owners.** The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with The Project upon its destruction, condemnation or obsolescence as hereinafter provided. The acceptance by any person of any interest in any Unit shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate The Project and to perform all of the duties required of it.

(b) **Contracts, Licenses and Other Agreements:** The Board of Directors shall have the right to enter into, grant, perform or enforce: contracts, agreements, licenses, leases, easements and/or rights-of-way, for the use by Owners, their Guests and members of their households, and other persons, concerning the Common Elements and any improvements located thereon. Any such contracts, licenses, leases, agreements, easements and/or rights-

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of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagee and which may include provisions by which the Association agrees that it shall pay part or all of the costs and expenses of maintaining and repairing same. Such costs shall be treated by the Board of Directors as a portion of the Annual Assessment for Common Expenses pursuant to Paragraph 5.3(a) hereof.

(c) Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners of Units on a self-supporting, Special Assessment or Annual Assessment for Common Expenses basis. Such activities, functions or services may include the providing of police or similar security services, the providing of garbage and trash collection services, the providing of firewood and the providing of maid and cleaning service for individual Condominium Apartments.

(d) Property of Association: The Association may pay for, acquire and hold intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations of the Association, each Owner and each Owner's guests as herein defined, may use such property. Upon termination of condominium ownership in The Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interest in the Common Elements. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference to. Each may use such property in accordance with the uses for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit.

(e) Implied Rights: The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

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ARTICLE FIVE: ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of the Assessment. The Declarant, for each Condominium Unit owned, within the Condominium Project, hereby covenants, and agrees to pay, and each Owner, of any Unit by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments created and defined in this Declaration, together with late fees, costs, and reasonable attorneys' fees shall be:

- (a) a charge upon the Unit and shall be a continuing lien upon such Unit against which each such assessment was levied, which lien shall attach as of the date the assessment is levied, and shall continue until such assessment, together with any late fees, costs of collection, and attorneys' fees are paid; and
- (b) a personal obligation of the person who was the Owner or of the persons jointly and severally, who were the Owners of such Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of The Project and the Members of the Association and in particular for the improvement and maintenance of the Common Elements and the furnishing of common services to the Units, which may include, among other things, expenses of management; premiums for all water charges; trash collection, sewage service charges, wages for Association employees; legal and accounting fees; payment of any deficit remaining from a previous fiscal year; and any other expenses and liabilities which may be incurred by the Board of Directors for the benefit of the Owners under or by reason of this Declaration. Such assessment shall include the establishment and maintenance of an adequate reserve fund for the maintenance, replacement and repair of those portions of the Common Elements which the Association has an on going duty to replace, repair and maintain on a periodic basis.

5.3 Basis of Assessment.

(a) **Annual Assessment for Common Expenses.** The Board of Directors shall assess against each Owner of a Unit within The Project an Annual Assessment for Common Expenses, to pay for Common Expenses as herein defined of the Association. Said

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assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of those portions of the Common Elements which the Association has a duty to replace, repair and/or maintain on a periodic basis. There shall be no division of the Annual Assessment for Common Expenses between Common Elements and Limited Common Elements. Such Assessment shall be apportioned among all Unites based on that Unit's percentage interest in the Common Elements as initially contained herein or as expanded in accordance with ARTICLE TWELVE hereof. Such Assessment shall commence in accordance with Paragraph 5.7 hereof.

(b) Individual Assessment: The Board of Directors shall have the right to individually assess any Owner amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 2.12, 3.4, 6.3, 6.9, and 8.2(b) hereof. No Individual Assessment shall be assessed until: (i) the Owner or Owners to be charged have been given written notice as to the reason for the assessment; (ii) the Owner or Owners to be charged have had an opportunity for hearing before the Board of Directors; and (iii) the Board of Directors levy the assessment by a two-thirds vote of the total vote of all the Board of Directors.

(c) Fines: The Board of Directors of the Association shall have the right to assess a Fine against any Owner or Owners for each violation of this Declaration, the Bylaws, the Articles of Incorporation and the Rules and Regulations of the Association. No such Fine shall be assessed until the Owner or Owners to be charged (i) have been given written notice as to the reason for the Fine; (ii) the Owner or Owners to be charged have had the opportunity for a hearing before the Board of Directors; and (iii) the Board of Directors levies the Fine by a two-thirds vote of the total vote of all of the Board of Directors.

Fines shall be assessed in a reasonable amount, as determined from time to time by the Board of Directors in its discretion and uniformly applied.

(d) Heating Assessment: In addition to other assessments herein provided for, the Board of Directors shall assess against each Owner of a Unit within The Project, a Heating Assessment to pay for the costs incurred in providing space heating and domestic hot water heating for such Owner's Apartment. Funds paid to the Association as Heating Assessments shall not be commingled with other Association funds and shall not be considered any part of the Annual Assessment for Common Expenses levied pursuant to Paragraph 5.3(a) hereof or a Special Assessment levied pursuant to Paragraph 5.4 hereof. Such assessment shall be apportioned among the Units as the Board of Directors in their discretion shall determine based upon a metered reading of such Unit's usage or that Unit's percentage interest in the Common Elements as initially contained herein or as expanded in accordance with ARTICLE TWELVE hereof.

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Upon failure to pay the Heating Assessment within sixty days of its due date the Board of Directors may, in addition to other remedies available to it for nonpayment of assessments in accordance with Paragraph 5.8 hereof, terminate the heating service to any Apartment and not restore such service until such past due assessments, together with any costs and fees, including reasonable attorneys' fees, in connection with the termination of service and the resumption thereof, have been paid.

(e) Levy of Assessments: At least thirty days prior to the end of the Association's fiscal year, the Board shall determine the Annual Assessments for Common Expenses which is payable monthly during the year by each Owner; provided however, that said assessment may be adjusted upon a finding of necessity by the Board, but no more than twice in any one year. Said Assessment shall be the amount estimated to be necessary to pay for the Common Expenses as herein defined of the Association and to provide the necessary reserves and shall include but not be limited to the expense items set forth in Paragraphs 5.2 and 5.3 hereof. 4

The omission or failure of the Board of Directors to fix the assessment for any period shall not be deemed a waiver, modification or release of the Owners from their obligations to pay.

Fines, Individual Assessments and Heating Assessments may be assessed at any time as required and are exempt from any voting requirements required for the levy of other assessments called for under this Declaration.

(f) Non-Exemption: No Owner shall be relieved from payment of any assessment or charge by waiver or suspension of the use of any of the Common Elements or by the abandonment of his or her Unit.

5.4 Special Assessments: In addition to the assessments authorized above, the Board may levy in any assessment year, a special assessment applicable for the year only, for the purpose of defraying in whole or in part, any unexpected expense, to include but not to be limited to, the cost of any construction, reconstruction, repair or replacement of any of the Common Elements, provided that such assessment shall have the assent of two-thirds of the votes of the Class A Members (not including the Declarant) who are voting in person or by proxy at a meeting duly called for this purpose.

If The Project has been or is to be approved by the Federal Home Administration and/or Veterans Administration, then until the conversion of Class B Membership to Class A Membership, in accordance with Paragraph 4.5 hereof, any Special Assessment for capital improvements in addition to the two-thirds majority vote of the Class A Members as required above, will require the

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written consent of the Veterans Administration and/or the Federal Housing Administration.

The limitation set forth above shall not apply to any expenditures made by the Board of Directors for the maintenance and repair of the Common Elements as set forth in Paragraph 5.3(a) or for the repair in the event of damage, destruction, condemnation, and obsolescence as set forth in ARTICLE NINE.

5.5 Notice and Quorum Needed to Levy a Special Assessment. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Class A Members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of Class A Membership shall constitute a quorum. A majority vote of the quorum shall control. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the repaired quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5.6 Uniform Manner of Assessment. The Annual Assessment for Common Expenses and Special Assessments must be assessed in a uniform manner upon all Units which are subject to such Assessment subject to the provisions of Paragraph 5.9 hereof.

5.7 Date of Commencement of Assessments; Prorations. The Annual Assessment for Common Expenses, as provided for herein, shall commence as to all Units within a Phase when the first Unit in such Phase is sold, leased or occupied as a residence subject to the provisions of Paragraph 5.9 hereof. The Heating Assessment shall commence as to a Unit when costs are incurred to heat the Unit.

