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DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
SIENNA PARK TOWNHOMES

78.00

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made on the date hereinafter set forth by Sienna Townhomes, a Colorado joint venture.

W I T N E S S E T H:

WHEREAS, Sienna Townhomes (hereinafter referred to as "Declarant", which term shall include its successors and any assignees of Declarant's rights hereunder) is the owner of that certain real property located in the City of Lakewood, County of Jefferson, State of Colorado, described on Exhibit A attached hereto ("Property");

WHEREAS, Declarant intends to construct 14 single-family townhome units on the Property and to submit said townhomes and the lots on which they are constructed to the provisions of this Declaration, and to thereafter construct additional homes on other real property now or hereafter owned by Declarant and submit said homes to the provisions of this Declaration;

WHEREAS, Declarant intends to convey a portion of the Property to The Sienna Park Townhomes Owners Association as a common area to be used by the owners of all homes comprising the Property and to have the owners of such homes bear a share of the costs of maintaining and operating such common area;

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to the Declarant, its successors and assigns and any persons acquiring or owning an interest in the real property and improvements described in Exhibit A, their successors or assigns.

1. Definitions. Unless the context shall expressly provide otherwise, the following definitions shall apply:

(a) "Association" shall mean The Sienna Park Townhomes Owners Association, a Colorado non-profit corporation;

(b) "Board" shall mean the Board of Directors of the Association;

(c) "Building" shall mean an entire detached structure comprising two or more Homes;

(d) "Common Area" or "Common Areas" shall mean and refer to all parts of the Property except the Lots, and any real property that may be designated as a part of the Common Area in any supplement to this Declaration and any other real property now or hereafter owned by the Association and all improvements now or hereafter constructed or installed thereon;

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(e) "Common Expenses" shall mean and include expenses of administration and management, maintenance, repair or replacement of the Common Area, and Lots, but with respect to Lots shall include only those items of maintenance, repair and replacement for which the Association is responsible under the provisions of Paragraph 9(b) of this Declaration;

(f) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements, and any Supplements or Amendments thereto;

(g) "First Mortgagee" shall mean the holder of a first deed of trust or first mortgage (collectively referred to as "First Mortgage") encumbering a Lot and to the Administrator of Veterans Affairs (Veterans Administration) and his assigns under any executory land sales contract wherein the Administrator or his assigns is seller;

(h) "Home" shall mean the structure (including the Garage and including fixtures) constructed by the Declarant (including replacements thereof) on a parcel of real property designated as a Lot on the Plat of Sienna Park;

(i) "Lot" shall mean and refer to a parcel of real property designated as a Lot by the use of a letter followed by an arabic number on the Plat of Sienna Park and any supplements thereto or amendments thereof, and all improvements constructed thereon;

(j) "Owner" means a person, firm, corporation, partnership, association, or other legal entity or any combination thereof owning, or being the vendee under a contract with a First Mortgagee to acquire, one or more Lots;

(k) "Parking Space" shall mean any space located on the Common Area that is designated by the Board or by the Declarant to be used for parking one vehicle;

(l) "Party Wall" shall mean and refer to the entire wall from front to rear, all or a portion of which is used for support or firewall protection between each adjoining Home, situated or intended to be situated on the boundary line between adjoining Lots;

(m) "Plat" shall mean and refer to the Final Plat of Sienna Park, recorded on December 31, 1981 at Reception No. 81094479 of the records of the Clerk and Recorder of Jefferson County, Colorado and all supplements thereto and amendments thereof;

(n) "Property" shall mean and refer to the real property located in the City of Lakewood, County of Jefferson, Colorado, described on Exhibit A attached hereto and any other property that may hereafter be made subject to this Declaration by one or more Supplements hereto;

(o) "Rules" shall mean the Rules and Regulations adopted by the Board as amended from time to time.

2. Property Subject to Declaration. Declarant expressly intends to and by the recording of this Declaration does hereby subject the Property to the provisions of these covenants, conditions, restrictions and easements.

3. Conveyance Subject to Covenants. All easements, restrictions, covenants, reservations, liens, charges, rights, benefits, burdens and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be

covenants appurtenant to and running with the land and shall be binding upon any person having an interest or a stake in the Property and their respective heirs, successors, representatives and assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust or any other instrument to a Lot, shall be deemed to affect that Lot, together with the Home constructed thereon, all rights of ownership of such Lot and all limitations on such ownership as described in this Declaration.

4. Title. A Lot may be held and owned by more than one person in any real property tenancy relationship recognized under the laws of the State of Colorado.

5. Restrictions on Use.

(a) All Lots shall be used and occupied principally for residential purposes by the Owner, by the Owner's family or by the Owner's guests and tenants; provided that one home office will be permitted in each Home if the same complies with the following: (1) no chattels, goods, wares or merchandise shall be commercially created, displayed, exchanged, stored or sold, (2) the office shall be operated entirely within the Home (but not within the garage), (3) the office shall be operated by a person whose principal residence is in the Home (4) there shall be no more than one person employed by or associated with the office who does not maintain his principal residence in the Home (5) there shall be no separate entrance to the office from the outside of the Home (6) the office shall not utilize more than 300 square feet of floor area (7) the office shall not create any external evidence of the operation of an office and (8) there shall be no signs used in connection with the office except such signs (if any) that the Board may approve in writing. In addition, Declarant, his employees, representatives, agents and contractors may maintain business and sales offices, construction facilities, model units, and such other facilities on the Property and Common Area and shall have an easement and right of access over and across the Common Areas for said purpose.

