

OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HIGH POINT CONDOMINIUMS

130.00

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CONDOMINIUM DECLARATION  
FOR HIGH POINT CONDOMINIUMS

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THIS DECLARATION, made as of the 13<sup>th</sup> day of MARCH, 1984, by HIGH POINT ASSOCIATES, LTD., an Ohio Limited Partnership, hereinafter called "Declarant", for itself, its successors and assigns.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in the County of El Paso, State of Colorado, which real property is described in Exhibit "A" attached hereto (hereinafter called the "Property"); and

WHEREAS, Declarant desires to create a condominium project on the Property pursuant to the provisions of the Condominium Ownership Act of the State of Colorado and the provisions of this Declaration; and

WHEREAS, Declarant also desires to reserve the option to expand such project with successive phases.

NOW, THEREFORE, Declarant hereby submits the Property together with all appurtenances, facilities, and improvements thereon to condominium ownership pursuant to the Condominium Ownership Act of the State of Colorado and this Declaration, and Declarant hereby imposes upon the Property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which are for the purpose of protecting the value and desirability of the Property and which shall be deemed to run with the Property and any real property and improvements hereafter added to the Project and shall be a burden and a benefit to Declarant, its successors, assigns and any person or entity acquiring or owning any right, title or interest in the Property or any part hereof or any part of any added property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

DEFINITIONS

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

1.1. "Association" means the High Point Condominium Owners Association, Inc., a Colorado nonprofit membership corporation, its successors and assigns. Except as specified herein, the Association shall act by and through its Board of Managers.

1.2. "Board" means the Board of Managers of the Association.

1.3. "Building" means a separate building improvement located upon the Property and consisting of one or more floors to be used for residential purposes, having access to a public street, and containing one or more individual Units.

1.4. "Common Elements" means and includes all of the Property, and all of the improvements thereto and thereon located, excepting all Units as the same are herein defined. Common Elements shall consist of the General Common Elements and the Limited Common Elements, which are defined as follows:

A. "General Common Elements" means a part of the Common Elements and includes by way of illustration and not limitation any of the following to the extent located within the

Project: the real Property described on Exhibit "A", the foundations, columns, girders, beams, supports, main walls, chimneys, roofs, common stairs and stairways, yards, gardens, grass, landscaping, installations of central services such as electricity, water, common utilities, and related tanks, pumps, motors, fans, compressors, pipes, and lines, sidewalks, pathways, private roads and streets located within the Condominium Project, and in general all property, apparatus and installations existing for common use or normally in common use including, without limitation, the air space above the Property which is not within the respective Condominium Units. General Common Elements shall include all tangible physical properties of this Project, except Limited Common Elements and the Units. No part of the General Common Elements may be conveyed to any person or entity except the Owners or as specifically provided in this Declaration.

B. "Limited Common Elements" means those portions of the Common Elements which are either limited to and reserved for the exclusive use and enjoyment of an Owner or limited to and reserved for the common use of more than one, but fewer than all, of the Owners, which may include by way of illustration and not limitation, any of the following which are specifically designated on the Condominium Map or supplement thereto as being Limited Common Elements: garage, parking spaces, patios, driveways, attics, balconies or any other area, item or mechanical equipment designated for the exclusive use of a Unit. Limited Common Elements may be designated as being appurtenant to a particular Condominium Unit either by the Condominium Map or supplement thereto or by any deed or other conveyance of a Condominium Unit from Declarant, but shall not be thereafter severed from the Condominium Unit to which they are assigned.

1.5. "Common Expenses" means and includes (i) expenses of administration, maintenance, repair or replacement of the Common Elements; (ii) expenses declared common expenses by the Association; (iii) all sums lawfully assessed against the Condominium Units by the Board of Managers of the Association; and (iv) expenses agreed upon as common expenses by the Owners.

1.6. "Condominium Act" means the Condominium Ownership Act of the State of Colorado (Colorado Revised Statutes 1973, Section 38-33-101 et. seq.) as now enacted and hereafter revised, modified, and amended.

1.7. "Condominium Unit" means one Unit together with the undivided interest in the Common Elements appurtenant to such Unit, all fixtures and improvements therein contained, and all other appurtenant rights.

1.8. "Declarant" means High Point Associates, Ltd., an Ohio Limited Partnership, its assigns or successors, to whom it specifically transfers in writing all or part of its rights as Declarant hereunder, and its authorized representatives.

1.9. "Declaration" means this Condominium Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided.

1.10. "Expansion Property" means and includes all of the real property described in Exhibit "C" attached hereto and incorporated herein by this reference; whether now owned or hereafter acquired by the Declarant.

1.11. "Guest" means any agent, employee, guest, licensee or invitee of an Owner.

1.12. "Map" or "Condominium Map" means the engineering drawings and survey containing the information required in Article II of this Declaration and recorded as required by said Article.

Either term shall include the original and all supplemental maps, if any.

1.13. "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the records of the office of the Clerk and Recorder of El Paso County, Colorado, and by which a Condominium Unit or any part thereof is encumbered. The term shall also include any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the original seller, whether such contract is recorded or not (but if not recorded, then written notice thereof shall be delivered to the Board) and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a subsequent assignee who has notified the Board in writing of such assignment.

1.14. "First Mortgage" means and refers to the unpaid and outstanding Mortgage, having priority of record over all other recorded encumbrances and liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.15. "Mortgagee" means any person or other entity or any successor to the interest of such person or entity named as the mortgagee, trust beneficiary, or creditor under any recorded mortgage, deed of trust, or other security instrument by which a Condominium Unit or any interest therein is encumbered. The term shall also include the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not but if not recorded, then written notice thereof shall be delivered to the Board.

1.16. "Owner" means any person, corporation, partnership, association, contract sellers or other legal entity or any combination hereof, including Declarant, who owns the record fee simple interest in one or more Condominium Units. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Condominium Unit merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.17. "Owner's Proportionate Share" or "Proportionate Interest" means that percentage of the total which is equal to such Owner's percentage interest in the Common Elements, as set forth in Exhibit "B" attached hereto and incorporated herein by this reference and which is subject to adjustment in the event that the Project is expanded as herein provided.

1.18. "Property" means the real Property described in Exhibit "A" attached hereto and incorporated herein by this reference, together with any property subsequently annexed hereto.

1.19. "Project" or "Condominium Project" means all Buildings and other improvements located on the Property and all rights, easements and appurtenances belonging thereto, and all of the undivided fee simple interest in the Property and shall include any real property subsequently annexed or added to the Project.

1.20. "Unit" means an individual air space which is contained within any enclosed room or room occupying part of a floor or floors in a Building to be used for residential purposes and having access to a public street and bounded by the unfinished interior surfaces of the perimeter walls, floors and ceilings, and

also bounded by the unfinished interior surfaces of windows, doors and built-in fireplace flues, if any, all in their closed position. If two or more Units adjoin each other, the adjoining walls, floors and ceilings shall be deemed to be perimeter. The term shall include all fixtures, built-in cabinets, built-in appliances, and improvements which are contained within a Unit and which comprise part of the Building, together with all interior non-bearing walls within the Unit and the inner decorated and/or finished surfaces of perimeter walls, floors and ceilings, including without limitation, plaster, paint, wallpaper and carpet. The term does not include any of the structural components for the Building, if any, located within the Unit, any utilities running through the Unit that serve more than one Unit, or any other Common Element or part thereof located within the Unit.

1.21. "Unit Assessment" means an assessment against a particular Owner and his Condominium Unit as more particularly described in Article XI hereof.

## ARTICLE II

### CONDOMINIUM MAP

2.1. Recording. The Map of the Property and the improvements thereon shall be filed for record in the office of the Clerk and Recorder of El Paso County, Colorado, prior to the first conveyance of a Condominium Unit.

2.2. Contents. Each such map or supplement shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the Buildings in reference to the exterior boundaries of the Property; the floor and elevation plans; the location of the Units within the Buildings, both horizontally and vertically; the thickness of the common walls between or separating the Units; the location of any structural components or supporting elements of the Buildings located within a Unit; the Condominium Unit designations; the Building designations; the designations of the Limited Common Elements, and the certification of a registered land surveyor stating that the Map substantially depicts the location and the horizontal and vertical measurements of the Units, the Unit designations, the Building designations, the location of the General and Limited Common Elements and the elevations of the constructed unfinished floors and ceilings of the Units as established from a datum plane and an affirmation that such Map was prepared subsequent to substantial completion of the improvements shown thereon. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, without the consent of the Owners being required, to conform the same according to the actual location of any of the improvements and to establish, vacate and relocate easements, access roads, on-site parking areas, garages and/or carports. Declarant's right, as hereinabove set forth, shall terminate on the conveyance by Declarant of all Condominium Units within the Project, or on December 31, 1988, whichever occurs first.