The Annual Assessment for Common Expenses, for a Unit shall be prorated on the basis of the number of days in the Association's fiscal year remaining from the date such Unit is sold, leased or occupied as a residence.

5.8 Due Dates, Non-Payment of Assessments, Remedies of the Association.

(a) Fines, Heating Assessments and Individual Assessments shall be due and payable as established by the Board of Directors.

(b) The Annual Assessment for Common Expenses shall be levied on an annual basis but shall be due and payable on the first day of each month on an installment basis. Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board of Directors.

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(c) Written notice of all assessments shall be sent to each Owner subject thereto specifying the type of assessment, the amount and the date such assessment is due.

(d) All assessments shall become delinquent unless paid by their due date. If such assessments are not paid by their due date, the Owner obligated to pay such assessment may be required to pay a reasonable late fee, as determined by the Board of Directors from time to time in its discretion and uniformly applied.

In the event it shall become necessary for the Board to collect any delinquent assessments, whether by foreclosure of a lien herein created or otherwise, the delinquent Owner shall pay, in addition to the assessment, and late fees as herein provided, all costs of collection including a reasonable attorney's fee and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is required to be filed to enforce collection, the cost of preparation, filing and release shall be considered a cost of collection.

Failure to make payment within sixty days of the due date thereof shall also cause the full amount of such Owner's Annual Assessment for Common Expenses for the remainder of that fiscal year to become due and owing at once at the option of the Board.

(e) The Association is hereby granted a lien against the Owner's Unit for any payment of an assessment which the Owner fails to make as required by this Declaration. The lien of the assessments together with late fees, costs of collection, to include attorney's fees and Fines as provided for herein shall be subordinate to the lien of any loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of the Veterans Administration or its assigns, and whether such contract is recorded or not. Such lien to attach at the time of the levy of the assessment, and continue until such assessment, together with all late fees, costs of collection, and reasonable attorney's fees are paid.

The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Unit; provided, however, the lien shall also be subject and subordinated to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust or mortgage.

If a foreclosure action is filed to foreclose any assessment lien, and an Owner abandons or leaves vacant his or her Apartment, the Board may take possession and rent said Apartment or apply for the appointment of a receiver for the Apartment without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee as set forth in his or her deed of trust or mortgage

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(including any assignment of rents) which creates that First Mortgagee's interest in the Unit.

(f) In the event an Owner is in default on any obligation secured by an encumbrance on his or her Unit, the Board, at its option, may pay the amount due on said obligation and shall have a lien against the Unit which lien shall attach in the manner as provided for unpaid assessments.

(g) The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.

(h) The lien of all assessments created and defined by this Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

(i) Sale or transfer of an interest in any Unit shall not affect the liens for unpaid assessments except that sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract by a First Mortgagee shall extinguish the lien of all unpaid assessments as to assessments which became due prior to such transfer of title or cancellation or forfeiture of executory land sales contract i.e. the date the First Mortgagee acquires fee simple title to the Unit. Provided however, the Association shall still have the right to recover such amount from the delinquent Owner. No transfer of title, or cancellation or forfeiture of executory land sales contract shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Any such delinquent assessments which were extinguished pursuant to the foregoing provisions may be reallocated and assessed to all Owners as part of the Annual Assessment for Common Expenses.

(j) The Association shall upon demand, and for a reasonable charge, furnish to an Owner, or his or her First Mortgagee, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

5.9 Declarant's Obligations. The Declarant for each Unit owned within each Phase of The Project, shall pay to the Association, twenty-five percent of the Annual Assessment for Common Expenses until such time as the Unit is sold, leased or occupied as a

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residence; provided however, the "Reserve" portion of the Annual Assessment for Common Expenses shall be fully funded from this twenty-five percent payment commencing not later than sixty days after the first Unit in that Phase has closed. Upon the sale, lease or occupancy as a residence, such Unit shall be liable for the payment of the full Annual Assessment for Common Expenses. The Declarant will pay the Heating Assessment as the same is levied on Units owned by the Declarant.

The Declarant agrees that it has a binding obligation and duty to pay any deficit or shortage that may arise in connection with the estimated budget prepared for the initial period of the operation of The Association. The obligation of the Declarant to subsidize the obligations of the Association shall terminate upon the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof.

5.10 Working Capital Fund. The Association shall establish a Working Capital Fund to cover the costs of the initial period of The Association's operation. Each Unit's contribution to the Fund shall be equal to at least a two month's installment of the Annual Assessment for Common Expenses for such Unit. Each Unit's nonrefundable contribution shall be collected and transferred to the Association at the time of the closing of the initial sale of such Unit and be maintained in a segregated account for the use and benefit of the Association. The purpose of the Fund is to insure that the Association will have cash available to meet foreseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Contributions paid into the Fund are not considered as advance payments of the Annual Assessment for Common Expenses as the same becomes due.

Within sixty days after closing has been held for the first Unit in each Phase, the Declarant shall pay each unsold Unit's share in that Phase, of the Working Capital Fund to the Association. The Declarant shall reimburse itself for this payment from the funds collected at closings when the unsold Units are closed.

5.11 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

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ARTICLE SIX: RESTRICTIVE COVENANTS AND OBLIGATIONS

6.1 Use and Occupancy of the Condominium Units. Each Owner shall be entitled to the exclusive ownership and possession of his or her Condominium Apartment. Each Condominium Apartment shall be used only for residential purposes. No Condominium Apartment shall be used at any time for any business or commercial activity, except as follows: (a) Declarant may use any Condominium Apartment(s) as a model Condominium Apartment or sales office until all Units owned by Declarant are sold; subject to the provisions of Paragraph 14.4 hereof, (b) the Owner thereof may lease or rent such Condominium Apartment upon such terms and conditions as the Owner may deem advisable, subject to the following: (i) The Apartment may not be used for hotel or transient purposes but may be leased only for residential purposes as generally defined; (ii) Any such lease or rental agreement shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Articles of Incorporation, the Bylaws of the Association, and the Rules and Regulations of the Association; and (iii) No Apartment may be leased, or rented for a period of less than thirty days. Any failure of a lessee or renter to comply with the terms of this Declaration, Articles or Bylaws, or the Rules and Regulations of the Association shall be a default under the lease or rental agreement enforceable by the Board of Directors. A copy of each lease or rental agreement shall be filed with the Board of Directors.

6.2 Use of the Common Elements. Each Owner and his or her Guests may use the appurtenant Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board of Directors may adopt Rules and Regulations governing the use of the Common Elements, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner's Guests occupying the Apartment agree to be bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board of Directors of the Association.

6.3 Pets Within The Project. No animals, livestock, or poultry of any kind shall be raised, bred or kept within The Project, except with the express written permission of the Board of Directors by a two-thirds vote of the total vote of all Directors. If a permitted dog, cat or other household animal constitutes a nuisance or inconvenience to a resident of The Project, then the Board of Directors of the Association shall have the right to direct that the animal be permanently removed

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from The Project. No removal of an animal shall be made until the animal's owner has been given written notice as to the reason for such animal's removal, such owner has had an opportunity for a hearing before the Board of Directors and the Board of Directors directs that the animal be removed from The Project by a two-thirds vote of the total vote of all of the Directors. All costs incurred by the Association in enforcing and effecting the removal of such animal including reasonable attorneys' fees and costs shall be properly assessed against the Owner of such animal as an Individual Assessment in accordance with Paragraph 5.3(b) hereof.

Permitted dogs, cats and other household animals shall not litter the Common Elements. It shall be the duty of the Association to keep the Common Elements free from litter caused by and left by pets. The owners of pets known to be at large upon the Common Elements shall be properly assessed an Individual Assessment in accordance with Paragraph 5.3(b) hereof by the Board of Directors for the cleanup expenses incurred, together with the costs of collection and enforcement, to include reasonable attorneys' fees and costs, if necessary.

Permitted dogs, cats and other household animals shall not be allowed to run at large within The Project, but shall be at all times on a leash while such animal is outside of its owner's Apartment. It shall be the duty of the Association, or its representatives, to notify the City Dog Warden of pets found at large within The Common Elements in violation of City Ordinances.