(b) All use and occupancy of the Lots and the Common Areas shall be governed by the Rules of the Association. The Board, on behalf of the Association, may promulgate and enforce rules governing the use, maintenance, and appearance of the Common Areas. The authority of the Board to approve or disapprove any action of an Owner hereunder shall imply neither an obligation by the Association to approve such action nor a limitation on the Board's power to prohibit such actions so long as such prohibitions are applicable to all Owners.

(c) Nothing shall be done within the Lots and the Common Areas which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body.

(d) No noxious or offensive activity shall be carried on upon the Common Areas, upon a Lot or in a Home.

(e) No animals of any kind, except household pets, shall be raised, bred or kept on the Common Areas or on a Lot. The Association may limit the number of household pets which may be kept on a Lot. Dogs shall be leashed at all times when on the Common Areas and each pet's owner shall confine its pet for excretions to his own Lot or to such part of the Common Areas as is designated for such purpose. No Owner shall allow animal excretion to accumulate on his Lot. Pets constituting a nuisance may be required to be confined to the Owner's Lot by the Board.

(f) Unsightly objects or materials shall not be placed upon the exterior portions of a Lot, or upon the Common Areas. No heating or cooling devices of any kind which protrude beyond the exterior perimeter of the windows in the Home shall be installed or maintained in a Home. No part of a Lot or the Common Areas may be used as a dumping ground for garbage, trash or other waste and the same shall be disposed of in a sanitary manner. All equipment for the storage or disposal of garbage, trash or waste shall be kept in a clean and sanitary condition in the Garage. Garbage, trash or waste shall be disposed of in such a manner as may be established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is prohibited. The Association shall have the right to enter upon a Lot to remove any refuse piles or other unsightly objects and materials at the expense of the Owner, following due notice to such Owner and the failure of the Owner to comply with this Paragraph. Such entry shall not be deemed a trespass.

(g) No vehicles shall be parked on the Property except in Garages or in a Parking Space. No maintenance of vehicles shall be performed on the Property except in a Garage, and no vehicles shall be placed on jackstands or blocks outside of a Garage except on a temporary basis for emergency repair. The Board may pass Rules further limiting where vehicles may be parked and the types of vehicles permitted to be parked outside of a Garage. No items of any kind shall be placed or stored on drives and no vehicles shall be parked in drives except any portion thereof that may be designated for such purpose.

(h) The removal of trees, shrubs, or other improvements from the Common Areas shall be prohibited without the express written approval of the Board. No person shall permit water to be introduced or placed into or on the soil anywhere within the Common Areas without the express written approval of the Board.

(i) No Home or Lot may be partitioned or subdivided without the prior written approval of the Board. No fences shall be permitted anywhere on the Property except any that may be erected by the Declarant and replacements thereof. No trees shall be removed from a Lot and no exterior structure, antenna, or any other exterior addition or alteration to a Lot shall be permitted without the prior written approval of the Board which may impose regulations applicable to all Homes, provided that Declarant shall not be required to obtain approval for improvements constructed on the Property within 7 years after the recording of this Declaration.

(j) Subject to the reservations in favor of Declarant, no signs of any kind or nature whatsoever shall be placed upon the Property without the prior written consent of the Board, provided, however, an Owner shall have the right to display a For Sale sign, the size and design of which have been approved by the Board.

(k) No Home may be leased for a period less than six months and all such leases shall be in writing, shall be subject to the terms of this Declaration, and a copy thereof delivered to the Association prior to the commencement of the lease term.

6. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and



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incorporated in a Lot with the consent or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be the basis for filing a lien against the Lot or Home of any other Owner not expressly consenting to or requesting the same or against the Common Areas. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Common Areas or any other Owner's Lot for construction performed or for labor, material, services or other products incorporated in or otherwise attributable to the Owner's Lot.

7. Easements.

(a) Subject to the provisions of Subparagraph (b), every Owner of a Lot shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement of enjoyment shall include the right to non-exclusive use of the Common Area by the Owners, their families, guests, tenants, and invitees, subject to the Rules promulgated by the Association and to the right of the Association to govern the use of Parking Spaces.

(b) The right and easement of enjoyment created hereby shall be subject to the right of the Board to publish reasonable Rules and Regulations governing the use of the Common Areas.

(c) There is hereby created a blanket easement upon, across, over and under all of the Lots and Homes for replacement, repair and maintenance of all utilities installed therein, including but not limited to water, sewer, gas, telephone and electricity (which for brevity are hereinafter referred to as "Utilities") and meters measuring the consumption thereof, and upon the Common Area for installation, repair, replacement and maintenance of utilities, and for pedestrian and vehicular ingress and egress, provided the same is limited to drives and ways constructed for such purposes; and to all police, fire protection and ambulance personnel and all similar persons to enter upon the Common Area, Lots and Homes in performance of their lawful duties. An easement is further granted to the Association (or its designated representatives) to enter in, onto, above, across, or under the Common Area, any Lot or Home to perform the duties of maintenance, repair and replacement with respect to any Lot, the Common Areas, or any utilities lying therein or thereunder.

(d) Each Owner shall have a non-exclusive easement in and over adjacent Lots and Common Area for horizontal and lateral support of such Owner's Home.

(e) The Association, through its duly authorized agent, shall have the right, in case of any emergency originating in or threatening a Home to enter such Home or Lot or any other Home or Lot which is necessary, such entry to be permitted immediately without prior request.

(f) The easements and rights herein created for an Owner shall be deemed appurtenant to the Lot of that Owner and all conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements provided herein as though fully set forth in said document.