## ARTICLE III

### NATURE OF OWNERSHIP

3.1. Division of Property into Condominium Units. The Property is hereby divided into separate Condominium Units as shown on the Map and Exhibit "B" hereto, each consisting of a separate fee simple estate in a Unit, an appurtenant, undivided Proportionate Interest as tenant in common in and to the Common Elements, and all rights appurtenant thereto, but subject to adjustment if the Project is expanded as provided herein. Ownership of the Common Elements is

allocated on the basis of a fraction, the numerator of which is the number "one" and the denominator of which is the total number of Condominium Units existing in the Project including any expansion.

3.2. Inseparability of a Condominium Unit. Each Unit, together with the undivided Proportionate Interest in the General Common Elements and the Limited Common Elements appurtenant thereto, and all other rights appurtenant thereto, shall be inseparable and may be conveyed, leased, devised, sold, transferred, or encumbered only as a Condominium Unit.

3.3. Nonpartitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners as tenants in common and shall remain undivided. No Owner, group of Owners or the Association shall bring any action for partition or division thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Condominium Project, and each Owner hereby expressly waives any and all such rights of partition he may have by virtue of his ownership of a Condominium Unit. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Condominium Unit between the Owners thereof, but such legal partition shall not affect any other Condominium Unit, nor shall any such partition sever any part thereof from such Condominium Unit as a whole.

3.4. Separate Taxation. All taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately and not on any Building or the Project as a whole, and each Condominium Unit shall be carried on the tax books as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the fractional undivided Proportionate Interests in Common Elements appurtenant to and part of the Condominium Units. The Association or the Declarant shall deliver to the County Assessor of the County of El Paso, Colorado, any written notice required by the Condominium Act, setting forth descriptions of the Condominium Units and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessment. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his Proportionate Share thereof in accordance with his ownership interest in the General Common Elements, and, in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their Proportionate Share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

3.5. Ownership-Title. A Condominium 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. Each such Owner shall have and be entitled to the exclusive ownership and possession of his Unit, subject to the provisions of this Declaration and said laws.

3.6. Use of Common Elements. Subject to the restrictions contained in this Declaration, including without limitation the restriction contained in Section 9.8, each Owner, his family members, Guests, and tenants shall have the non-exclusive right to use and enjoy the General Common Elements for the purpose for which they are intended, subject to the rules and regulations of the



Association and without hindering or interfering with the lawful rights of other Owners, and shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to that Condominium Unit and designated for exclusive use by such Owner.

3.7. Charges for Use. Except for the assessments and other sums set forth herein, no Unit Owner shall be required to pay any additional fees or charges in connection with such Owner's use of any of the Common Elements existing at the recording of this Declaration; provided however, the Association may undertake on a contractual basis any activity, function or service, for the benefit of all, some or any Owners who agree to pay therefor, separate and apart from the assessments hereunder.

3.8. Recreational Facilities. It is not anticipated that any major recreational facilities will be constructed by the Declarant on or as part of the Common Elements.

3.9. Right to Combine Units. Declarant hereby reserves the right to physically combine the area or 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 the respective Condominium Units. In the event of any such physical combining of Units to create a combined Unit, the combined Condominium Unit shall also include the fixtures and improvements and undivided interest in Common Elements appurtenant to the Units so combined and shall be legally described by reference to both Unit members followed by the word "combined". Declarant reserves the right to designate and convey to any purchaser of any such combined Unit, as additional Limited Common Elements appurtenant thereto, any walls, floors or other structural separations between the Units so combined, or any space which would be occupied by such structural separations but for the combination of such Units; provided, however, that such walls, floors or other structural separations or such space shall automatically become General Common Elements if the combined Units become subject to separate ownership in the future. This reserved right in Declarant shall terminate upon the conveyance by the Declarant of all of the Units within the Project to third party purchasers or on December 31, 1988, whichever event occurs first.

3.10. New Additions to the Existing Common Elements. If the Declarant or the Association makes any new additions of General and Limited Common Elements to be constructed hereafter, then, except as may be otherwise provided in Article XVII hereof, a) each Owner would be responsible for his percentage of any increase in Common Expenses created thereby, b) each Owner would own, as a tenant in common with the other Owners, an undivided interest in the new additions in accordance with his Proportionate Interest, c) each Owner's interest in the existing General and Limited Common Elements would be unaffected by such additions, and d) each Owner's voting powers in the Association would be unaffected by such additions.

#### ARTICLE IV

##### DESCRIPTION, TRANSFER AND CONVEYANCE OF A CONDOMINIUM UNIT

4.1. Description. Every contract for the sale of a Condominium Unit and every deed, lease, mortgage, trust deed, will or other instrument affecting title to, or interest in, a Condominium Unit, may legally describe that Condominium Unit, in the following manner (with appropriate insertions):

Condominium Unit \_\_\_\_\_, Building \_\_\_\_\_, High Point  
 Condominium \_\_\_\_\_ according to the Condominium Declaration  
 thereon \_\_\_\_\_ for record in the records of the office of  
 the Clerk \_\_\_\_\_ recorder of El Paso County, Colorado  
 on Nov \_\_\_\_\_, 1984, in Book 3846, at Page 671, and

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as defined and described in the Condominium Map for High Point Place recorded on March 16, 1984, in Condominium Plat Book 3, Page 100, in said records.

4.2. Transfer. Every instrument affecting title to or interest in a Condominium Unit which describes it in the manner set forth above, shall be good and sufficient for all purposes to sell, convey, transfer, assign, encumber or otherwise affect not only that Unit, but also, without requiring specific reference thereto, the undivided interest in the General Common Elements and the Limited Common Elements appurtenant thereto and all other appurtenant property rights and interests, together with all easements and all fixtures and improvements therein contained, and to incorporate all of the rights, easements, limitations, and burdens incident to ownership of a Condominium Unit as provided in this Declaration and the Condominium Map; Declarant may assign any Limited Common Element, such as a garage, which are not assigned by the Condominium Map, by adding its description to the legal description set forth in Section 4.1 above.

4.3. Amendments and Supplements. 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 reference(s) thereto.

## ARTICLE V

### EASEMENTS

5.1. Recorded Easements. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including without limitation any as shown on any recorded plat affecting the Property, or any portion thereof, and as shown on the Condominium Map; additionally, the recording data for recorded easements and licenses upon the Property is as follows: reservation and assignment of minerals in Book 1926 at Page 431, Book 2452 at Page 455, Book 3377 at Page 413 and Book \_\_\_\_ at Page \_\_\_\_.

5.2. Ingress and Egress and Support. Subject to Articles VII and IX hereof, each Owner, his family members, Guests and tenants shall have a non-exclusive easement for the purpose of vehicular and pedestrian ingress and egress over, upon, and across the General Common Elements necessary for access to that Condominium Unit, to public or private streets, and to the Limited Common Elements designated for use in conjunction with that Condominium Unit, and each Owner shall have the right to the horizontal and vertical support of his Unit.

5.3. Association Use. The Association, its officers, agents and employees shall have a non-exclusive easement to make such use of and to enter into, upon, across, under or above the General Common Elements as may be necessary or appropriate to perform the duties and functions which it is permitted or required to perform pursuant to this Declaration or otherwise, including but not limited to the right to construct and maintain on the Common Elements any maintenance and storage facilities for use by the Association.

5.4. Repairs - Ordinary and Emergency. If any Common Elements are located within a Unit, or are conveniently accessible only through a Unit, the Association, its officers, agents or employees, shall have the right to enter such Unit after service of reasonable written notice and during regular business hours, for the inspection, maintenance, repair and replacement of any of such Common Elements or after service of such notice, if any, as is reasonable under the circumstances, at any time as may be necessary for making emergency repairs to prevent damage to the Common Elements or to another Unit or Units. Damage to any part of a Unit or Units resulting from the above-described repairs or any damage caused to a

Unit by the Common Elements located outside of the Unit, including without limitation broken water pipes, sewer lines or other utilities, shall be a common expense of all of the Owners, unless such damage is the result of the misuse or negligence of the Owner, his family, his tenants or his Guests, in which case such Owner shall be responsible and liable for all of such damage and may be charged for any cost thereof by special assessment. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of the above-described repairs or from action taken to comply with any law, ordinance or order of any governmental authority. Damaged improvements, fixtures or personalty shall be restored to substantially the same condition in which they existed prior to the damage.

5.5. Encroachments. If any part of the Common Elements encroaches upon a Unit or Units, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the Common Elements, or upon any adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Building or Condominium Unit is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Common Elements due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building or Unit constructed on the Property, by error in the Condominium 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. Such encroachments and easements shall not be considered or construed to be encumbrances either on the Limited or General Common Elements or on the Condominium Units. In interpreting any and all provisions of this Condominium Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Condominium Units, the actual location of a Condominium Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Condominium Unit as indicated on the Condominium Map.