6.4 Nuisances. No noxious or offensive activity shall be carried on within The Project, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance. No activity shall be conducted on any part of The Project which is or might be unsafe or hazardous to any person. Trailers of any kind, boats, camper shells, motor homes, miscellaneous heavy equipment, recreational vehicles, and mobile homes shall not be stored on The Project within view of the other Apartments or from the street without the express written permission of the Board of Directors for hardship cases. Inoperable, wrecked vehicles, unlicensed and tractors are prohibited from being parked anywhere within The Project. All rubbish, trash or garbage shall be regularly removed from The Project and shall not be allowed to accumulate thereon.

6.5 No Unsightliness. No activity shall be conducted on any part of The Project which is or might be unsafe, unsightly, unhealthy or hazardous to any person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Elements, including areas which are Limited Common Elements; and nothing shall be placed on or in windows or doors of Condominium Apartments, which would or might create

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unsightly appearance. No Owner shall modify, alter, repair, decorate, redecorate, or improve the exterior of any Condominium Apartment or any of the Common Elements without the express written approval of the Board of Directors in accordance with Paragraph 8.5 hereof.

6.6 Prohibition of Certain Activities. Nothing shall be done or kept in any Apartment or in the Common Elements or any part thereof which would result in the cancellation of the insurance of The Project or increase the rate of the insurance on The Project over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept in any Apartment or in the Common Elements which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Apartment or in the Common Elements, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of The Project which is unreasonably loud or annoying.

6.7 Antennas. No exterior television or radio antennas and/or masts or satellite dishes of any sort shall be placed, allowed or maintained upon The Project without prior written approval of the Board of Directors of the Association.

6.8 Restrictions on Signs. No signs or advertising of any nature shall be erected or maintained on any part of The Project without prior written consent of the Board of Directors. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify The Project and the Units therein.

6.9 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within The Project, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees and costs, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.3(b) hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 6.9 shall be made by the Board of Directors and shall be final.

6.10 Waiver of Summary Abatement. The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained against any Unit property or its use. Judicial proceedings must be

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instituted before any items of construction can be altered or demolished.

6.11 Parking and the Use of the Parking Spaces. The Board of Directors shall promulgate rules and regulations to regulate the use of the Parking Spaces for the benefit of all Owners. Certain Parking Spaces shall be assigned by the Board of Directors, and an Owner is prohibited from parking in a Parking Space other than the Parking Space assigned to such Owner. An illegally parked vehicle is subject to towing and impounding in accordance with the City of Boulder Ordinances.

Parking is expressly prohibited on any grass or landscaped area. Only preventative maintenance and repair of vehicles shall be allowed in the Parking Spaces.

No gasoline, gasohol, distillate, diesel, kerosene, naphtha or similar volatile combustible or explosive materials shall be stored in any Parking Space except in the fuel tanks of vehicles parked therein and used for transportation purposes or one container of outdoor grill fuel starter of no more than two liter capacity.

6.12 Disclaimer of Bailee Liability. Neither the Association, the Board of Directors, any Officer, Managing Agent, nor any Owner shall be considered as a bailee of any personal property placed anywhere within The Project and shall not be responsible for the security of such personal property or for any loss thereof or damage thereto from any cause, whether or not attributable to negligence, except to the extent covered by insurance in excess of any applicable deductible.

6.13 Window Coverings. Interior window coverings, including draperies and shades used in Apartments, shall present a uniform appearance of type and color from the exterior of The Buildings and the Board of Directors shall have the right to approve all proposed draperies, shades or other interior window coverings to assure compliance in accordance with Paragraph 8.5 hereof.

The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above Restrictive Covenants and Obligations.

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ARTICLE SEVEN: INSURANCE

7.1 Authority to Purchase/General Requirements. Except as otherwise provided in Paragraph 7.7 hereof, all insurance policies relating to The Project shall be purchased by the Board of Directors. The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the Association, Owner, First Mortgagee or such First Mortgagee's successor or assigns, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees, their successors and assigns from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households;
- b) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without prior demand in writing that the Board of the Managing Agent cure the defect and neither shall have so cured such defect within thirty days after such demand;
- c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 7.4 hereof may not be cancelled, reduced in coverage, or substantially modified by any party (including cancellation for nonpayment of premium) without at least thirty days

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prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy.

- d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Unit superior to the lien of a First Mortgagee.
- e) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner if available.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado.

The name of the insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Association, and the insurance proceeds for that loss shall be payable to the Association as trustee for each Owner and such Owner's First Mortgagee. Each Owner and such Owner's First Mortgagee, if any, shall be beneficiaries of the insurance policy or policies according to each Owner's interest as such interests appear in the policy or policies, or in the event separate interests are not designated in the policy, then pro rata according to each Owner's percentage interest in the Common Elements.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy, its successors and assigns, beneficiary.

7.2 Hazard Insurance. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring all the Common Elements and Limited Common Elements within The Project including fixtures, machinery, equipment and supplies maintained for the service of The Project, as well as common personal property belonging to the Association. Such insurance shall be in the amount of the full current replacement cost, as defined below, to include, among other things, all fixtures, improvements, alterations and equipment, comprising a part of the individual Apartment within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Apartment initially installed or replacements thereof, in accordance with the original plans and specifications, or installed by or at the

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expense of the Owner and provide that all claims are to be settled on a replacement cost basis. All references herein to a "blanket" type policy of property insurance, are intended to denote "Single Entity" condominium insurance coverage.

In addition, any fixtures, equipment or other property within the Apartments which are to be financed by a First Mortgagee (regardless of whether or not such property is a part of the Common Elements) must be covered in such "blanket" policy.

Such insurance shall at all times represent one hundred percent of the current replacement cost of The Project based on the most recent appraisal of the entire Project. The replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provisions for co-insurance. The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall be consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, which shall be maintained as a permanent record, showing that the insurance represents one hundred percent of the current replacement cost of The Project as defined above.

Such policies shall also provide:

- a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Enforcement, (Loss of value for an undamaged portion, Cost of Demolition, Increased Cost of Construction) Agreed Amount Endorsement, and Inflation Guard Endorsement, if available.
- b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the hazard insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, ten thousand

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dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the person or entity who is responsible for the repair and maintenance of the property which was damaged or destroyed. In the event of a joint duty of repair and maintenance of the property damaged or destroyed then the deductible shall be paid by the Association. Funds to cover the deductible amounts should be included in the Reserve Account and be so designated.

A duplicate original of the policy of hazard insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least thirty days prior to expiration of the current policy.

The Association shall hold any insurance proceeds in trust for the Owners and First Mortgagees as their interests appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Apartments. Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is surplus of proceeds after the Common Elements and Apartments have been repaired or restored or The Project is terminated.

7.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest, and invasion of privacy) and property damage insurance covering all of the Common Elements, public ways of The Project and any other areas that are under the Association's responsibility and commercial spaces owned by the Association whether or not they are leased to some third party insuring each Officer, Director, the Managing Agent and each Owner, to include the Declarant in its capacity as an Owner. Such coverage under this policy shall include, without limitation, the legal liability of the insureds of property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Elements and Limited Common Elements and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to Projects similar in construction, location and use, where applicable and available, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Contractual and All-Written Contract insurance, Workmen's Compensation and Employer's Liability insurance, Comprehensive Keepers Liability and Bailees Liability endorsement.

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The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars per occurrence covering all claims for personal injury, bodily injury, including deaths of persons and property damage. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

7.4 Fidelity Insurance. The Board of Directors shall obtain and maintain adequate fidelity insurance coverage, to protect against dishonest or fraudulent acts committed by the Association's Directors, Officers, Managing Agent, Trustees, employees or volunteers of the Association and all others who manage or are responsible for handling funds collected and held for the benefit of the Association, provided however, the Board of Directors shall not maintain fidelity coverage to cover any Managing Agent.

Such fidelity coverage shall name the Association as the named insured, be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any time while the insurance is in force, but must be no less than the sum of three months' of assessments on all Units within The Project, plus the Association's Reserve Funds, and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the management of its funds to a Managing Agent, such Managing Agent must be covered by its own fidelity insurance providing the same coverage required of the Association's fidelity insurance. The Association should be named as an obligee in the Managing Agent's fidelity insurance and evidence of such coverage must be submitted to the Association.

7.5 Additional Insurance.

a) If the area where The Project is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for The Project shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of The Project's current replacement cost.