(g) If any portion of the Common Area now or hereafter encroaches upon a Lot, a valid easement for the

encroachment and for the maintenance of the same so long as it stands shall and does exist. If any portion of a Home now or hereafter encroaches upon the Common Area or an adjacent Lot, including but not limited to encroachments resulting from the overhang of decks, chimneys and fences, a valid easement for the encroachment and for the maintenance of the same so long as it stands shall and does exist. For title and other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or the Lots. Encroachments referred to herein include without limitation encroachments caused by error in original construction, by settling, rising or shifting of the earth or by changes in position caused by repair or reconstruction of any of the improvements located on the Property.

8. Maintenance of Common Areas. The Association shall provide and pay for the care, operation, management, maintenance, repair, replacement and improvement of the Common Areas. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas in good, clean, attractive and sanitary order and repair; may arrange to be furnished to the Common Areas, water, sewer, electric, gas and other necessary utility services; shall maintain and replace all or any portion of the landscaping; shall provide for rubbish collection; may remove snow, ice and other materials from the streets and walkways; shall keep the Common Area safe, attractive and desirable, making necessary or desirable alterations, additions, betterments or improvements to or on the Common Areas. Nothing herein shall be construed as waiving any right of the Association to recover for any damage or expense incurred by the Association as the result of the willful or negligent action or lack of action by any person.

9. The Maintenance of Homes.

(a) Each Owner shall be responsible for the maintenance, repair and replacement of the interior and exterior of his Home. Each Owner shall keep his Home in good order and repair, free from deterioration, trash and waste. An Owner shall not change the color of or modify the design of any exterior surface of his Home other than to return it to its condition as constructed by Declarant.

(b) The Association shall provide for maintenance, repair and replacement only of those portions of water, sewer, electrical and other systems which serve more than one Home.

10. Failure of an Owner to Maintain. If an Owner fails to perform his obligation to maintain the exterior portion of his Home in accordance with all of the provisions of this Declaration, the Board may give such Owner written Notice of such failure, including in the Notice the item or items which require maintenance, repair, replacement or removal. The Owner shall have ten days after the delivery of such Notice to commence the maintenance, repair, replacement or removal of such items and to diligently pursue the same to completion. In the event an Owner fails to commence such action within the ten day period or fails to diligently pursue the same, the Association may provide and pay for the maintenance, repair, replacement or removal of the items specified in the Notice. The Owner shall be liable to the Association for the cost of such maintenance, repair, replacement or removal, together with interest on the amount expended by the Association at the rate of 18% per annum (or such other

rate provided for in the Rules or By-Laws) and the Association may levy an extraordinary assessment against such Owner's Lot to recover the payment thereof. The Association may take any action under this paragraph without prior written notice if in the opinion of the Board, such action must be done immediately in order to prevent damage to the Lot involved, to any other Lot or to the Common Areas. 7

11. Party Walls.

(a) General Rules of Law to Apply. Each Owner shall own in fee simple subject to the provisions of this Paragraph a portion of the Party Wall lying within his Lot and, to the extent not inconsistent with this paragraph, the general rules of law regarding party walls and liability for property damage thereto shall apply to each Party Wall. Each Owner having a Party Wall is hereby granted mutual reciprocal easements for support, repair, and maintenance of the Party Wall. In the event any Party Wall, originally constructed by Declarant, shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot and no Owner shall either maintain any action for removal of a Party Wall or any action for any damage because of such protrusion. In the event there is such a protrusion, it shall be deemed that said Owner has granted perpetual easements to the adjoining Owner for continuing use, repair and maintenance of the Party Wall or such projection. The foregoing shall also apply to any replacement of any Party Wall if the same is constructed substantially in conformity with original Party Wall constructed by Declarant.

(b) Damage, Repair and Maintenance. The cost of reasonable repair and maintenance of such a Party Wall shall be shared equally by the Owners of the Lots abutting such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, such destruction or damage shall not terminate any rights of the adjoining Owners thereto and the adjoining Owners shall restore it to substantially original condition and contribute equally to the costs of repair or restoration. Notwithstanding any other provision of this Paragraph, an Owner who by his (or his family's, guests', tenants' or invitees') negligent or willful act or omission causes a Party Wall to be damaged or destroyed shall bear the entire costs of repairs or restoration and shall diligently prosecute all such repairs or restoration. If such Owner shall fail to do so, then the Owner of the adjacent Lot may do so at the sole cost and expense of the Owner causing such damage. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to each Owner's Lot and shall pass to each Owner's successor in title.

12. Administration and Management. The administration and management of the Common Areas shall be vested exclusively in the Association. An Owner of a Lot, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. Any purchaser of a Lot shall be deemed to have assented, ratified, and approved such designation. The Association shall have the following duties, rights and powers:

(a) To collect monthly or periodic assessments from the Owners; to execute and record statements of lien for delinquent assessments; to collect delinquent assessments by

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suit or otherwise; and to collect such other assessments as are authorized herein.

(b) From funds collected, to provide for maintenance, repair, replacement, improvement, management, insurance, and care of Association property including the Common Areas, and to provide for insurance, maintenance, repair and replacement of Homes and such other expenses as are enumerated in this Declaration.

(c) To lease, acquire and sell real or personal property and to improve, and construct improvements thereon.

(d) To borrow money in furtherance of any lawful purpose of the Association and to issue such notes, or other evidence of such borrowings as the Board so determines.

(e) To enter into the Homes and upon the Lots when necessary in connection with its duties set forth in this Declaration.

(f) To enjoin, or seek damages from, the Owners for violation of this Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, and the Rules.