5.6. Utilities. Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property, the Common Elements and/or the roofs or walls of any Building for the purpose of installing, maintaining, repairing and replacing any utilities, including but not limited to gas, electric, water, sewer and telephone and cable television lines, any heating or cooling installations, any master television antenna system and any other necessary and related facilities. The foregoing easements shall include the right of ingress and egress and the right to erect and maintain the necessary pipes, wires, lines, poles and other equipment should any person or party furnishing a service covered by a general easement hereinabove described request a specific easement by separate recordable document, Declarant shall have the right to grant such easement without conflicting with the terms of the foregoing easement thereof. The foregoing easements shall not affect any other recordable easement on the Property, including but not limited to easements granted in the Condominium Map. The right reserved herein for Declarant shall pass automatically to the Board upon the last sale of the Condominium Unit within the Project or on December 31, 1988, whichever occurs first. Furthermore, easements are hereby declared and granted to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the Common Elements and the walls of the Units whether or not such walls lie in whole or in part within the Unit boundaries.

5.7. Reservation for Declarant's Further Development. Declarant, for itself and its assigns, shall have the right to ingress and egress over, under, across and through the Property and the Common Elements and the right to store materials thereon and to make such other reasonable use thereof as may be necessary to complete the Project, to provide access and/or utilities to the Expansion Property, or any part thereof, and/or to change, correct, install or construct such drainage facilities or modification of landscaping and drainage as may be necessary in Declarant's reasonable discretion, except that such use may not unreasonably interfere with the Owners' use and enjoyment of their Condominium Units and the Common Elements, nor with their rights of ingress and egress to their Units from a public or private street.

5.8. Public Servants and Emergencies. A non-exclusive easement is further granted to all police, sheriff, fire protection, ambulance and all similar persons to enter upon the streets, Common Elements, and the Project in the proper performance of their duties.

5.9. Easements Deemed Created. The easements, uses and rights herein created for an Owner shall be deemed appurtenant to the Unit of that Owner, and all conveyances of Condominium Units hereafter made, whether by Declarant or otherwise, shall be construed to grant or reserve the easements, uses and rights set forth herein, even though no specific reference to such easements or this Article appears in the instrument for such conveyance.

## ARTICLE VI

### MECHANICS' LIENS

6.1. Mechanics' Liens - Association Work. Labor performed, or services or materials furnished for the Common Elements, if duly authorized by the Board, shall be deemed to be performed or furnished at the express consent of each Owner, provided however, any Owner may remove his Condominium Unit from any such lien against the Project or against two or more Condominium Units, or against the Common Elements or a portion thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien, based upon the percentages shown in Exhibit "B", and the Board shall have no authority to bind the Owners beyond their pro rata share as provided above.

6.2. Mechanics' Liens - Owner Work. In the event a lien arises from work or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner thereof or his agent or his contractor or subcontractor, and not requested by the other Owners or the Board, such Owner shall indemnify, defend and hold harmless all other Owners and the Association from, and against any liability or loss arising from the claim of any such lien. In no event, shall the claim of any such individual lien be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished; the filing of any such lien against the Condominium Unit of a non-consenting Owner shall, to the extent permitted by law, be null and void and shall entitle such Owner or the Association to recover damages and expenses, including without limitation attorney's fees, from the lienor.

6.3. Other Liens. As required by the Condominium Act, Declarant hereby states that it is possible that additional liens, other than mechanics' liens, assessment liens or tax liens, may be obtained, to the extent permitted by law and by this Declaration, against the Common Elements. To the extent permitted by law, all liens shall be subject to the covenants, terms and provisions of this Declaration.

## ARTICLE VII

USE RESTRICTIONS

7.1. Residential Use. Each Unit shall be occupied and used as a private dwelling for the Owner, the members of his family, Guests and tenants for residential purposes only. No Unit shall be used for any business, manufacturing or commercial purpose whatsoever; provided, however, if the appropriate zoning so allows and if proper written approval of the Board is obtained, an Owner may use a specifically designated portion of his Unit as a home business office, which approval may thereafter be withdrawn or terminated by the Association at any time. The Board may, in its reasonable discretion, restrict the maximum number of adults and children which are permitted to occupy the Units.

7.2. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Common Elements, nor shall an addition to, or change or alteration therein be made until the plans and specifications showing the nature, shape, height, material and location of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to surrounding structures and topography. In the event the Board fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it and have been receipted for by a member of the Board, approval will not be required and this Section will be deemed to have been fully complied with. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-Buildings shall be used on any portion of the Property at any time as a residence, either temporarily or permanently. No Owner shall undertake any work in his Unit which would jeopardize the soundness or safety of the Building or the Project, reduce the value thereof or impair an easement thereon or thereto, nor shall any Owner enclose, by means of screening or otherwise, any Common Element including without limitation, any balcony, patio or porch which is accessible from, associated with and which adjoins a Unit, without having first obtained the prior written approval of the Board with respect to the materials, design and specifications for such enclosure, as more particularly provided in this paragraph. Structural alterations shall not be made by an Owner to the Building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Building without the prior written consent of the Board first having been obtained. All drapes, shades, blinds and other window coverings shall be white when viewed from the outside, unless the prior written approval of the Board is obtained.

7.3. Common Elements. The Common Elements shall be used for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment of the Owners, their tenants and Guests. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. The Common Elements, including without limitation all improvements and landscaping thereon, shall not be altered, constructed upon, or removed except upon the consent of the Board. The Board may adopt rules and regulations governing the use of the Common Elements, and each Owner, by the acceptance of his deed and other instrument of conveyance or assignment agrees to be bound by any such adopted rules and regulations. No Owner shall alter any meter rooms, mechanical equipment areas, crawl space or attic areas designated as General Common Elements, without the prior written approval of the Board or without the presence of an authorized representative of the Board or of the managing agent.

**7.4. Prohibitions.** Nothing shall be done or kept in any Unit, or in the Common Elements, or any part thereof, which would result in the cancellation of any insurance on the Project, or in an increase in the rate of any insurance on the Project, without the prior written consent of the Board. No part of the Project or of any Condominium Unit shall be used in any way or for any purpose which may endanger the health, safety or life of any person or which may unreasonably disturb any other Owner. No activities shall be permitted upon any portion of the Project which will violate the provisions of any applicable statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No nuisance shall be allowed upon the Property, nor shall any use or practice be allowed which is a source of annoyance to residents, or which interferes with the peaceful possession and proper use of the Property by its residents. No damage to or waste of the Common Elements, or any part thereof, shall be committed by any Owner, or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against any loss resulting from any such damage or waste caused by him, the members of his family, Guests or tenants.

**7.5. Animals.** No horses, snakes, fish, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot except that Owners may keep not more than one dog, one cat, fish and reasonable numbers of small animals, so long as all are bonafide household pets, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any rules and regulations of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. All dogs shall be kept on leash and attended by their owners at all times. The Board may institute such rules as it deems advisable for the control, restriction, or complete elimination of pets and may impose such fines as are necessary, in its sole discretion, to enforce such rules and this Declaration.

**7.6. Storage Restrictions.** All clotheslines, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring Units and streets. Patios and balconies shall not be used as storage areas. Clothing, bedding or similar items shall not be displayed on any patio or balcony area. Garage doors, if any, shall be kept closed at all times except when in immediate use for ingress or egress of motor vehicles and except when in immediate use for access to public utility meters which shall not be obstructed in any way whatsoever.

**7.7. Maintenance.** Each Owner shall keep the interior of his Unit and the Limited Common Elements appurtenant thereto in a clean, sanitary and attractive condition and in a good state of repair. All rubbish, trash or garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. The Board may, in its discretion, enter into agreements or arrangements for common trash and garbage removal from all Condominium Units.

**7.8. Outside Structures.** No exterior television or radio antenna, tower or similar structure of any sort shall be placed, allowed or maintained upon any portion of the improvements located upon the Property, without the prior written consent of the Board.

**7.9. Leasing of Condominium Units.** No Condominium Unit shall be occupied or rented for time-sharing, transient or hotel purposes, which shall be defined as (a) occupancy or rental for any period less than 30 days; or (b) any rental if the occupants are provided customary hotel services, such as room service for food and

beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, an Owner shall have the absolute right to lease his Condominium Unit for private residential, living or sleeping purposes and pursuant to the following conditions: (a) no Owner may lease less than his entire Condominium Unit, (b) all leases shall be in writing, and (c) all leases shall provide that the terms of the lease, and lessee's occupancy of the Condominium Unit, shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and the rules and regulations of the Board and that any failure by the lessee to comply therewith shall be a default under the lease. The Board may require that an Owner use an approved form of lease, submit a copy of each lease to the Board, and enforce it against his tenant.

7.10. Garages. Garage doors shall be kept closed at all times except when in immediate use for ingress or egress of motor vehicles and except when in immediate use for access to public utility meters which shall not be obstructed in any way whatsoever. Garages shall not be occupied or used for living areas. Mechanical garage-door openers shall not be installed unless they contain vibration insulation mounts and meet any rules and regulations which may be imposed by the Board at any time.