The Association must also maintain coverage for detached Common Elements and have separate coverage for each Building housing the Condominium Apartments for one hundred percent of the replacement cost including any machinery and equipment that are part of the Building. The contents coverage must equal one hundred percent of the replacement cost including any machinery and equipment that are part of the Building. The contents coverage must equal one hundred percent of the replacement cost of all contents, including machinery and equipment which are not

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part of a Building, that are owned in common with other Owners. A separate Association endorsement is required if not already a part of the policy.

Deductibles may not exceed the lower of five thousand dollars or one percent of the face amount of the coverage. Funds for such deductibles must be included in the Association's Reserve and be so designated.

If The Project at the time of the recording of this Declaration is not identified as a Special Flood Hazard Area but becomes reclassified at a later date as such and the Board becomes aware of such reclassification, then the Board of Directors shall obtain flood insurance for The Project in accordance with the above. Conversely flood insurance may be discontinued under certain conditions.

b) Adequate Directors and Officers liability insurance, if available, and if deemed consistent with good business practices, for errors and omission on all Directors and Officers to be written in an amount which the Association deems adequate;

c) If it is determined by a First Mortgagee that the existing coverages do not adequately protect The Project, the Board of Directors shall obtain such additional coverages.

d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to The Project.

7.6 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article, except for premiums on fidelity bonds maintained by a Managing Agent for its officers, employees and agents, shall be paid from Association funds and be collected from the Owners as part of the Annual Assessment for Common Expenses as provided for in Paragraph 5.3(a) hereof.

7.7 Separate Insurance. Each Owner shall have the right, at his or her own expense, to obtain insurance for his or her Unit for his or her own benefit and to obtain insurance coverage upon his or her personal property, furnishings and for his or her personal liability provided, however, that no Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

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ARTICLE EIGHT: MAINTENANCE, REPAIR, REPLACEMENT, ADDITIONS AND ALTERATIONS

8.1 By the Association. The Association shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than two-thirds of all of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of an Owner) of all of the Common Elements including the Limited Common Elements, whether located inside or outside of the Apartments, the cost of which shall be charged to all Owners as part of the Annual Assessment for Common Expenses.

8.2 By the Owner.

a) Each Owner shall keep his or her Apartment and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance and condition of his or her Apartment. In addition, each Owner shall be responsible for all damage to any other Apartments or to the Common Elements resulting from his or her failure or negligence to make any of the repairs required by this Paragraph. Each Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Association is responsible.

b) The Owner of any Unit to which a Limited Common Element is appurtenant shall keep it in a clean and sanitary condition, and shall also make all repairs thereto caused or permitted by his or her negligence, misuse or neglect. In the event any Owner shall fail to maintain or keep in good repair his or her Limited Common Element in a manner satisfactory to the Board of Directors, the Board of Directors after notice and hearing shall have the right and duty, upon approval by a two-thirds vote of the total vote replace or restore said Limited Common Element. The cost of such maintenance, replacement, repair and restoration shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(b) hereof. Each Limited Common Element is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing the repair and restoration in accordance with the above.

All structural repair or replacement shall be made by the Association and charged as part of the Annual Assessment for Common Expenses in accordance with Paragraph 5.3(a).

c) Any Owner permitted by the Board of Directors to use a specific portion of the Common Elements for storage is responsible for the use of such portion in a safe and sanitary manner.

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8.3 Schedule of Maintenance Responsibilities. Notwithstanding the general provisions for maintenance set forth above, specific maintenance responsibilities and the costs attributable thereto shall, to the extent set forth thereon, be determined pursuant to the Schedule of Maintenance Responsibilities attached as Exhibit C attached hereto.

8.4 Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

8.5 Additions, Alterations or Improvements by the Unit Owners (Architectural Control). No Owner shall make any structural addition, or alteration or improvement in or to his or her Unit without the prior written consent of the Board of Directors. No Owner shall paint or alter the exterior of his or her Unit, including the doors and windows, nor shall any Owner paint or alter the exterior of The Buildings, without the prior written consent of the Board of Directors.

The Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within thirty days after such request, and failure to do so within the stipulated time shall constitute approval by the Board of Directors of such proposed structural addition, alteration or improvement.

If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any Unit requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by an authorized Officer, only, without however incurring any liability on the part of the Board of Directors, the Association or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

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ARTICLE NINE: DAMAGE, DESTRUCTION, CONDEMNATION AND OBSOLESCENCE

9.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with The Project upon its damage, destruction, condemnation and obsolescence.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney-in-Fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and condemnation and obsolescence as is hereafter provided. As Attorney-in-Fact, the negotiations, settlements and/or agreements, and shall have full and complete authorization for the collection and appropriate disposition of all insurance proceeds, the documents and the performance of all other acts necessary and appropriate to exercise the powers herein granted.

The Annual Assessment for Common Expenses shall not be abated during the period of insurance adjustment or repair and reconstruction.

9.2 Damage, Destruction, Reconstruction and Repair.

a) Repair and reconstruction of The Project as used in the following paragraphs means restoring The Project substantially in accordance with this Declaration and in accordance with the original plans and specifications for The Project unless other action is approved by Owners of Units to which at least eighty percent of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the Units subject to first mortgages within The Project.

The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless the Owners and the First Mortgagees agree not to rebuild in accordance with the provisions of Paragraph 9.2(e) below.

b) In the event of damage to or destruction of The Project to the extent of not more than sixty-six and two-thirds percent of the total replacement cost thereof, not including land, due to fire or other disaster, the Association shall promptly repair and reconstruct the same in a workmanlike manner. The Association shall have full authority, right and power, as Attorney-in-Fact to cause the repair and reconstruction of The Project using the insurance proceeds. If the insurance proceeds are insufficient to repair and reconstruct The Project, such damage and destruction shall be promptly repaired and reconstructed by the Association as Attorney-in-Fact, using the proceeds of insurance and the proceeds of a Deficiency Assessment to be made against

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all of the Owners and their Units as more fully defined in Paragraph 9.2(f). The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair or reconstruction of The Project using all of the insurance proceeds and such assessment.

c) In the event of damage to or destruction of The Project to the extent of more than sixty-six and two-thirds percent of the total replacement cost thereof, not including land due to fire or other disaster and insurance proceeds are sufficient to fully cover the costs of such repair or reconstruction, then the Association shall promptly repair or reconstruct The Project.

d) In the event of damage to or destruction of The Project to the extent of more than sixty-six and two-thirds percent of the total replacement costs thereof, not including land, due to fire or other disaster and the insurance proceeds are not sufficient to fully cover the costs of such repair or reconstruction, the Association, upon due notice to all Owners and giving them an opportunity to be heard, shall adopt and record a written "Plan for Reconstruction". All of the Owners shall be bound by the terms and other provisions of such Plan and the Association shall promptly repair or reconstruct The Project unless The Project is disposed of in accordance with such Plan, all proceeds of insurance for such repair and reconstruction, as well as the proceeds of a Deficiency Assessment to be made against all of the Owners and their Units as more fully defined in Paragraph 9.2(f). The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair or reconstruction of The Project using all of the insurance proceeds for such purpose notwithstanding the failure of any Owner to pay the Deficiency Assessment.

e) In the event of damage to or destruction of The Project to the extent of more than sixty-six and two-thirds percent of the total replacement costs thereof, not including land, due to fire or other disaster and the insurance proceeds are not sufficient to fully cover the costs of such repair or reconstruction, and the Owners of Units to which at least eighty percent of the votes in the Association are allocated, upon due notice to all Owners and First Mortgagees and giving them an opportunity to be heard, adopt and record a written "Declaration not to Rebuild", which Declaration has the approval of those First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the units subject to first mortgages within The Project, the entire remaining Project shall be sold by the Association as Attorney-in-Fact for all Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and Bylaws and legal status of The Project terminated.

The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear in

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the policy or policies, or in the event separate interests are not designated in the policy, then pro rata according to each Owner's percentage interest in the Common Elements), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designated and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interests in the Common Elements. The total funds of each account shall be used and disbursed without contribution from one account to another, by the Association, as Attorney-in-Fact, for the same purposes and in the same order as is provided in Paragraph 10.6 hereof. The provisions contained in this Paragraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any such distribution of insurance proceeds.

f) The Deficiency Assessment made in connection with such repair and reconstruction as provided for in Paragraphs 9.2(b) and 9.2(d) shall be a part of the Annual Assessment for Common Expenses and shall be levied pursuant to Paragraph 5.3(a) hereof and shall be due and payable as provided in such assessment but not sooner than thirty days after written notice thereof. Such Deficiency Assessment shall not be considered a Special Assessment and such assessment shall be exempt from any Special voting requirements of the Owners. Further assessments may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction. In the event amounts collected are in excess of the amounts required for such repair and reconstruction, the excess shall be returned to the Owners by the Association in the same proportions as the assessment levied. The Deficiency Assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in Paragraph 5.8 hereof. Such lien shall have the same priority as that provided for in Paragraph 5.8 hereof.