(g) To employ workmen and others; to contract for services to be performed, including those of a manager; to purchase supplies and equipment; to enter into contracts; and generally to have the powers of a property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment against such Owner for violation of the covenants imposed by this Declaration. The Association shall not enter into any contract or management agreement for the furnishing of services (other than utilities, trash removal, landscaping and snow removal), material or supplies, the term of which is in excess of one year; and further provided that any contract or management agreement entered into (excluding those for utilities) by the Association shall be terminable by the Association for cause upon thirty (30) days written notice and termination without cause upon ninety (90) days written notice without the payment of a penalty or fee.

(h) In its own name or on behalf of all Owners, by suit or otherwise, to protect and defend the Common Areas from loss and damage.

(i) To employ counsel, attorneys and auditors in connection with legal matters of the Association and in connection with the preparation of any financial statements of the Association, which financial statements shall be available to Owners and First Mortgagees for inspection at the Association office, as hereinafter provided.

(j) To deposit funds in the hands of the Board which are not necessary for immediate disbursements in insured savings accounts of National or State Banks or Savings and Loan institutions earning the standard rate of interest.

(k) To file legal protest, formal or informal with authorities against the granting by authorities of zoning ordinances, rezonings, approvals, or variances concerning property



within a reasonable proximity of the Property which might affect the value of the Common Areas or a significant portion of the Property.

(l) To adopt Rules in accordance with the By-Laws for the regulation and operation of the Lots and Common Area, including, but not limited to, regulations governing the use of the Lots, and Common Area.

(m) To pay all taxes and special assessments levied against the Common Areas.

(n) The Association shall have and may exercise any right or privilege given to it expressly by this Declaration or by its Articles of Incorporation, or reasonably implied from the provisions thereof which may be necessary or desirable to fulfill its duties, obligations, rights or privileges except as such rights or privileges may be expressly limited in this Declaration, or in the Articles of Incorporation.

13. Membership in Association. The following shall be entitled to membership in the Association:

(a) All Owners shall automatically become Members of the Association. Upon the sale or transfer of a Lot by an Owner the seller's or transferor's membership shall terminate and shall be automatically transferred to the new Owner.

(b) The Declarant, provided however, such membership shall terminate upon termination of the Class B Membership except with respect to any Lot then owned by Declarant.

14. Voting Rights in Association. There shall be two classes of Members to wit:

(a) Class A Members shall be all the Owners and shall be entitled to one vote for each Lot owned. If an Owner is more than one person or a corporation or other legal entity, then one such person, an officer of such corporation or a representative chosen by such entity shall be designated the Class A member with respect to such Lot by written notice delivered to the Secretary of the Association. In the absence of such designation, the Board may designate one such person, officer or representative as the voting Member. When the same person owns more than one Lot such Owner shall be entitled to one vote on Association matters for each Lot owned.

(b) Declarant shall be the Class B Member and shall be entitled to three votes to be exercised by a designated representative thereof for each Lot owned by Declarant. Declarant shall not be a Class A Member so long as it is a Class B Member, but upon termination of its Class B membership it shall be a Class A Member for each Lot owned by it. Class B Membership shall terminate upon the earlier to occur of either (i) the sale by Declarant of 33 Lots (including those Lots submitted to this Declaration pursuant to Section 33 hereof) or (ii) five (5) years after the date that this Declaration is first recorded; provided, however, Declarant may elect to terminate the Class B membership at any earlier time.

(c) Until termination of Class B Membership, Declarant shall have the sole and exclusive right to appoint the Board of Directors of the Association.

15. Compliance with Provisions of Covenants and By-Laws. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure so to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the managing agent or Board of Directors in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner. 10

16. Parking Spaces. Parking spaces located in the Common Area shall be used exclusively for parking automobiles belonging to guests of Owners. The Association may from time to time change the number and location of such parking spaces. Each Owner shall park automobiles or other motor vehicles owned by such Owner exclusively on such Owner's Lot; provided, however, in the event any Home originally constructed by Declarant is constructed without a garage, any Owner of such Home shall have an easement and right to park one automobile on the Common Area in a space designated for such purpose by the Association within reasonable proximity of such Owner's Home. The Association may designate parking spaces located in the Common Area for use by an Owner or Owners from time to time.

17. Assessments.

(a) General. Each Owner, by acceptance of a deed, agrees to pay to the Association assessments or charges established from time to time as herein provided. Such assessments, together with any late charge as may be determined from time to time by the Board, interest at the rate of 18% per annum (or such other rate provided for in the Rules or the By-Laws), the cost of collection, and attorney's fees shall be charged to the Lots and shall be a continuing lien upon the property against which each assessment is made in the event of delinquency in payment. Such assessment, together with interest, late charge, court costs, and reasonable attorney's fees also shall be the personal obligation of the person who was the Owner, or the persons jointly and severally who were the Owners at the time when the assessment was made. Assessments against each Lot shall commence as of the date of the transfer of the Common Area to the Association.

The assessments levied by the Association against the Lots (except Extraordinary Assessments) shall be used exclusively for the construction, management, maintenance and care of the Common Areas, the maintenance, repair, and replacement of Homes and Lots that the Association is responsible for under the provisions of Paragraph 9(b), and for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration, including but not limited to: the provision of services and facilities related to the use and enjoyment of the Common Areas; the provision of gas, electricity, water and sewage disposal to the Common Areas; the furnishing of water to the Homes, the maintenance, repair and replacement of utilities, paving, lighting, walkways, and other facilities furnished to the Common Area; provisions for snow removal, grounds upkeep, sprinkler systems, landscaping, garbage pickup, water and sewer service, administration expenses, working capital, real property taxes and special assessments levied against the Common Areas, rental and acquisition of real or personal property; and such expenses as the Association, in its opinion, shall determine to be necessary and desirable including the establishment and

maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including but not limited to an adequate reserve fund for the acquisition, construction, maintenance, replacement and repair of those portions of the Common Areas which must be replaced on a periodic basis, to be charged against the Owners as part of their regular assessment.