7.11. Parking. There shall be no parking of automobiles, trucks or vehicles of any type upon any part of the Project, including without limitation any private streets, except as shown for parking on the Condominium Map or as permitted in writing by the Association's Board; violation of this provision shall permit the Board or any Owner to remove the offending vehicle at the expense of the Owner thereof. No commercial vehicles, campers, trailers, or vans shall be stored on or otherwise parked on any part or any road within the Project except when temporarily engaged in transport or unless parked in a carport, garage or area designated for such purpose by the Board. For the purpose of this Section, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck. Recreational vehicles may be parked only in any area designated for such purpose by the Board. No mechanical work shall be performed upon any vehicle located upon the Property unless performed in a garage, or otherwise as permitted by the rules of the Board.

7.12. Abandoned Vehicles. No abandoned vehicles or parts thereof shall be stored or parked upon any part of the Project, including but not limited to any residential street, alley or way of access within or adjacent to the Project, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the owner thereof cannot be reasonably ascertained), and if the unused vehicle is not removed within 72 hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, housetrailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of ten (10) days or longer.

7.13. Signs and Advertising. No signs, advertising, billboards, unsightly objects or nuisances shall be placed, erected or permitted to remain in or on any Condominium Unit or any part of the Project. "For Sale" or "For Rent" signs or other window displays or advertising shall not be maintained or permitted by any Owner on any part of the Property or in any Unit; provided, however, that the right is reserved by Declarant or its agents to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and to

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place such signs on the Property as may be required to facilitate the business of disposing of unsold Units. The right is hereby given to any First Mortgagee or the Association, who may become the Owner of any Unit, to place "For Sale" or "For Rent" signs on any Unit owned by such First Mortgagee or the Association.

7.14. Exception for Declarant. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant, or any contractor involved in the construction of said Condominium Units, or in the development of the Project, to maintain during the period of construction and sale of said Units, upon such portions of the Project as the Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of said Condominium Units, and to the development of the Project, including, but without limitation, use of the Property for storage of equipment and vehicles, erection of signs of any size and type, ingress and egress, a business office, construction office, storage area, equipment, construction yards, model units, parking areas, lighting and temporary parking and access facilities for prospective and actual tenants, occupants and purchasers, and sales office, and the provisions of this Article VII shall not apply to such use or other construction and sales activities by the Declarant or its contractors, except that such reasonable use by the Declarant or his contractors may not unreasonably interfere with the Owners' use and enjoyment of their Condominium Units and the Common Elements, nor with their right of ingress and egress to their Units from a public or private street. In addition, the Declarant, its agents, employees, financiers, or its contractors shall have such rights of ingress and egress over the General Common Elements as in Declarant's discretion shall be necessary to complete the Project.

## ARTICLE VIII

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

8.1. Membership. Every Owner shall be a member of the Association and shall remain a Member until such time as his ownership of his Condominium Unit ceases. When more than one person holds title to a Condominium Unit, all such persons shall be Members of the Association, but such multiple or joint ownership shall not increase the one vote allocable to such Unit. Membership in the Association shall not be transferred, except in connection with the sale or conveyance of a Condominium Unit. However, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit. Membership in the Association is not transferred when an Owner leases his Condominium Unit.

8.2. Classes of Voting Membership. The Association shall have two classes of voting membership.

A. Class A. The Class A members shall be all Owners, with the exception of Declarant, and there shall be one vote for each Condominium Unit owned.

B. Class B. The Class B member(s) shall be Declarant, and shall be entitled to three votes for each Condominium Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) on December 31, 1988; or

(ii) one hundred twenty (120) days after the date by which seventy-five percent (75%) of the Condominium Units have been conveyed to Condominium Unit purchasers.



8.3. Voting Rights. Each Condominium Unit shall have one vote. The affirmative vote of a majority of the Condominium Units shall be required for decisions and action by the Association, unless otherwise provided herein or in the Association's Articles of Incorporation or By-Laws. When more than one person holds an interest in a Condominium Unit, they may appoint one of their co-Owners as proxy to cast the vote for that Condominium Unit. The vote for such Condominium Unit shall be cast as the Owners thereof agree, but in no event shall they cast more than one vote on any one question. If the Owners of such Condominium Unit cannot agree as to the manner in which their vote shall be cast when called upon to vote, then they will be treated as having abstained; during any such period, each Owner shall retain all other rights and obligations of membership in the Association. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Managers and to operate the Association until Declarant's Class B membership is terminated, and the Association shall not begin to function through its other Members until such time, unless the Declarant otherwise consents in writing.

## ARTICLE IX

### ASSOCIATION FUNCTIONS

9.1. Management. Subject to Article X, the management and operation of the Project shall be by the Association which shall be organized and shall fulfill its functions pursuant to this Declaration, the Articles of Incorporation, the By-Laws, and the Condominium Act. The Association shall act by and through its Board, its elected officers, and its agents and employees.

9.2. Association Powers and Responsibilities. The Association, subject to the rights and duties of the Owners as set forth elsewhere in this Declaration, shall be responsible for the management, control, operation, maintenance, replacement and repair of the Common Elements as more specifically provided herein.

9.3. Property of Association. The Association may pay for, acquire and hold real and tangible and 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 family, tenant and Guests may use such property. Upon termination of condominium ownership of 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 Proportionate Interests. The transfer of title to a Condominium Unit by sale, conveyance, foreclosure or procedure in lieu of foreclosure shall transfer to the purchaser, without the necessity of any reference thereto, the beneficial interest in such property associated with the Condominium Unit; such beneficial interest shall not be transferable except with the transfer of the Condominium Unit.

9.4. Association's Right to Lease and License General Common Elements. With the prior written consent of Owners entitled to vote two-thirds (2/3) of the votes allocated to Condominium Units sold by the Declarant, the Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-Owners, on either a short-term basis or long-term basis with or without charge, and upon such terms as the Association may deem desirable, all or any part of the General Common Elements.

9.5. Restrictions Upon Association and Owners. Except as provided in Article XVI hereof, unless at least two-thirds (2/3) of the First Owners of Units (based upon one [1] vote for each First Mortgage or held) and at least two-thirds (2/3) of the Owners, other than the Declarant (based upon one [1] vote for each Condominium Unit) have given their prior written

approval, neither the Association nor the Owners shall be empowered or entitled to:

(i) by act or omission, seek to abandon or terminate the Project;

(ii) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

(iii) partition or subdivide any Condominium Unit;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements apart from any Condominium Unit, except as provided by Section 5.6 hereof; or

(v) use hazard insurance proceeds for loss to Condominium Unit and/or Common Elements improvements for other than repair, replacement or reconstruction of such improvements.

9.6. Additional Restrictions During Declarant Control. In addition to the provisions of Section 9.5, after the Declarant has obtained evidence of approval for guaranteed or insured loans by Federal Housing Administration or the Veterans Administration and continuing until such time as the Class B membership has terminated, the prior written approval of the Veterans Administration or the Federal Housing Administration of the U. S. Department of Housing and Urban Development shall be required for the following:

A. Amendment of the Condominium Declaration;

B. Amendment of the Articles of Incorporation or the By-Laws of the Association;

C. Annexation of additional properties to this Condominium Declaration;

D. Dedication or mortgaging of all or any part of the Common Elements by the Declarant, except as provided by Section 5.6 hereof;

E. Merger, consolidation or dissolution of the Association; or

F. Any special assessment for capital improvements. "Capital Improvements", as used herein, shall mean the construction, erection or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction, reconstruction, erection, installation, maintenance, repair or replacement of Common Elements presently located on the Property or which may hereafter be constructed, erected or installed on the Property by the Declarant in its development of the Project.

9.7. Inspection of Records and Notice to First Mortgagees. The Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Articles of Incorporation, By-Laws, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Additionally, the Association shall furnish, within a reasonable time following written request, to any holder, insurer or guarantor of any First Mortgage, a copy of an audited financial statement for the immediately preceding fiscal

year, free of charge to the party so requesting. Further, the Association shall, if requested in writing, notify each First Mortgagee recorded on its books of any proposed amendment of the Association's Declaration, Articles of Incorporation or By-Laws or any other action requiring the First Mortgagee's consent at least ten (10) days prior to the effective date of such amendment or action.

9.8. Promulgation of Rules and Regulations. The Board may make such rules and regulations governing the use of the Common Elements, as are, in its sole discretion, consistent with the rights and duties established in this Declaration.