9.3 Condemnation.

(a) If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of The Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Paragraph 9.3 shall apply.

(b) The Association, as their Attorney-in-Fact, shall represent the Owners in any condemnation proceedings or in any negotiations, settlements and agreements with the condemning authorities for the acquisition of the Common Elements or any part thereof.

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(c) All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association as attorney-in-fact to be held in trust for the use and benefit of the Owners and First Mortgagees as their interests shall appear. No Owner or any party shall be entitled to priority over First Mortgagees with respect to any distribution of the Condemnation Award.

(d) In the event that the entire Project is taken or condemned, sold or otherwise disposed of in lieu of in avoidance thereof, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners pro rata according to each Owner's percentage interest in the Common Elements, providing that if a standard different from the value of The Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Paragraph 10.6 of this Declaration.

(e) In the event that less than the entire Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate unless terminated in accordance with ARTICLE TEN hereof. If not terminated, each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (i) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds, and shall apportion the amounts so allocated to the taking of or injury to the Common Elements among Owners in proportion to their respective percentage interests in the Common Elements, (ii) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (iii) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner had made within his or her Unit shall be apportioned to the particular Unit involved, and (iv) the amount allocated to the consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If a judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and distributed in the same manner as provided in Paragraph 10.6 hereof.

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Any restoration or repair of the remaining Common Elements shall be performed substantially in accordance with this Declaration and in accordance with the original plans and specifications unless other action is approved by Owners representing an aggregate ownership interest of eighty percent or more of the Common Elements and by First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the Units subject to first mortgages within The Project.

9.4 Reorganization/Reallocation. In the event a partial taking by condemnation or by damage or destruction which is not rebuilt results in the taking of a complete Condominium Apartment, the Owner thereof automatically shall cease to be a member of the Association, and that Unit's entire Common Element interest, votes in the Association, and Annual Assessment Common Expenses Liability are automatically reallocated to the remaining Units in proportion to their respective Common Element interests before the taking and the Board of Directors shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of an Apartment remaining after part of an Apartment is taken under this Paragraph is thereafter a Common Element.

9.5 Obsolescence and Reconstruction. The Owners of Units to which at least eighty percent of the votes in the Association are allocated may agree, upon due notice to all Owners and granting them an opportunity to be heard that the Units are obsolete and adopt and record a written "Plan for Renewal and Reconstruction", which Plan must have the approval of those First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the Units subject to First Mortgagees within The Project. Written notice of adoption of such Plan shall be given to all of the Owners as an Annual Assessment for Common Expenses whether or not such Owner may have previously consented to such Plan. The assessment shall be levied, allocated and collected in the same manner as a Deficiency Assessment as provided for in Paragraph 9.2(f) hereof.

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ARTICLE TEN: TERMINATION OF THE CONDOMINIUM PROJECT

10.1 Vote of Owners and First Mortgagees. Except in the case of a taking of all the Units by condemnation or by fire or other casualty, The Project may be terminated only by agreement of the Owners of Units to which at least eighty percent of the votes in the Association are allocated. Such an agreement must have the approval of those First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the Units subject to first mortgages within The Project.

10.2 Termination Agreement. An agreement of Owners to terminate condominium ownership must be evidenced by their execution of a termination agreement or ratifications thereof. If, pursuant to a termination agreement, the real estate constituting The Project is to be sold following termination, the termination agreement must be recorded in every county in which a portion of The Project is situated, and is effective only upon recordation.

10.3 Sale of The Project. The Association, on behalf of the Owners, may contract for sale of The Project, but the contract is not binding on the Owners until approved pursuant to Paragraphs 10.1 and 10.2. If the real estate constituting The Project is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interest in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be apportioned among the Owners in accordance with Paragraph 10.5 of this Declaration. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her Unit. During the period in which the Owner has the right of occupancy, each Owner and his or her successors in interest remain liable for all assessments and other obligations imposed on Owners by the Declaration.

10.4 Project not be Sold. If The Property constituting The Project is not to be sold following termination, title to The Property, upon termination, vests in the Owners as tenants in common in proportion to their respective Common Element interests and the liens of the Units shall shift to such Owner's undivided interest. While the tenancy in common exists, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of The Property that formerly constituted his or her Unit.

10.5 Determination of Unit Owner's Interests. The respective interests of Owners referred to in Paragraphs 10.3, 10.4 and 10.6 are pro rata according to each Owner's percentage interest in the Common Elements immediately before termination.

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10.6 Distribution to Owners. Following termination of The Project, the proceeds derived from the sale shall be divided in proportion to the Owner's respective interests as provided in Paragraph 10.5, and shall be used and disbursed by the Association, as Attorney-in-Fact, in the following order:

- a) for payment of the balance of the lien of any first mortgage;
- b) for payment of reasonable costs of sale incurred;
- c) for payment of taxes and special assessment liens in favor or any assessing entity;
- d) for payment of unpaid assessments;
- e) for payment of junior mortgages and encumbrances in the order of and to the extent of their priority;
- f) the balance remaining, if any, shall be paid to the Owner.

The proceeds of sale described in Paragraph 10.3 and held by the Association as trustee are not assets of the Association.

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ARTICLE ELEVEN: CERTAIN RIGHTS OF THE FIRST MORTGAGEES

11.1 Entitlement. A First Mortgagee, upon written request by such First Mortgagee to the Association, shall be entitled to timely receive any of the following:

- (a) Budgets, notices of assessments, or any other notices provided for under this Declaration by the Association to the Owner of a Condominium Unit in which a First Mortgagee has a security interest.
- (b) Financial statements of the Association which are prepared for the Association and distributed to its Members.
- (c) Notices of meetings of the membership and the right to be represented at any meeting by a designated representative.
- (d) Notice of the decision of the Owners to make any amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.
- (e) Notice of the commencement of any condemnation proceedings with respect to any part of The Project.
- (f) Notice of any default by an Owner of a Unit in which a First Mortgagee has a security interest in the performance of any obligations under this Declaration, the Articles of Incorporation and/or Bylaws of the Association which remains uncured for a period of sixty days.
- (g) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (h) Notice of any condemnation loss or any casualty loss which affects a material portion of The Project or any Unit in which a First Mortgagee has a security interest.
- (i) Notice of any proposed action contained in Paragraphs 11.2 and 11.3 hereof, requiring the consent of the First Mortgagees.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate its name and address to which same shall be sent by the Association together

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with the Unit number or address of the Unit it has a mortgage on. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from the purported First Mortgagees of the same Condominium Unit, the Association shall honor the most recent requests received.

11.2 Restrictions on Amendments. The following restrictions do not apply to amendments to the Declaration made in accordance with ARTICLE NINE and ARTICLE TEN hereof, or to a reallocation of interests in the Common Elements which might occur pursuant to any plan of expansion in accordance with ARTICLE TWELVE hereof. The consent of the Owners of Units to which at least eighty percent of the votes in the Association are allocated and the approval of those First Mortgagees holding mortgages on Units which have at least eighty percent of the votes of the Units subject to first mortgages within The Project shall be required to add or amend any material provisions of the Declaration, Bylaws, Articles of Incorporation or The Map which establish, provide for, govern or regulate any of the following:

- (a) Assessments, manner of assessment liens or subordination of such liens;
- (b) Reserves for maintenance, repair and replacement of the Common Elements;
- (c) Insurance or Fidelity Bonds;
- (d) Right to use of the Common Elements;
- (e) Responsibility for maintenance and repair of The Project;
- (f) Subject to the provisions of ARTICLE TWELVE hereof the expansion or contraction of The Project or the addition, or annexation or withdrawal of property to and from The Project;
- (g) Boundaries of any Unit and the exclusive easement rights appertaining thereto;
- (h) Leasing of Condominium Apartments and uses to which an Apartment or the Common Elements are restricted;
- (i) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Unit;
- (j) A decision by the Association to establish self management when professional management

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had been required previously by a First Mortgagee;

- (k) Restoration or repair of The Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration.
- (l) Any action to terminate the legal status of The Project after substantial destruction or condemnation occurs, or for reasons other than the substantial destruction or condemnation of the Project; or
- (m) Any provision in this Declaration, Articles of Incorporation or Bylaws which specifically grants rights to First Mortgagees hereunder.