(b) Annual Assessments. Annual assessments may be made for the purposes of providing funds for the normal operations of the Association, including but not limited to maintenance and repair of the Common Areas and Lots, salaries, costs of operating the Association, cost of acquiring real or personal property, insurance premiums, management fees, office costs, reasonable reserves, amounts necessary to pay deficits or debts, including debts incurred in connection with or for the purpose of financing the acquisition of real or personal property, incurred by the Association, water and sewer rents and fees, gas and electricity furnished to the Common Area, real estate taxes and other special assessments on the Common Areas, and funds for any other purpose or purposes of the Association provided for herein except for capital improvements with a cost in excess of \$10,000. The total amount of money required to be raised by annual assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of deficits from prior fiscal years, providing reasonable reserves, and providing a reasonable carry-over reserve for the following fiscal year. To determine the amount required to be raised by annual assessments for any fiscal year, the Board shall prepare an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, the estimated income and other funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by annual assessments to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of such budget to any Owner and, upon request, to any First Mortgagee. Based on such budget, the Board of Directors shall determine the amount of the annual assessments for each Lot for such fiscal period. Until January 1 of the year immediately following the year in which this Declaration is first recorded, the maximum annual assessment shall be forty-five dollars (\$45.00) per Lot per month. Notwithstanding anything to the contrary contained herein, without the prior consent of two-thirds (2/3) of the Class A Members who are voting in person or by proxy at a meeting called for this purpose, the annual assessment for any fiscal year shall not exceed one hundred five percent (105%) of the annual assessment for the preceding fiscal year.

(c) Supplementary Assessment. Subject to the limitations set forth in subparagraph (b), in the event that the Board shall determine, at any time or from time to time, that the amount of the annual assessment is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Board shall revise the annual budget for such fiscal year or prepare a new budget, a copy of which shall be furnished to any Owner or on request, to any First Mortgagee. Based on such revised or new budget, the Board may make a supplementary assessment against each Lot for such fiscal year.

(d) Extraordinary Assessment. An Extraordinary Assessment may be levied by the Board against a Lot and the Owner to recover the actual amounts expended by the Association with respect to the following, plus an amount to be determined by the Board not to exceed 25% of the total amount thereof to cover overhead and administrative costs of the Association:

(i) Maintenance, repair or replacement performed by the Association under the provisions of Paragraph 10, regarding failure of an Owner to maintain,

(ii) Maintenance, repair or replacement caused or contributed to by the negligence, misuse or neglect of an Owner, his family, guests, tenants or invitees or the failure of an Owner to maintain his Home or Lot in accordance with the provisions of the Covenants,

(iii) The Association may also make an Extraordinary Assessment against an Owner and his Lot for any other purposes provided for in this Declaration or in the Articles, By-laws or Rules.

(e) Special Assessment. Special assessments may be made for the purposes of raising funds for capital improvements in excess of \$10,000 and for any other Association purpose for which annual assessments may not or have not been made. Whether to make a special assessment and the amount thereof shall be determined by the Board; provided that no special assessment shall be valid unless approved by a two-thirds vote of the Class A Members present and voting, in person or by proxy, at any annual meeting of the members of the Association or at any special meeting thereof called for the purpose of considering such special assessment.

(f) Allocation of Assessments. All annual, supplementary and special assessments shall be allocated equally among the Lots.

(g) Payment of Assessments. The annual assessment for each Unit shall be payable in twelve (12) equal monthly installments due on the first day of each month, unless the Board shall adopt some other payment schedule. The failure to make payment within thirty (30) days of the due date thereof shall cause the full amount of the assessments for the remainder of the year to be immediately due and payable at the election of the Board. Any assessment unpaid shall accrue interest at the rate of 18% per annum. Special and supplementary assessments shall be payable as provided in the resolutions authorizing the same. Extraordinary Assessments shall be due upon demand by the Association therefor. All installments of annual, supplementary, special and extraordinary assessments shall be paid without any setoff or diminution of any kind.

(h) Working Capital. The Association shall levy and collect from each Owner at the closing when the Owner acquires a Home, a sum equal to two (2) times the estimated monthly assessment apportioned to the Home. Such sum may be used for working capital, for application against an Owner's delinquent account or for any other lawful purpose. If the Owner's account for any reason falls below the original deposited amount, the account shall be promptly restored to the required amount. Upon the sale of the Home (except the first sale by Declarant), the amount in the reserve account may be



transferred by the seller to the buyer but in no event shall the Association be obligated to refund the deposit upon such sale.

(1) Notice and Quorum for Any Action Authorized Under Subparagraphs (b) and (e). Written notice of any meeting called for the purpose of taking any action authorized under subparagraphs (b) and (e) shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

18. Lien for Nonpayment of Assessment for Common Expenses. All sums assessed against a Lot (including interest thereon) shall constitute a lien on such Lot superior to all other liens and encumbrances (including any homestead rights granted an Owner under State or Federal law which each Owner, to the extent permitted by law, by acceptance of a deed to a Lot waives in connection with the lien hereby granted) except:

(a) Tax and special assessment liens in favor of any assessing authority; and

(b) All sums unpaid to any First Mortgagee of record, including all unpaid sums as may be provided for by such encumbrance, and including additional advances made thereon prior to the arising of such lien.