9.9. Enforcement. The Board and any aggrieved Owner shall have the power and authority to enforce each and every one of the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and the decisions, resolutions, rules and regulations of the Board. Except as otherwise provided, each Owner shall comply strictly with the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and the decisions, resolutions, rules and regulations of the Board adopted pursuant thereto as the same may be lawfully made and amended and/or modified from time to time. Failure to comply with any of the same shall mean that (a) the Board may suspend the Owner's voting rights in the Association during any period during which such Owner fails to comply, (b) Board may also file and enforce the liens provided for herein and/or take judicial action against the Owner to enforce compliance with such rules, regulations or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law, including recovery of costs and reasonable attorney's fees, and/or (c) the Board may also fine any Owner, and his family member, guest, lessee or contractor who violates the terms and provisions of this Declaration, the By-Laws, and/or the Association's rules and regulations, a sum not to exceed Fifty Dollars (\$50.00) per occurrence and if such fine remains unpaid for ten (10) days after notice, it shall become a Unit Assessment as provided herein. Any person or entity employed as a manager may be authorized by the Board to undertake the foregoing enforcement, including without limitation the instituting of litigation and/or the impositions of fines on behalf of the Board.

9.10. Implied Rights. The Association and the Board 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.

## ARTICLE X

### MANAGEMENT

10.1. Management Agreements. The Association may utilize professional management in performing its duties hereunder. Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Board. A copy of all such agreements shall be reasonably available, upon request, to each First Mortgagee and each Owner. Any and all professional management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type. Any professional management agreement shall not exceed one (1) year and shall provide that it can be terminated without payment of a termination fee by the Board with or without cause upon thirty (30) days' written notice. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association, shall be subject to review and approval by the Veterans Administration or the Federal Housing Administration and shall terminate absolutely, in any event, not later than thirty (30) days

after termination of the Class B membership of the Declarant. If professional management has been previously required by any holder, insurer or guarantor of a First Mortgage, then any decision to establish self management shall require the prior consent of sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of the First Mortgagees; no such management agreement shall be cancelled prior to the effecting of a new management agreement by the Association or its Board and it shall be the duty of the Association or its Board to effect a new management agreement prior to the expiration of any prior management contract.

10.2. Other Personnel. The Board may obtain and pay for the services of such other personnel as it deems appropriate in its sole discretion.

## ARTICLE XI

### ASSESSMENTS

11.1. Personal Obligation to Pay Assessments and Charges. Each Owner of any Condominium Unit, including Declarant and including any purchaser under an executory land sales contract wherein the Administrator of Veterans Affairs is identified as the seller, covenants and agrees to pay, and shall be personally obligated to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fines, fees and other sums described in this Declaration and/or imposed by the Association as permitted by this Declaration. All Owners of a Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Condominium Unit. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the Common Elements or the facilities contained therein by abandonment or leasing of his Condominium Unit, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. Any utilities which are master metered shall be included in the annual common expense assessments levied by the Association.

11.2. Enforcement of Personal Obligation. In addition to the lien described herein, the Association may, at its option, suspend all voting rights and the right to use any recreational facilities, until all payments owed by an Owner are received, and/or may bring an action at law against any Owner to collect any unpaid assessments, charges, fees and other sums. In any such action, the Association shall be additionally entitled to recover, and the Owner to pay, interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of Fifteen Dollars (\$15.00) per month per unpaid assessment or other sum, court costs and other collection costs, and reasonable attorneys fees. Notwithstanding any terms and provisions of this Condominium Declaration to the contrary, the sale or transfer of any Condominium Unit shall not affect the personal liability or the lien for assessments, charges, fees or other sum levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, cancellation or forfeiture of any such Veterans Administration executory land sales contract, shall extinguish the lien of assessments which became due prior to any such sale or transfer or foreclosure, or any above-described proceeding in lieu thereof. Further, no First Mortgagee shall be liable for any unpaid

assessments, charges, fees or other sums accruing against a Condominium Unit prior to any such sale, transfer, foreclosure or any above-described proceeding in lieu thereof. No such sale, transfer, foreclosure or any above-described proceeding in lieu thereof shall relieve either any Owner or any Condominium Unit from liability or the lien for any assessments, charges, fees or other sums thereafter becoming due. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan used to purchase a Unit in this condominium project evidenced by a First Mortgage of record (including deed of trust), to any refinancing loan to refinance any such purchase money loan, provided that any such refinancing loan is evidenced by a First Mortgage of record (including deed of trust).

**11.3. Annual Assessments.** The annual assessment shall be based upon the Board's advance budget of the requirements needed by it to provide for the Common Expenses and the administration and performance of its duties during such assessment year, which sum may, at the Board's discretion, include, but shall not be limited to the following:

A. any costs and expenses related to management and to the activities and property of the Association;

B. any taxes and special tax assessments on the activities and property of the Association;

C. premiums for all insurance which the Association is required or permitted to maintain as provided in Article XIII hereof;

D. expenses for common services which may include, without limitation, common lighting, water, gas, electricity, sewer, snow removal, garbage and trash collection;

E. landscaping and care of the grounds;

F. such repairs, restorations, replacements, improvements, and maintenance of the Common Elements which are the responsibility of the Association; provided however, there shall be no division of assessment charge between the expenses of Limited and General Common Elements and provided further such work shall not require the prior approval of the Association regardless of the expense or amount thereof unless a Special Assessment is required pursuant to Section 11.4 hereof;

G. wages for Association employees;

H. legal and accounting fees;

I. any deficit remaining from a previous assessment year;

J. the creation of reasonable reserves, surpluses and sinking funds for the periodic replacement, repair and maintenance of the Common Elements and for other periodic expenses; and

K. any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Board for the benefit of the Owners or by reason of this Declaration.

**11.4. Special Assessment.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, as provided in Section 11.5, a special assessment applicable to that year only for the purpose of defraying, in whole or in part:

A. The cost of any emergency situation or any construction, demolition, reconstruction, repair or replacement of all or part of the Project, including without limitation the Common Elements and any fixtures and personal property related thereto, or

B. The expense of any other contingencies or unbudgeted costs.

11.5. Procedure for Special Assessments Under Section 11.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 11.4. shall be sent by the Board to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting. Said notice shall specify the amount of the assessment and the date of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting. Any such assessment shall require the assent of two-thirds (2/3) of the votes of each class which are cast at such a meeting where a quorum is present.

11.6. Unit Assessments. In the event that the Association incurs any expense or liability as a result of the wilful, negligent or wrongful act of an Owner, his family, tenants or Guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's By-Laws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be an assessment against that Owner and his Condominium Unit and if unpaid shall be both a personal obligation of such Owner and a lien as herein provided.

11.7. Payment Procedures.

A. Amounts. Subject to Section 11.10 hereof, any amounts assessed as annual or special assessments shall be assessed equally and uniformly against each Owner and his Condominium Unit. Additional assessments shall be assessed and payable solely by the Owner and the Condominium Unit against which they are levied.

B. Payment Dates.

(i) Annual Assessments. The annual assessment shall be divided into twelve (12) equal monthly installments per year, which shall be due and payable by the Owners in advance on the first day of each month. The monthly installments of the first annual assessment for all Condominium Units within the Property shall commence upon the first day of the first month following the first conveyance of any Condominium Unit therein from the Declarant to the first Owner thereof; subsequent annual assessments shall commence on January 1 of each subsequent year. The monthly installments of the annual assessment for all Condominium Units, if any, located in any subsequent annexed phase within the Expansion Property shall commence upon the first day of the first month following the first conveyance of any Condominium Unit within that phase from the Declarant to the first Owner thereof. At least twenty (20) days in advance of the annual assessment year, the Board shall establish the amount of the annual assessment against each Owner and his Condominium Unit for the following year, and written notice of any change of the annual assessment shall be sent to each Owner.

(ii) Special Assessments and Unit Assessments. Special Assessments and Unit Assessments shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent.

C. Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his Condominium Unit for such assessment, and shall not be deemed to be a waiver, modification or release of any Owner from his obligation to pay the same, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice given.

D. Estoppel Certificate. Upon ten (10) days' notice to the Manager or Board of Managers and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. Said certificate may be relied upon by all persons acting in good faith, as conclusive evidence of the payment of any assessments therein stated to have been paid.

E. Initial Fee. The Board shall require the first Owner of each Condominium Unit, at the time of conveyance from Declarant, to make a one-time payment in an amount equal to two (2) months' assessments, which sum shall be used for working capital and to enroll that Owner in the Association and for all matters related thereto and shall be placed in the segregated funds of the Association. Such a payment shall not relieve an Owner from making any regular monthly assessment payment as the same comes due and shall not be refundable.

#### 11.8. Enforcement by Lien.

A. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Condominium Unit, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of Fifteen Dollars (\$15.00) per month per unpaid assessment or other sum, court costs and all other collection costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Condominium Unit against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due.

B. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Condominium Unit, setting forth the name of the Owner, the legal description of the Condominium Unit, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Condominium Unit, at the address of the Unit or at such other address as the Association may have in its records for the Owner of the Condominium Unit. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney's fees, administrative charges and interest have been fully paid or otherwise satisfied. Any recorded lien may be released by recording a document to that effect executed by an officer or agent of the Association. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the personally liable therefor or from thereafter again foreclosing attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when the Association shall have the power and right to bid on or purchase the Condominium Unit at foreclosure or other legal sale, to have the total amount of its lien credited towards any purchase price, and to acquire and hold, lease, mortgage, vote

C. Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his Condominium Unit for such assessment, and shall not be deemed to be a waiver, modification or release of any Owner from his obligation to pay the same, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice given.