11.3 Special FHLMC Provision. So long as required by The Mortgage Corporation, the following provisions apply in addition to the provisions of Paragraph 11.2 above. Unless eighty percent of the First Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) give their prior written approval, the Association shall not be entitled to:

- (a) Use hazard insurance proceeds for losses to the improvements insured by the Association for other than repair, replacement or reconstruction of such improvements;
- (b) Partition or subdivide any Condominium Unit;
- (c) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Elements, except that approval shall not be required for the Board of Directors to grant easements for utilities and similar or related purposes;
- (d) By act or omission seek to abandon or terminate the Condominium Project.

11.4 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice. Copies are available at reasonable cost.

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ARTICLE TWELVE: EXPANSION

12.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge this condominium project in phases by submitting to The Project from time to time a Supplemental Condominium Map and Supplemental Declaration adding any of the Real Property described on Exhibit "D" attached hereto. The total number of condominium units in The Project as expanded shall not exceed thirty-six Units.

If The Project has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, any such addition, expansion or annexation must be according to a General Plan heretofore filed with and approved by the Federal Housing Administration or the Veterans Administration and such addition, expansion or annexation must be supported by the written consent of the Federal Housing Administration or the Veterans Administration, evidence of which may be recorded.

12.2 Supplemental Declarations and Supplemental Condominium Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Boulder County, Colorado, a supplement or supplements to this Declaration containing a legal description of the new Real Property or Properties, together with a Supplemental Condominium Map or Maps containing the same information with respect to the new Real Property as was required on the original Condominium Map with respect to the initial Real Property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the Real Property already subject to this Declaration.

All intended improvements in future phases must be substantially completed prior to being brought within the Condominium Project.

12.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to The Project as so expanded. For example, "Condominium Unit" shall mean the Condominium Units described hereinabove plus any additional Condominium Units added by a Supplemental Condominium Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Condominium Units shall be effective to transfer rights in The Project as expanded by use of the form of description set forth in Paragraph 2.3 hereof, with additional references to the Supplemental Condominium Declaration(s) and the Supplemental Condominium Map(s). The recordation in the records of Boulder County, Colorado, of a Supplemental Condominium Map or Maps incident to any expansion shall operate automatically to grant, transfer, and convey to the Owners of Condominium Units the respective

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undivided interests set forth in Paragraph 12.5 hereof in the new Common Elements added to the Condominium Project as the result of such expansion. Such recordation shall also operate to vest in any then Mortgagee of any Condominium Unit encumbering the new Common Elements added to The Project as the result of such expansion.

12.4 Declaration Operative on New Properties. The new Real Property shall be subject to all the terms and conditions of this Declaration or Declarations, and the Condominium Units therein shall be subject to the condominium regime with all incidents pertaining thereto as specified herein, upon placing the Supplemental Condominium Map(s) and Supplemental Condominium Declaration(s) of public record in the real estate records of Boulder County, Colorado.

All future improvements to The Project will be consistent with the initial improvements in terms of quality of construction and shall be similar in building types, architectural style and size of Units.

12.5 Interests on Enlargement. The Owners at the time of their purchase of Condominium Unit which has been brought into The Project by a Supplemental Declaration and a Supplemental Condominium Map shall be Members of the Association entitled to the same non-exclusive use of the Common Elements and the same voting privileges as those Owners of the initial property brought into The Project through the original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for all Owners including the Declarant in accordance with Paragraph 5.7 hereof.

Whenever any additional property is brought into the Condominium Project, the interest of each Owner of a Condominium Unit in the Common Elements in The Project after such addition shall be determined by the Declarant on the basis of the proportion which the approximate finished square footage area of all completed Apartments within The Project (including Apartments created on the additional Real Property submitted to The Project). The finished square footage area of each Apartment is based upon dimensions which are approximate and the calculation of the percentage interest has been rounded. The Supplemental Declaration recorded at the time of expansion shall set forth the new percentage ownership interests of the existing Units and the newly added Units.

12.6 Taxes, Assessments and Other Liens. All taxes and other assessments relating to the Real Property described in Exhibit "D" covering any period of time prior to the addition of such property or any portion thereof to The Project must be paid or otherwise provided for by the Declarant to the satisfaction of all First Mortgagees.

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Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deed of trust on any Unit constructed in a prior phase.

12.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of The Project after the recording of the Supplemental Map and Supplemental Declaration submitting each Phase to The Project, shall be treated as a part of The Project developed as a whole from the beginning, except to the extent expressly otherwise provided for herein. It is the express purpose hereof to provide that from and after the date of the submission of a Phase of The Project in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Project.

12.8 Termination of the Right of Expansion. This right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right shall terminate without further act or deed not later than:

- (a) the annexation of all of the Real Property described on Exhibit "D" to The Project; or
- (b) five years from the date of the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

Until the termination of this right of expansion as provided for above, any amendment to this Paragraph 12.8 must have the prior written assent of the Declarant.

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ARTICLE THIRTEEN: DURATION AND AMENDMENTS

13.1 Duration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of The Project and this Declaration are terminated, revoked, or amended as herein provided.

If and to the extent that any of these covenants, easements, rights and restrictions as contained herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities; (b) the rule restricting restraints on alienation; or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitation upon the time for which such covenants or restrictions may be valid, then the provisions concerned shall continue and endure only until the expiration of a period of twenty-one years after the death of the last to survive all of the lawful descendants of Ronald Reagan, President of the United States of America, living on the date this Declaration is recorded.

13.2 Amendments. Subject to provisions of ARTICLE TWELVE hereof and except as permitted in Paragraph 14.7 hereof and except in cases of amendments that may be executed by the Declarant pursuant to Paragraphs 1.23 and 13.4, and the Board of Directors pursuant to Paragraphs 1.23 and 9.4 and except as restricted by Paragraphs 3.7 11.2, 11.3, and 14.4 hereof, this Declaration, including the Map, may be amended only by written agreement by Owners of Units to which at least eighty percent of the votes in the Association are allocated, provided however, the consent of the Owners of Units to which one hundred percent of the votes are allocated and the approval of those First Mortgagees holding mortgages on Units which have at least one hundred percent of the votes of the Units subject to first mortgages within The Project shall be required to:

- (a) Increase the number of Units;
- (b) Change the number of votes in the Association appertaining to any Unit;
- (c) Change the pro rata interest or obligations of any individual Unit for the purposes of (i) levying assessments or allocating the distribution of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements.
- (d) Convert Units into Common Elements or Common Elements into Units.

All amendments must be recorded in the real estate records of Boulder County, Colorado.

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If The Project has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then until the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, amendment of this Declaration and the assessment of a Special Assessment in accordance with Paragraph 5.4 hereof.

13.3 Secretary's Certificate. One method of satisfying the requirements of Paragraph 13.2 hereof shall be the recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Units, and that the requisite percentage of First Mortgagees, have given written consent to the amendment. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, along with the recorded amendment, are in the records of the Association and available for inspection.

13.4 Special Amendments. Declarant hereby reserves and is granted the right and power to record Special Amendments to this Declaration at any time until the conversion of the Class B Membership to Class A Membership in accordance with Paragraph 4.5 hereof, which amends this Declaration to comply with the Statutes of the State of Colorado or any written requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans' Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgagees or deeds of trust covering the Units within The Project; provided however, that such special amendment must have the prior written consent of the Veterans Administration or the Federal Housing Administration.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of such Owners of the Units. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record such Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Unit.

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ARTICLE FOURTEEN: GENERAL PROVISIONS

14.1 Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation and Rules and Regulations of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto. Owners shall have a similar right of action against the Association.

14.2 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law.

14.3 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

14.4 Temporary Use by the Declarant. Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant to maintain upon The Project, without charge, such facilities as may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business office, storage area, nursery, construction yard and structures, signs, model condominium apartments and sales offices.