To evidence such lien, the Board of Directors or managing agent may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and the Lot number. Such notice shall be signed by one of the Board of Directors or by the managing agent and shall be recorded in the Office of the Clerk and Recorder of Jefferson County, Colorado. The recording of a notice of lien shall not be a condition precedent to nor delay the attachment of a lien which shall attach as of the first day of any period for which any assessment is levied. Such lien may be enforced by foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property and shall encumber all rents and profits issuing from the Lot which lien or rents and profits shall be subordinate to the matters described in subparagraphs (a) and (b) above. The Owner shall also be required to pay the Association a reasonable rental for the Lot during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey the Lot.

The amount of any payment assessed against a Lot shall be the debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Any encumbrancer holding a lien on a Lot may pay any unpaid assessments payable with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot for

the amounts paid of the same rank as the lien of his encumbrances.

19. Liability for Common Expenses Upon Transfer or Encumbrance of a Lot. Except as hereinafter set forth, the sale or transfer of a Lot shall not affect the lien for assessments and any such transferee shall be jointly and severally liable with the former Owner for any and all unpaid assessments. Upon the written request of any mortgagee or prospective mortgagee or grantee of a Lot, and upon payment of a reasonable fee not to exceed Fifteen Dollars (\$15.00), the Association, by its managing agent or Board, shall issue a written statement setting forth the amount of any unpaid assessment with respect to the subject Lot, the amount of the current monthly assessment and the date such assessment becomes due, and the amount of credit for advanced or for prepaid items which statement shall be conclusive upon the Association in favor of all persons who rely thereupon in good faith. Unless such request for a statement of indebtedness is complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the interest of the person making such request.

First Mortgagees of Lots which acquire title to the Lot as a result of obtaining a deed in lieu of foreclosure or forfeiture or cancellation of an executory land sale for a Lot and purchasers of Lots at foreclosure sale foreclosed pursuant to any First Mortgage shall not be liable for any Assessments except those accruing during the period when such mortgagee, vendor or purchaser is the Owner of said Lot.

20. Insurance.

(a) The Association shall be required and empowered to obtain and maintain the following insurance:

(i) Hazard insurance coverage upon the Common Areas and the Homes as hereinafter described;

(ii) Comprehensive public liability insurance in a minimum amount of \$1,000,000.00 per single occurrence, Workmen's Compensation coverage upon employees, and such other liability insurance insuring the Association, the Board, managers and agents in connection with the Common Areas as the Board so determines.

(iii) Fidelity bonds to protect against dishonest acts on the part of Association officers, directors, trustees and employees, and all others who handle or are responsible for handling Association funds. Such bonds shall (1) name the Association as a named insured; (2) be written in an amount equal to at least 150% of the estimated annual operating expenses and reserves; (3) contain waivers of any defense based upon the exclusion of persons serving without compensation from any definition of "employee" or similar expression; (4) provide that no modification in any substantial manner, or cancellation shall be had without 30 days prior written notice to the holders of the First Mortgages on the Lots.

(iv) Such other insurance as the Board may deem desirable for the benefit of the Owners.

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(b) The Board shall obtain and maintain at all times fire insurance and extended coverage insurance policies issued in an amount of the estimated replacement value of the improvements constructed upon the Lots and the Common Areas, and including all such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other townhomes, fixtures, equipment and personal property similar in construction, design and use. The insurance covering loss or damage to the Homes shall be carried in blanket policy form naming the Association as the insured, shall identify the interest of each Owner and shall contain a standard, noncontributory mortgagee clause in favor of each mortgagee of a Lot. The insurance covering loss or damage to the Common Areas shall name the Association as the insured. The managing agent or Board shall, upon request of any First Mortgagee, furnish a copy of the blanket policy and the separate certificate identifying the interests of the mortgagor and mortgagee and of the policy insuring the improvements to the Common Areas. Each Owner shall be responsible for insurance on the contents of the Owner's Home and personal property therein.

(c) All policies of insurance required to be carried hereunder shall be issued by responsible insurance companies authorized to do business in the State of Colorado, and 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 noncompliance with 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 the insurance under 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, and shall further provide that the policy cannot be cancelled, materially altered or allowed to lapse except upon ten days prior written notice to each Owner and First Mortgagee.

(d) The Association and each Owner hereby waive and release any and all claims which they may have against any Owner, the Association, its officers, members of the board, its employees and agents, the Declarant and any manager and its respective employees or agents, for damage to any portion of the Property or the improvements or personal property located thereon, caused by any casualty, to the extent that such damage is covered by fire or any other form of casualty insurance. All policies secured by the Association under this Paragraph shall contain waivers of the insurer's rights to subrogation as to any claim against the Association, its Board of Director, agents, employees and all other Owners and shall further provide that the insurer shall not be entitled to contribution.

(e) In the event of substantial damage to, or destruction of, any part of the Common Areas or to one or more Homes, any distribution of insurance proceeds hereunder shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the holder of a First Mortgage on a Lot with respect to any such distribution; provided however, that nothing in this paragraph shall be construed to deny the Association the right to apply any such proceeds to repair or replace damaged portions of the Common Areas or Homes as herein-

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after set forth. The Association shall notify the appropriate First Mortgagees forthwith whenever damage to any Home exceeds \$1000 or the damage to the Common Areas exceeds \$10,000.