D. Estoppel Certificate. Upon ten (10) days' notice to the Manager or Board of Managers and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. Said certificate may be relied upon by all persons acting in good faith, as conclusive evidence of the payment of any assessments therein stated to have been paid.

E. Initial Fee. The Board shall require the first Owner of each Condominium Unit, at the time of conveyance from Declarant, to make a one-time payment in an amount equal to two (2) months' assessments, which sum shall be used for working capital and to enroll that Owner in the Association and for all matters related thereto and shall be placed in the segregated funds of the Association. Such a payment shall not relieve an Owner from making any regular monthly assessment payment as the same comes due and shall not be refundable.

#### 11.8. Enforcement by Lien.

A. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Condominium Unit, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of Fifteen Dollars (\$15.00) per month per unpaid assessment or other sum, court costs and all other collection costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Condominium Unit against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due.

B. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Condominium Unit, setting forth the name of the Owner, the legal description of the Condominium Unit, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Condominium Unit, at the address of the Unit or at such other address as the Association may have in its records for the Owner of the Condominium Unit. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney's fees, administrative charges and interest have been fully paid or otherwise satisfied. Any recorded lien may be released by recording a document to that effect executed by an officer or agent of the Association. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the personally liable therefor or from thereafter again foreclose attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when the Association shall have the power and right to bid on or purchase the Condominium Unit at foreclosure or other legal sale, to have the total amount of its lien credited towards any purchase price, and to acquire and hold, lease, mortgage, vote



the votes appurtenant to ownership thereof, convey or otherwise deal with the same.

C. The lien provided for herein shall be subordinate to the lien of any real estate taxes and the lien of any First Mortgage, which was duly recorded prior to the date such assessment, charge, fee or other sums became due, and which shall include, without limitation, the lien of any executory land sales contract wherein the Administrator of Veterans Affairs is seller, whether owned by the said Administrator or his assigns, and whether recorded or not, encumbering any Condominium Unit, and shall also include any and all advances made by a First Mortgagee or executory land sales contract seller, notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Condominium Association's lien. However, such lien shall be superior to all other liens and encumbrances and shall be superior to any homestead exemption as now or hereafter may be provided by Colorado or Federal law, and the acceptance of any right, title or interest in or to a Condominium Unit shall constitute a waiver of such homestead exemption.

11.9. Notice and Opportunity to Cure by First Mortgagee. The holder of any First Mortgage upon a Condominium Unit may request that the Association notify it, in writing at its specified address, of any default by the Owner of said Unit in paying assessments, charges, fees or other sums or performing other obligations under this Declaration, the By-Laws, or rules and regulations, which is not cured within sixty (60) days of when due. Any First Mortgagee may, but shall not be required to, cure any such default and pay any such assessments, charges, fees or other sums.

11.10. Assessment of Declarant. Notwithstanding any term or provision herein to the contrary, the Declarant and all Condominium Units owned by Declarant shall be subject to assessment or other charge under this Declaration only as provided in this section:

(i) Any Condominium Units which are owned by Declarant and which are leased, rented, or otherwise occupied as a residence shall, commencing on the date of first occupancy thereof and thereafter, be assessed at the same rates as provided in Section 11.7(A) hereof; and

(ii) All other Condominium Units owned by the Declarant shall be assessed or charged at a rate equal to twenty-five percent (25%) of the assessment or other charge rate for other Condominium Units; provided, however, in the event the assessed fees and charges due to the Association fail to meet its ordinary operating expenses (apart from reserves and capital expenditures) because of such partial Declarant assessment, then Declarant shall, upon written notice from the Association, pay a sufficient amount as a subsidy but not an assessment, up to the amount of full parity of annual assessment upon its Condominium Units (exclusive of reserves, reserve deficiencies or capital expenditures), to the Association to meet any such operating shortfall so long as such notice must be given within one (1) year after the end of each annual assessment period and is waived if not made in such timely manner; such final one-year period shall terminate one (1) year after the date on which Declarant's Class B membership ceases.

## ARTICLE XII

### MAINTENANCE AND REPAIR

#### 12.1. Owner's Responsibilities.

A. Total Responsibility. An Owner shall be responsible, at his sole expense, for the maintenance, repair,

replacement, alteration and remodeling of the following: (i) any loss, damage or injury to the Project, the Common Elements, or any other Condominium Unit caused, in the sole discretionary determination of the Board, by the negligent or wilful act or omission of Owner, his family, Guests, tenants, contractors, other persons or parties acting with the consent of any of the foregoing, or any pets or animals of the foregoing, (ii) interior non-supporting walls, floors and ceilings of his Unit and the materials thereof, including but not limited to, plaster, gypsum dry wall, paneling, woodwork, wallpaper, paint, carpet, wall and floor tile and flooring (but not including sub-flooring), which make up the finished surfaces of the perimeter walls, ceiling and floors within the Unit; (iii) all interior and exterior doors, locks, screens, light bulbs, windows and window fixtures, (iv) all cabinets, kitchen and bathroom fixtures and equipment, and appliances; (v) all light, plumbing, furnace, air conditioning, hot-water heater and heating improvements which are for the exclusive use of his Unit, and the related hardware, (vi) any and all additions and improvements made by the Owner after Declarant's initial construction, and (vii) all utility lines, pipes, conduits, equipment and fixtures from the point where they enter his Unit, provided however, an Owner shall not do or permit any act or work which might impair the structural soundness of the Building or would impair any utilities, or parts thereof, which serve other Condominium Units and provided further an Owner shall not be obligated to undertake any repairs, maintenance, or replacements for which the Association has received insurance proceeds. All maintenance, repair, alteration or remodeling done by an Owner shall be of equal or better materials and workmanship than as originally constructed by Declarant.

**B. Limited Responsibility.** In addition, each Owner shall be responsible to keep and maintain, at his sole expense, in good repair and a clean sanitary condition, his Limited Common Elements. Such responsibility shall not include replacement, repainting, alteration or structural repairs thereto, which shall be the responsibility of the Association nor for any maintenance which is included as a Common Expense in the Association's budget.

**C. Owner's Failure.** If Owner fails to fulfill his responsibilities under paragraphs A and B of this Section, the Board may, at its option, take such action as it deems appropriate, after ten (10) days' notice to such Owner, except in emergencies, including without limitation performing the Owner's obligations, and any costs resulting therefrom shall be an Additional Assessment against such Owner and his Condominium Unit and shall be due and payable by the Owner thereof.

**12.2. Association's Responsibilities.** The Association shall have the duty of maintaining, repairing and replacing the following:

(i) All of the Common Elements which are not the Owner's responsibility under Section 12.1.; such repair and maintenance shall include, but not be limited to, the provision of exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior Building surfaces, (except doors, locks, light bulbs, glass and window screen surfaces which shall be the Owner's responsibility), trees, grass, roads, driveways, walks and other exterior improvements;

(ii) All of utilities located outside of a Unit and serving more than one Unit (to the extent not maintained or repaired by the utility company);

(iii) of the structure of any Building;

(iv) All caused to a Condominium Unit by any defect, occurrence or condition of the Common Elements or otherwise for which the Association receives insurance proceeds; the

Association's responsibility under this subparagraph (iv) shall include restoration of the Unit, together with any fixtures, built-in cabinets, built-in appliances, and improvements, which are contained within a Unit and which comprise part of the Building, and carpeting, if insured, to a condition comparable to that when the Unit was conveyed by Declarant.

12.3. Repair Work by Association. It shall be the responsibility of each Owner to promptly report to the Association any defect or need for repairs which would be the responsibility of the Association. The Board shall engage and pay for all labor and materials as may be necessary for the work for which the Association is responsible. The Board and its authorized representatives shall have the right to enter upon the exterior, and at reasonable times, the interior of any Unit, for inspection or the performance of such work. The cost of the maintenance and repair described in Section 12.2 hereof and any incidental damage caused to a Unit by such work shall be a Common Expense of all of the Owners, and regardless of amount, it shall be assessed as provided herein for annual or special assessments, unless, however, the need for maintenance or repair is the Owner's responsibility under Section 12.1 hereof. The Board or its authorized representative is hereby authorized to act for any Owner in his absence when, in the reasonable discretionary opinion of the Board or its authorized agent, an emergency exists or damage to other Condominium Units is eminent; the cost of such action shall be a Common Expense except as provided above.