No maintenance of such facilities or use or activity by Declarant shall unreasonably interfere with the access, enjoyment or use of any Unit by any Owner nor the access, enjoyment or use of the Common Elements; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

This right of use shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such reservations shall terminate without further act or deed not later than:

- (a) The completion of all of the improvements to The Project, provided however, the Declarant may maintain within The Project, without charge, model condominium apartments and a sales office until the last Unit has been sold; or
- (b) five years from the date of the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

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Until the termination of this right of use as provided for above, any amendment to this Paragraph 14.4 must have the prior written assent of the Declarant.

14.5 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

14.6 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.7 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or 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 James W. Leach, 1881 - 9th Street, Suite 201, Boulder, CO 80302, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado (Change of Registered Agent).

14.8 Attorney's Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action. Attorneys' fees and costs may be paid by mutual stipulation of the parties if such action is resolved by stipulation and agreement of the parties.

14.9 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

14.10 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

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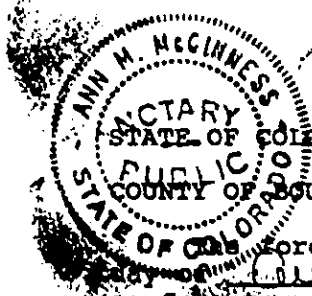
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this _____ day of _____ 1986.

ATTEST:

WONDERLAND HILL DEVELOPMENT COMPANY
a Colorado Corporation

[Signature]
Secretary

By: [Signature]
President



STATE OF COLORADO)
COUNTY OF BOULDER) ss.

The foregoing instrument was acknowledged before me this 28 day of August, 19 86, by Bruce Downie as Secretary and James Leach as President of Wonderland Hill Development Company.

My commission expires: November 7, 1990.

WITNESS my hand and official seal.

[Signature]
Notary Public

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**EXHIBIT A
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
SUBMITTED TO THE SHADOW CREEK CONDOMINIUM REGIME
(FIRST PHASE)**

ALL THAT PORTION OF THE N 1/2 OF THE N 1/2 OF SECTION 36, T1N, R71W, OF THE 6th P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE N 1/4 CORNER OF SAID SECTION 36, THENCE S 0°35'50" E, 544.94 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 36 TO THE CENTERLINE OF ARAPAHOE AVENUE IN THE CITY OF BOULDER, COLORADO; THENCE N 88°11' W, 504.46 FEET TO THE CENTERLINE OF THE FORMER DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY; THENCE N 14°45' W, 16.31 FEET; THENCE N 88°36' E, 78.21 FEET TO THE POINT OF BEGINNING;

THENCE N 88°36' E, 23.32 FEET;

THENCE S 0°01' E, 16.98 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD;

THENCE N 75°05' E, 14.70 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD TO THE SOUTH LINE OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN BOOK 675 AT PAGE 297 OF THE RECORDS OF BOULDER COUNTY, COLORADO;

THENCE S 89°58'30" E, 40.88 FEET ALONG THE SOUTH LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 675 AT PAGE 297;

THENCE N 0°01' W, 36.78 FEET TO THE CENTERLINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY;

THENCE N 75°05' E, 73.46 FEET ALONG THE CENTERLINE OF SAID DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY TO THE NORTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN BOOK 748 AT PAGE 242 OF THE RECORDS OF BOULDER COUNTY, COLORADO;

THENCE N 08°05'00" W, 172.75 FEET;

THENCE N 82°56' W, 100.00 FEET;

THENCE N 87°41' W, 24.34 FEET;

THENCE S 15°00'56" W, 195.25 FEET;

THENCE S 48°33'23" E, 58.78 FEET TO THE POINT OF BEGINNING.

AREA=0.80 ACRES, MORE OR LESS.

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**EXHIBIT B
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS**

**THE SHADOW CREEK CONDOMINIUMS
SCHEDULE OF PERCENTAGE INTERESTS IN THE COMMON ELEMENTS
(FIRST PHASE)**

Subject to the provisions of ARTICLE TWELVE of the Declaration, each Unit in The Project is hereby vested with an undivided percentage interest in and to the Common Elements as set forth below:

UNIT NUMBER	FINISHED SQ. FT. PER APARTMENT	PERCENTAGE INT. PER UNIT
CA-101	1605	9.256
CA-102	1289	7.420
CA-103	1289	7.420
CA-104	1605	9.256
CA-201	1605	9.256
CA-202	1289	7.420
CA-203	1289	7.420
CA-204	1605	9.256
CA-301	1605	9.256
CA-302	1289	7.420
CA-303	1289	7.420
<u>CA-304</u>	<u>1605</u>	<u>9.256</u>
	17,364.	100%

The Percentage Interest in the Common Elements of each Unit has been determined by the Declarant on the basis of the proportion which the approximate finished square footage area of each Apartment bears to the total approximate finished square footage area of all of the Apartments in The Project (including Apartments created on the additional real property submitted to The Project). The square footage for each Apartment is based upon dimensions which are approximate and the calculation of the Percentage Interest has been rounded. The Percentage Interest in the Common Elements shown for each Unit is subject to change in accordance with ARTICLE TWELVE of the Declaration.

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In the event the Declarant exercises its right to enlarge this Project in Phases by submitting to The Project additional real property in accordance with ARTICLE TWELVE of the Declaration, each Percentage Interest of each Unit will then be determined by the Declarant on the basis of the proportion which the approximate finished square footage area of each Apartment bears to the total approximate finished square footage area of all completed Apartments within The Project (including Apartments created on the additional real property submitted to The Project).

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**THE SHADOW CREEK CONDOMINIUMS
SCHEDULE OF MAINTENANCE RESPONSIBILITIES**

Exhibit C
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I	II	III	IV	V
ITEMS	COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITIES WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENTS
Grounds, including all landscaped and paved areas and other improvements thereon lying outside the Building's foundations with the exceptions noted herein.	All, in all regards.	---	---	---
The Building's roof, exterior walls, foundation.	All, in all regards, with exceptions noted herein regarding routine cleaning.	---	---	---
Windows.	Exterior painting, and exterior caulking only.	---	---	Routine clearing, repair and replacement of glass in the windows and window mechanisms serving an Apartment.
Doors, Apartment entry.	All surfaces which are not exposed to the interior of an Apartment, including door panel, buck, trim and sill.	---	---	Apartment side of door panel, interior trim, all hardware including lock, door chime assembly, hinges/closure and weather stripping.
Doors, balconies.	All surfaces which are not exposed to the interior of an Apartment excluding glass, including door panel, buck, trim and sill.	---	---	Apartment side of door panel, including glass replacement, interior trim, door mechanisms, hinge/closure and weather stripping.

THE SHADOW CREEK CONDOMINIUMS
SCHEDULE OF MAINTENANCE RESPONSIBILITIES

I	II	III	IV	V
ITEMS	COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITIES WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENTS
Plumbing and related systems and components thereof.	All maintenance, repair and replacement of portions of plumbing constituting service to more than one Apartment. Water damage to Common Elements or other Apartments than the one which is the primary source of the problem through the negligence of the occupants of such Apartment.	—	Only to the extent that a malfunction or threat of same has originated outside the Apartment in which the malfunction occurs or may occur. Also damage caused to such Apartment from causes initially occurring outside that Apartment.	All portions within an Apartment serving only that Apartment, including fixtures and appliances attached thereto. Water damage to an Apartment, when the primary source of the problem is through negligence of the occupants of that Apartment.
Electrical and related systems and components thereof, including fixtures.	Systems including fixtures and appliances serving more than one Apartment, all in all regards.	—	—	Systems including fixtures and appliances, serving only one Apartment, all in all regards, including exterior fixtures serving primarily only one Apartment.
Heating systems and components thereof.	Systems serving more than one Apartment, all in all regards.	—	—	All heating and related systems and components thereof serving only one Apartment, all in all regards.
Parking Spaces.	—	All, in all regards.	—	—
Storage Spaces.	—	All, in all regards, except routine cleaning.	—	Routine cleaning.