21. Appointment of Attorney-in-Fact. Each Owner by his acceptance of the deed or other conveyance vesting in him an interest in a Lot does irrevocably constitute and appoint the Association with full power of substitution as his true and lawful attorney in his name, place and stead (i) to deal with such interest upon damage to or destruction, obsolescence or condemnation of the Property as hereinafter provided, (ii) to enter into agreements regarding the Common Areas including but not limited to leases, rights of way, and ingress and egress agreements with full power, right and authorization to execute, acknowledge and deliver any contract, deed, proof of loss, release or other instrument affecting the interest of such Owner, and (iii) to take any other action, which the Association may consider necessary or advisable to give effect to the provisions of this Declaration or to perform its duties hereunder. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage or condemnation claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in the case of fraud or gross negligence.

22. Damage and Destruction.

(a) Except as provided in subparagraph (b) in the event of damage to, or destruction of, any Building or of any improvements constructed upon the Common Areas due to fire or other disaster, such damage or destruction shall be promptly repaired and reconstructed by the Association. The Building or other improvements, when rebuilt or repaired, shall be substantially similar to the design of the original Building or improvements. If the proceeds of insurance are insufficient to effect any repair and reconstruction of the improvements on the Common Areas, the Association shall levy a special assessment against the Owners to pay any deficiency required to accomplish the repair and reconstruction. If the proceeds of insurance are insufficient to effect any repair and reconstruction of a Building, the deficiency shall be shared equally by the Owners of all Homes then subject to this Declaration and the Association shall levy an Extraordinary Assessment against all the Owners. The Association shall have authority to cause the repair or reconstruction using all the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay a Special or Extraordinary Assessment. Notwithstanding, the provisions of this Paragraph an Owner shall be liable to the Association for the entire cost of such repair and reconstruction if the damage to the Building or Common Areas was caused or contributed to by the negligent or willful act or omission of such Owner or his family, guests, tenants or invitees or the failure of an Owner to maintain his Home or Lot in accordance with the provisions of this Declaration.

(b) If destruction or damage is sustained to more than sixty percent (60%) of the replacement value of a Building, (exclusive of foundation) and if the Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the total number of Homes then subject to this Declaration, the Declarant (provided Declarant's consent shall only be necessary within 5 years after this Declaration is first record-



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ed) and the First Mortgagees of all Homes in such Building determine not to rebuild the Building, the Lots on which such Homes are located shall be sold by the Association, as attorney-in-fact for the Owners of such Building, subject to the provisions contained in this Declaration, the Plat, the Articles of Incorporation and the By-Laws, and the improvements shall be razed and the land restored to an attractive condition as approved by the Board. Any future improvements constructed on such Lots shall be substantially similar in design to that of the original Building or improvements or such other design as is approved in writing by the Board and the First Mortgagees of at least 75% of the Lots then subject to this Declaration. The insurance settlement proceeds shall be divided by the Association according to each Lot Owner's interest in the Building (as such interests appear on the policy or policies), and such divided proceeds shall be paid into a separate account in the name of the Association, and shall be further identified by the number of the Lot 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 funds, without contribution from one account to another, toward the partial or full payment of the lien for the benefit of any First Mortgagee against the Lot represented by such separate account. There shall be added to each such account the Owner's share of the proceeds derived from the sale of the Building apportioned on an equal basis. 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 in the following order:

- (i) For payment of taxes and special assessment liens in favor of any assessing entity;
- (ii) For payment of the balance of the lien of any First Mortgage;
- (iii) for payment of unpaid Assessments;
- (iv) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (v) The balance remaining, if any, shall be paid to the Owner.

(c) If destruction or damage is sustained to more than sixty percent (60%) of the replacement value of the improvements constructed upon the Common Area, and if repair or reconstruction of the improvements to the Common Area is not required by applicable zoning laws, and if Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the total number of Lots then subject to these Covenants, the Declarant (provided Declarant's consent shall only be necessary within 5 years after this Declaration is first recorded) and the First Mortgagees of all such Lots determine not to rebuild such improvements, the Association shall demolish the improvements so damaged or destroyed and restore the Common Area to its condition prior to construction of the improvements using the proceeds of the insurance on the Common Area. Any insurance proceeds remaining after restoration of the Common Area shall be apportioned among all the Lots then subject to these Covenants on an equal basis. Following such apportionment, the insurance proceeds shall be used and disbursed by the Association in the manner and in the order described in subparagraph (b) of this Paragraph.

23. Condemnation. If all or any part of the Property 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 shall apply:

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

(b) In the event that an entire Building is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Declaration with respect to the condemned property shall terminate. The Condemnation Award shall be apportioned equally among the Owners owning the Homes in the Building so taken or condemned and shall be disbursed by the Association as an attorney-in-fact for the Owners of Homes in such Building in the manner and the order described in subparagraph (b) of Paragraph 22.

(c) In the event that less than an entire Building is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions hereof shall not terminate. Each Owner of a Home in the Building shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to severance damages shall belong to the Owner in the Building whose Lot was not taken or condemned, (b) the respective amounts allocated to the taking of, or injury to, a particular Lot and/or improvements an Owner has made to his own Lot shall be apportioned to the particular Lot involved, and (c) 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 an allocation of the Condemnation Award is already established in negotiation, 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 made in the manner and the order set forth in paragraph 22(b).

(d) In the event that the Common Area is taken or condemned or otherwise disposed of in lieu of or in avoidance thereof in whole or in part, the Condemnation Award shall be apportioned equally among the Owners of all the Lots, and shall be disbursed in the manner and in the order set forth in subparagraph (b) of Paragraph 22.