### ARTICLE XIII

#### INSURANCE

13.1. Insurance by the Association. The Association shall obtain and maintain at all times, as a Common Expense, to the extent that such coverage is reasonably available, the following types of insurance:

A. Casualty. All Buildings and improvements upon the Property, all common property of the Association, and all personal property included in the Common Elements, together with all fixtures, built-in cabinets, built-in appliances, and improvements which are contained in a Unit and which comprise part of the Building, but excluding any other personal property which is the Owner's responsibility to insure, shall be insured in an amount equal to one hundred percent (100%) of the replacement value thereof, excluding land, foundation and excavation costs, as determined annually by the Board. Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement". The Association may also purchase a "Demolition Endorsement", and "Increased Cost of Construction Endorsement" and/or a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

- (1) loss or damage by fire and other hazards covered by the standard "all risk" form including without limitation endorsements for vandalism and malicious mischief, and
- (2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, and
- (3) any damage which is caused by or originating from the Common Elements and which is the responsibility of the Association to repair or remedy.

B. Public Liability. Comprehensive general liability and property damage insurance in such limits as the Board of Directors of the Association may from time to time determine, but not in a amount less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury, per person, per occurrence and umbrella liability limits of One Million Dollars (\$1,000,000.00) per occurrence covering claims for bodily injury and Fifty Thousand Dollars (\$50,000.00) for property damage arising out of one occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Elements and the Condominium Units by the Association, off-premises employee coverage, its officers, directors, agents, employees, representatives and the Owners, water damage liability, contractual liability, and liability for property of others.

C. Workmen's Compensation. Workmen's Compensation, or similar insurance with respect to its employees in the amounts and forms sufficient to meet the requirements of law, shall be acquired by the Association.

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

E. Fidelity Insurance. The Association shall purchase, in an amount not less than one hundred fifty percent (150%) of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destructory or disappearance of money or securities and forgery. Said policy shall cover any person or entity handling funds of the Association, including, but not limited to, employees of the professional managers, and shall also contain endorsements thereto covering any persons who serve the Association without compensation. Such fidelity coverage or bonds shall name the Association as an insured and obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

F. Flood Insurance. If the Project is located in an area identified by the Secretary of the U. S. Department of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under that Act or the aggregate of the current market value of the Condominium Units comprising the Project.

G. Other Insurance. The Association may obtain such other insurance as the Board shall determine from time to time to be desirable, with respect to the Association's responsibilities and duties.

13.2. Insurance Policies. All insurance shall be carried in blanket form naming the Association as insured, as trustee and attorney-in-fact for all of the Owners, and shall identify the interest of each Owner (Owner's name and Unit number designation) and the First Mortgagee. All policies of insurance to the extent obtainable shall contain cross-liability endorsements to cover the liabilities of the Owners as a group to an Owner, waivers of subrogation and waivers of any defense based on invalidity arising from the acts of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the insureds including the Association, the

Owners, and the First Mortgagees. Certificates, endorsements or duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees upon request. Further, the Association may require the insurance company or companies providing the insurance coverages described herein to provide each Owner and First Mortgagee with a Certificate of Insurance in regard to such Owner's Condominium Unit. All insurance policies shall be written by companies licensed to do business in the State of Colorado and having a Best's Insurance Report rating of A or better. Premiums upon insurance policies purchased by the Board shall be part of the Common Expenses included in the annual assessments.

13.3. Severability. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but that the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

13.4. Proceeds. All insurance policies shall contain a standard noncontributory mortgagee clause in favor of each First Mortgagee of a Condominium Unit, which has given notice of its lien to the Association and shall provide that they are for the benefit of the Association, the Owners and their First Mortgagees as their interests may appear and shall provide that all proceeds covering losses shall be paid to the Association in trust for the purposes set out herein. The duty of the Association shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Owners and First Mortgagees as provided herein. The Board may disburse the net proceeds of all insurance policies arising out of such casualty to the contractors engaged in the repair and reconstruction in appropriate progress payments.

13.5. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately meets the requirements of this Declaration and covers such other risks as are customarily covered with respect to Condominium projects similar in construction, location and use. Prior to obtaining any policy of fire insurance or renewal thereof, the Board or the Managing Agent may obtain a written appraisal from a duly qualified real estate, insurance appraiser or other person knowledgeable of replacement cost, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

13.6. Notice to First Mortgagees. Provided that a First Mortgagee has, in writing, requested the following information with respect to a Condominium Unit upon which said First Mortgagee holds the First Mortgage, and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage in excess of Ten Thousand Dollars (\$10,000.00) or destruction of: (a) the Condominium Unit on which such First Mortgagee holds the First Mortgage, and/or (b) the Common Elements, then timely written notice of any such damage or destruction shall be given by the Association to such First Mortgagee.

13.7. Owners' Insurance. It shall be the responsibility of each Owner, and at his own expense, to make arrangements in regard to title insurance on his Condominium Unit, for all insurance on his personal property, including without limitation, furniture, carpet, draperies, oven, range, refrigerator, wallpaper, disposals, appliances, fixtures, and furnishings, and for public liability insurance covering his individual Unit, and, in addition, the Owner may obtain such other and additional insurance coverage on and in relation to his Condominium Unit as he, in his sole determination, shall conclude to as desirable; provided, however, that none of such insurance shall affect the coverage obtained by the Association, nor cause the diminution or termination thereof. Any such insurance obtained by an Owner shall waive the particular insurance company's right of subrogation against the Association and the other Owners. Neither the Association nor the Declarant shall have any responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

#### ARTICLE XIV

##### ASSOCIATION AS ATTORNEY-IN-FACT

This Declaration does hereby make mandatory the irrevocable appointment of the Association as attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Units, Buildings, Common Elements or other portion of the Project which have been so destroyed, damaged, condemned or becomes obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence, or condemnation shall be appointed. Said appointment must be approved by the Owners representing an aggregate ownership of seventy-five percent (75%) or more of the Common Elements and at least seventy-five percent (75%) of the First Mortgagees of the Condominium Units.

#### ARTICLE XV

##### DESTRUCTION, DAMAGE OR OBSOLESCENCE

15.1. Damage or Destruction. Repair and reconstruction of the improvements in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the

Project's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless Owners representing an aggregate Proportionate Interest of seventy-five percent (75%) or more and at least seventy-five percent (75%) of the First Mortgagees agree not to rebuild in accordance with the provisions hereinafter set forth.

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

**15.3. Insurance Proceeds Insufficient.**

A. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than seventy-five percent (75%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units. Such special assessment shall be a common expense and made according to each Owner's Proportionate Interest and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article XI. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Section. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, late charge, interest at a rate of eighteen percent (18%) per annum, on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any First Mortgagee;
- (2) For payment of taxes and special assessments liens in favor of any assessing entity and the customary expenses of sale;
- (3) For payment of unpaid assessments levied by the Association under Article XI hereof and all costs, expenses and fees incurred by the Association;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(5) The balance remaining, if any, shall be paid to the Owner of the Condominium Unit.

B. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than seventy-five percent (75%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate Proportionate Interest of seventy-five percent (75%) or more of the common elements and at least seventy-five percent (75%) of the First Mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and By-Laws. Assessments under Article XI hereof shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's Proportionate Interest, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Owner's Proportionate Interest. 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 subsections (1) through (5) of Section 15.3.(A).

#### 15.4. Obsolescence.

A. The Owners representing an aggregate Proportionate Interest of seventy-five percent (75%) or more may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subsection (5) of this Section 15.3.(A).



B. The Owners representing an aggregate Proportionate Interest of seventy-five percent (75%) or more, may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of seventy-five percent (75%) of the First Mortgagees of the Condominium Units. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire project shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and the By-Laws. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's Proportionate Interest and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subsections (1) through (5) of Section 15.3.(A).

## ARTICLE XVI

### CONDEMNATION

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

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

#### B. Complete Taking.

(1) In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Owner's Proportionate Interest, provided however, that if a standard different from the value of the Property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, 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 Section 15.3.(A)(1) through (5).

C. Partial Taking. In the event that less than the entire Condominium Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts among the Owners as follows: (a) the total amount allocated to the taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's

Proportionate Interest; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Section 15.3.(A) (1) through (5).

D. The Association shall timely notify each First Mortgagee of any Condominium Unit of the commencement of the condemnation proceedings or eminent domain proceedings and shall notify said mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds Ten Thousand Dollars (\$10,000.00).

16.2. Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners and of First Mortgagees of remaining units for amendment of this Declaration as provided in Article XVIII.

16.3. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XV.

## ARTICLE XVII

### EXPANSION OF PROJECT

17.1. Declarant's Reserved Right to Expand. Subject to the provisions of this Declaration, the Declarant shall have and hereby specifically reserves the right until December 31, 1988, without the approval of the Owners or First Mortgagees, except as provided in Section 9.6, to annex to the Property from time to time any contiguous portion or portions of the Expansion Property described in Exhibit "C" attached hereto and incorporated herein by this reference, and to submit such additional property and improvements thereon, including without limitation the Condominium Units and Common Elements, to the terms and provisions of this Declaration. Any Buildings and Condominium Units which are constructed by Declarant on any part of the Expansion Property, which is annexed hereby, shall be substantially completed prior to annexation and substantially comparable in style, floor plan, size, quality and cost to the Condominium Buildings and Condominium Units existing on the Property at the date of such annexation as determined by the Declarant in its sole discretion but subject to approval by the Veterans Administration or the Federal Housing Administration pursuant to Section 9.6 hereof, if applicable. By accepting a deed to a Condominium Unit, each Owner hereby grants to Declarant a right to expand the project and to modify the Owner's Proportionate Interest according to, as hereinafter set forth in this Article.