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**THE SHADOW CREEK CONDOMINIUMS
SCHEDULE OF MAINTENANCE RESPONSIBILITIES**

I	II	III	IV	V
ITEMS	COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITIES WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENTS
Trash collection system.	All, in all regards.	—	—	—
Balconies and decks.	—	All in all regards, except routine cleaning.	—	Routine cleaning.
Exterior Stairs.	All, in all regards except ice and snow removal	—	—	Ice and snow removal by Owners served thereby.
Chimneys.	All, in all regards.	—	—	—
Elevator.	All, in all regards.	—	—	—
Lobby.	All, in all regards.	—	—	—
Swimming Pool.	All, in all regards.	—	—	—

**THE SHADOW CREEK CONDOMINIUMS
SCHEDULE OF MAINTENANCE RESPONSIBILITIES**

Exhibit C
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MAINTENANCE RESPONSIBILITIES:

This chart and the titles and headings used herein are not intended to describe or encompass all maintenance functions nor to delineate all respective responsibilities between the Owners, severally, and the Association. The placement of responsibility under any specific column does not always accurately reflect the precise character and nature of ownership. The appropriate sections of the Declaration determine ownership. In many cases maintenance responsibility is allocated to the Association to ensure central maintenance responsibility, uniformity and quality of repair, and to protect community health and safety. Where such maintenance is required due to the negligent or wrongful act or omission of an Owner (or members of his household, tenants, employees, agents, visitors, guests or pets), the Association will perform the necessary maintenance at the sole expense of the Owner.

COLUMN I: Items - Items appearing in this column are illustrative and not exhaustive.

COLUMN II: Common Elements Under Association Responsibility - Responsibility for determining and providing for the maintenance, repair and replacement requirements of the Common Elements and determining the costs thereof shall be primarily the responsibility of the Board of Directors and such designees to which it may delegate certain such responsibilities.

COLUMN III: Limited Common Elements Under Association Responsibility - Responsibility for determining the maintenance, repair and replacement requirements of the Common Elements shall be shared responsibility between the Board of Directors and the Owner of a Unit to which a specific Limited Common Element is exclusively appurtenant; provided, however, that the Board shall have the final responsibility for determining the need for and accomplishing such maintenance, repair and replacement activities.

COLUMN IV: Unit Components Under Association Responsibility - The items in this column are legally and by definition a part of a Unit but are attached or directly connected to or associated with the Common Elements and common expense items in such a way that a clear distinction between Owner and Association responsibility cannot be made. Moreover, such items frequently involve matters of concern relative to the general health, safety and welfare of all of the occupants of The Building. Thus, certain costs which appear to benefit a single Owner but which affect other Owners are declared a common expense, especially when the correct functioning of an activity or element is integral to or supportive of the legally defined Common Elements and common expenses.

COLUMN V: Certain Other Components Under Owner's Responsibility Without Respect to Ownership of the Component - The items in this column are not intended to be exclusive and all-encompassing and do not affect responsibilities expressly provided for otherwise.

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EXHIBIT D
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS

LEGAL DESCRIPTION OF THE REAL PROPERTY
WHICH MAY BE SUBMITTED TO THE SHADOW CREEK CONDOMINIUM REGIME
IN LATER PHASES

All that portion of the N $\frac{1}{4}$ of the N $\frac{1}{4}$ of Section 36, T1N, R71W, of the 6th P.M., described as follows:

Commencing at the N $\frac{1}{4}$ Corner of said Section 36, thence S0 $^{\circ}$ 35'50"E, 544.94 feet along the North-South Centerline of said Section 36 to the Centerline of Arapahoe Avenue in the City of Boulder, Colorado; thence N88 $^{\circ}$ 11' W, 504.46 feet to the Centerline of the former Denver, Boulder and Western Railroad right-of-way; thence N14 $^{\circ}$ 45'W, 16.31 feet to the True Point of Beginning;

Thence N88 $^{\circ}$ 36'E, 106.53 feet;

Thence S0 $^{\circ}$ 01'E, 16.98 feet to the South right-of-way line of said former Denver, Boulder and Western Railroad;

Thence N75 $^{\circ}$ 05'E, 14.70 feet along the South right-of-way line of said former Denver, Boulder and Western Railroad to the South line of that tract of land as described in Deed recorded in Book 675 at Page 297 of the records of Boulder County, Colorado;

Thence S89 $^{\circ}$ 58'30"E, 40.88 feet along the South line of that tract of land as described in said Book 675 at Page 297;

Thence N0 $^{\circ}$ 01'W, 36.78 feet to the Centerline of said former Denver, Boulder and Western Railroad right-of-way;

Thence N75 $^{\circ}$ 05'E, 36.20 feet along the Centerline of said Denver, Boulder and Western railroad right-of-way;

Thence N3 $^{\circ}$ 42'37"E, 181.01 feet;

Thence N82 $^{\circ}$ 56'W, 100.00 feet;

Thence N87 $^{\circ}$ 41'W 100.00 feet;

Thence N87 $^{\circ}$ 21'W, 100.00 feet;

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**EXHIBIT D
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
WHICH MAY BE SUBMITTED TO THE SHADOW CREEK CONDOMINIUM REGIME
IN LATER PHASES**

Thence S82°00'W, 12.62 feet to the Easterly line of that tract of land as described in Deed recorded on Film 929 as Reception No. 182591 of the records of Boulder County, Colorado;

Thence S1°00'30"E, 67.45 feet along the Easterly line of that tract of land as described on said Film 929 as Reception No. 182591;

Thence N89°57'E, 9.13 feet along the Easterly line of that tract of land as described on said Film 929 as Reception No. 182591;

Thence S1°30'E, 90.00 feet along the Easterly line of that tract of land as described on said Film 929 as Reception No. 182591;

Thence S74°46'E, 41.72 feet along the Easterly line of that tract of land as described on said Film 929 as Reception No. 182591 to the Southeast Corner thereof;

Thence S77°36'E, 18.56 feet;

Thence S6°06'E, 49.94 feet;

Thence S89°49'E, 23.44 feet;

Thence S14°45'E, 13.69 feet to the True Point of Beginning.

LESS:

ALL THAT PORTION OF THE N 1/2 OF THE N 1/2 OF SECTION 36, T1N, R71W, OF THE 6th P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE N 1/4 CORNER OF SAID SECTION 36, THENCE S 0°35'50" E, 544.94 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 36 TO THE CENTERLINE OF ARAPAHOE AVENUE IN THE CITY OF BOULDER, COLORADO; THENCE N 88°11' W, 504.46 FEET TO THE CENTERLINE OF THE FORMER DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY; THENCE N 14°45' W, 16.31 FEET; THENCE N 88°36' E, 78.21 FEET TO THE POINT OF BEGINNING;

THENCE N 88°36' E, 28.32 FEET;

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**EXHIBIT D
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
WHICH MAY BE SUBMITTED TO THE SHADOW CREEK CONDOMINIUM REGIME
IN LATER PHASES**

THENCE S 0°01' E, 16.98 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD;

THENCE N 75°05' E, 14.70 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD TO THE SOUTH LINE OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN BOOK 675 AT PAGE 297 OF THE RECORDS OF BOULDER COUNTY, COLORADO;

THENCE S 89°58'30" E, 40.88 FEET ALONG THE SOUTH LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 675 AT PAGE 297;

THENCE N 0°01' W, 36.78 FEET TO THE CENTERLINE OF SAID FORMER DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY;

THENCE N 75°05' E, 73.46 FEET ALONG THE CENTERLINE OF SAID DENVER, BOULDER AND WESTERN RAILROAD RIGHT-OF-WAY TO THE NORTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN BOOK 748 AT PAGE 242 OF THE RECORDS OF BOULDER COUNTY, COLORADO;

THENCE N 08°05'00" W, 172.75 FEET;

THENCE N 82°56' W, 100.00 FEET;

THENCE N 87°41' W, 24.34 FEET;

THENCE S 15°00'56" W, 195.25 FEET;

THENCE S 48°33'23" E, 58.78 FEET TO THE POINT OF BEGINNING.

AREA=0.00 ACRES, MORE OR LESS.

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**EXHIBIT E
TO THE CONDOMINIUM DECLARATION
FOR THE SHADOW CREEK CONDOMINIUMS**

**THE RECORDING DATA FOR RECORDED EASEMENTS AND
LICENSES WHICH THE PROJECT IS OR MAY BECOME SUBJECT TO**

1. Easement and right of way recorded on Film 1346 as Reception No. 678941.
2. Right of way for Overhead Power Lines and Power Poles.

All recordings are in the office of the Boulder County Clerk and Recorder, Boulder, Colorado.