17.2. Requirements for Annexation. For any annexation by the Declarant pursuant to the provisions of this Article, Declarant shall cause to be prepared a supplemental Condominium Map of such

annexed property and a supplement to this Declaration, which shall contain a listing of the Condominium Units in the Project after expansion and the adjustment of the Proportionate Interests. These documents shall be filed in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, prior to conveyance of the first Condominium Unit in such annexed property. The expansion may be accomplished in "phases" by successive supplements. At such time as the Declarant determines that the Project is complete, the Declarant shall record a Certificate of Completion with said Clerk and Recorder.

#### 17.3. Modification of Owners' Proportionate Interests.

Upon the Declarant's annexation of any part of the Expansion Property to this Condominium Declaration and the recording of the annexation documents, each Owner's Proportionate Interest in the Common Elements, including those included in the Project prior to annexation and those added by the annexation, shall be automatically adjusted for all Condominium Units, including those in the Project before and after annexation. The basis for that adjustment shall be the approximate square footage of each Condominium Unit compared to the approximate total square footage of Condominium Units existing in the Project after expansion. Such adjustment of Proportionate Interest in the Common Elements appurtenant to a Condominium Unit shall be automatic upon recording of such documents, and no further documentation need be filed of record or further action need be taken by the Declarant, any Owner or any First Mortgagee to reflect such modification in Proportionate Interests. The maximum number of total Condominium Units which may be contained in the Project after annexation is completed shall not exceed EIGHTY-FOUR (84) Condominium Units.

17.4. Assessments. Notwithstanding any such annexation and such adjustment, each Owner (regardless of whether such Owner is the owner of a Condominium Unit enumerated in Exhibit "B" attached hereto or is the owner of a Condominium Unit contained in an annexation) shall be fully liable, in accordance with Article III hereof, with respect to his obligation for the payment of assessments, charges, fines, fees and other sums to the Association, including without limitation, the expenses for the new General and Limited Common Elements.

17.5. New Members Subject to Declaration. Upon the recording of the annexation documents, each Owner of a Condominium Unit located upon the annexed property shall automatically become a member of the Association, and that Owner and his Condominium Unit shall be subject to covenants, terms and provisions of this Declaration, including without limitation the assessment and voting provisions hereof, together with the Articles of Incorporation, the By-Laws, and any rules then in effect. Similarly, the definitions used in this Declaration shall be automatically expanded to encompass and refer to the Project as so expanded; for example, "Common Elements" shall mean the Common Elements originally described herein together with any Common Elements added thereto by annexation.

17.6. Declarant's Right Not to Expand Project. The Declarant shall have the absolute right not to annex all or any part of the Expansion Property and may record any documentation necessary to demonstrate conclusively such non-annexation. Any part of the Expansion Property, which has not been annexed to the Project as provided herein, shall not be subject in any way whatsoever to the covenants, terms or provisions of this Declaration, except for any rights or easements reserved herein for the benefit of such property. Unless and until annexation, any part of the Expansion Property may be conveyed by the Declarant free and clear of this Declaration, and any such conveyance shall terminate the application of this Declaration as to said part of the Expansion Property.

GENERAL PROVISIONS18.1. Amendment.

A. The covenants and restrictions of this Declaration and the separate Condominium estates created hereby shall run with and bind the land, until such time as this Declaration is terminated or revoked in the manner herein provided.

B. Except as is otherwise provided in Article XVI, this Declaration shall not be revoked or terminated unless all of the Owners and all First Mortgagees consent and agree to such termination or revocation by an instrument duly recorded. This Declaration shall not be amended or modified unless the Owners of at least seventy-five percent (75%) of the Condominium Units and the First Mortgagees of at least seventy-five percent (75%) of the Condominium Units have agreed to such amendment, provided however, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (b) that this section may be amended by an instrument signed by Owners of at least ninety percent (90%) of the Condominium Units, and one hundred percent (100%) of all First Mortgagees who have given the Association notice of their lien, (c) an Owner's Proportionate Interest in the Common Elements appurtenant to each Unit as set forth in Exhibit "B" thereto, shall have a permanent character and shall not be altered without the consent of all of the Owners and all of the First Mortgagees of Condominium Units, except as provided in Article XVII regarding expansion of the Project, and (d) that the Declarant hereby reserves the right, until the Declarant's Class B membership is terminated, and subject to Article IX, Section 9.5, but without the vote of the Owners, to make such amendments to this Declaration, the Articles of Incorporation, and/or the By-Laws, as may be approved in writing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property and/or Expansion Property, and each Owner and First Mortgagee by accepting a deed or other instrument to his Condominium Unit appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record any such amendments.

C. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned.

D. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

18.2. Acceptance of Provisions of All Documents/Waiver of Homestead. The conveyance, sale, transfer, lease, or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and the waiver of any homestead rights and any exemptions under any state or federal law and shall be binding upon each grantee and mortgagee without the necessity of

inclusion of such an express provision in the instrument of conveyance or encumbrance.

**18.3. Severability.** The provisions of this Declaration shall be deemed to be independent and severable and if any of the provisions of this Declaration or any clause, paragraph, sentence, phrase or word, or the application thereof, in any circumstances be invalidated by judgment or Court Order, such invalidity shall not affect the validity of the remainder of the Declaration, which other provisions shall remain in full force and effect.

**18.4. Conflict.** In the event there should be any conflict between the provisions of this Declaration and the Articles of Incorporation of the Association and any By-Laws or rules or regulations of the Association, the provisions of this Declaration shall be deemed controlling. In case of conflict between the Articles of Incorporation and the By-Laws, the Articles of Incorporation shall control. The provisions of this Declaration shall be in addition to and supplemental to the Condominium Act and to all other provisions of law.

**18.5. Notice.** Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices of matters affecting the Property, which may be given to the Owners by the Association or other Owners by use of regular mail to the registered address, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with copy addressed to the President of the Association at his registered address.

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

**18.7. Captions.** The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are, in no way to be construed to define, limit or otherwise describe the scope of the Declaration nor the intent of any provisions hereof.

**18.8. Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Declarant, Association and each Owner, and its heirs, personal representatives, successors and assigns of each of them. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

**18.9. No Waiver.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

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

**18.11. Remedies Cumulative.** The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.



EXHIBIT "A"  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
HIGH POINT CONDOMINIUMS

BOOK 384E PAGE 708

LEGAL DESCRIPTION OF PHASE I  
OF  
HIGH POINT CONDOMINIUMS

A portion of Lot 1, Block 1, in High Point Place, (to be platted), a Subdivision located in the Northeast Quarter of Section 16, Township 13 South, Range 66 West of the 6th Principal Meridian; described as follows:

Commencing at the Northeasterly corner of Lot 2, of Vista Grande Terrace Filing Number 30, as recorded in Plat Book E-3 at page 70, of the records of El Paso County; Thence South 89°15'16" West of the Northerly line of said Lot 2, for a distance of 406.64' feet to the point of beginning; Thence South 89°15'16" West (continuing on the Northerly line of said Lot 2), for a distance of 150.89' feet; Thence North 00°01'35" West, for a distance of 289.50' feet; Thence North 89°28'59" East, for a distance of 222.34' feet; Thence South 01°50'59" West, for a distance of 92.00' feet; Thence South 89°28'59" West, for a distance of 62.00' feet; Thence South 01°50'48" West, for a distance of 197.16' feet to the point of beginning.

El Paso County, Colorado

EXHIBIT "B"  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
HIGH POINT CONDOMINIUMS

BOOK 384 PAGE 709

Each of the following Condominium Units, located in Lexington Village Condominiums, El Paso County, Colorado, shall have an appurtenant undivided Proportionate Interest in the Common Elements as follows:

				<u>8</u>
Condominium Unit	1	Building	A	1/16th
Condominium Unit	2	Building	A	1/16th
Condominium Unit	3	Building	A	1/16th
Condominium Unit	4	Building	A	1/16th
Condominium Unit	1	Building	B	1/16th
Condominium Unit	2	Building	B	1/16th
Condominium Unit	3	Building	B	1/16th
Condominium Unit	4	Building	B	1/16th
Condominium Unit	1	Building	C	1/16th
Condominium Unit	2	Building	C	1/16th
Condominium Unit	3	Building	C	1/16th
Condominium Unit	4	Building	C	1/16th
Condominium Unit	1	Building	D	1/16th
Condominium Unit	2	Building	D	1/16th
Condominium Unit	3	Building	D	1/16th
Condominium Unit	4	Building	D	1/16th