24. Mortgagee's Rights.

(a) Each First Mortgagee upon written request by such holder to the Board, shall receive any of the following:

(i) Copies of budgets, notices of assessments, insurance certificates, or any other notices or statements provided by the Association all of which shall also be provided any Owner upon request;

(ii) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners; provided, however, the

holders of First Mortgages encumbering fifty-one percent (51%) of the Lots subject to this Declaration shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available;

(iii) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;

(iv) Notice of the decision of the Owners or the Association to make any material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association;

(v) Notice of damage in excess of \$1,000 to or destruction of any Home, or any part of the Common Area in excess of \$10,000;

(vi) Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Lots or Common Areas;

(vii) Notice of any default of the holder's Owner which is not cured by the Owner within sixty (60) days after the giving of notice by the Association to the Owner of the existence of the default;

(viii) The right to examine the books and records of the Association at any reasonable time.

(ix) Notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association.

(b) The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a holder of a First Mortgage hereunder and in the event of multiple requests from purported holders of First Mortgages on the same Lot, the Association shall honor the most recent request received.

(c) No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any holder of a First Mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser at foreclosure or person accepting a deed in lieu thereof shall take subject to this Declaration.

(d) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common

Area and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(e) Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant) of Lots have given their prior written approval, the Association shall not:

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

(ii) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause;

(iii) use hazard insurance proceeds for losses to the Common Area for any purpose other than repair, replacement or reconstruction of the Common Area except as is otherwise provided in this Declaration;

(iv) by act or omission, change, waive or abandon any scheme of regulations or the enforcement thereof, pertaining to the architectural design or exterior appearance of the Homes, the exterior maintenance of the Homes, or the maintenance of the Common Area;

(v) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on the then current replacement cost).

25. Revocation or Amendment to Declaration. Except as provided in Paragraph 33, this Declaration shall not be revoked nor shall any of the provisions herein be amended unless Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the Lots, seventy-five percent (75%) or more of the First Mortgagees (based upon one vote for each such mortgage so held) and the Declarant (provided that Declarant's consent shall only be required within 5 years after this Declaration is recorded) consent and agree to such revocation or amendment by instrument(s) duly recorded except that the specific voting provisions in paragraph 22 shall be applicable in the event of damage or destruction.

26. Conveyance of Common Area. From time to time, the Declarant may convey and the Association shall accept all or part of the Common Area, together with any improvements thereon, provided however, that any portion of the Common Area not transferred to the Association shall be so transferred not later than the time the Class B Membership in the Association shall terminate, as provided in Paragraph 14(b). The Common Area shall be transferred to the Association by special warranty deed, subject to the covenants, restrictions, easements and reservations contained herein and all easements, covenants, restrictions, rights-of-way, and reservations then of record. The Association shall hold title to the Common Area for the use and enjoyment of the Owners; no Owner shall have any other interest and right thereto and all such right and interest shall absolutely termi-



nate upon the Owner's termination of possession or ownership of his Lot.

27. Personal Property For Common Use. Prior to the first conveyance of any Lot, Declarant shall execute and deliver a bill of sale to the Association, transferring all items of personal property located on the Property furnished by the Declarant, which property is intended for the common use and enjoyment of all Owners. The Association shall hold title to such property for the use and enjoyment of the Owners. No Owner shall have any other interest and right thereto and all such right and interest shall absolutely terminate upon the Owner's termination of possession or ownership of his Lot. 21.

28. Mailing of Notices. All notices, demands or other correspondence intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of such Owner at the Lot number of such Owner, or at such other address as an Owner notifies the Association of in writing from time to time. All notices, demands or other correspondence intended to be served upon the managing agent or the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to The Sienna Park Townhomes Owners Association, 6701 South Emporia, Englewood, Colorado, 80112, or such other address as may be given from time to time. All notices, demands or other correspondence shall be deemed given upon deposit in the United States mails, as hereinabove specified.

29. Arbitration Required For Any Claim Hereunder. Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in the State of Colorado, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction hereof; provided, however, that this paragraph shall have no applicability to any remedies available to a mortgagee under Colorado law or to remedies available to the Association for collection of assessments or foreclosure of a lien with respect thereto.

30. Term of Protective Covenants. The provisions of this Declaration shall continue in full force and effect for a term of 20 years from the date this Declaration is first recorded, after which time this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument signed by Owners representing an aggregate ownership interest of the 75% or more of the Lots and 75% or more of the First Mortgagees covering or effecting the Lots (based on one vote for each such mortgage so held), has been duly recorded, agreeing to terminate this Declaration, provided that if any provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the survivor of the now living decendants of the President of the United States, Ronald Reagan and the Governor of the State of Colorado, Richard Lamm.

31. Acceptance of Provisions of All Documents. The conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration and the By-Laws and Rules and Regulations of the Association, and shall be binding upon each grantee or encumbrancer, its succes-

sors and assigns without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

32. Sales and Construction Facilities. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction on, and sale of, the Lots, upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of the Lots, including without limitation, a business office, storage area, construction yards, signs, model Homes, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the Common Areas and the Lots as in Declarant's discretion may be necessary to complete the construction of improvements to the Property.

33. Reservation to Supplement Project. Declarant, for itself, its successors and assigns, expressly reserves the right to submit all or any portion of the real property described in Exhibit B and the improvements constructed thereon to the provisions of this Declaration which improvements will consist of not more than 28 Homes which will be constructed consistent in quality with the quality of the improvements initially subject to this Declaration. Such submission shall be expressed in and by duly recorded Supplements to this Declaration, which Supplements must be recorded within 7 years after this Declaration is first recorded. The reference to this Declaration in any instrument shall be deemed to include any recorded Supplements to this Declaration without specific reference thereto.

After the recording of a Supplement to this Declaration:

- (a) The definitions set forth in Article I hereof shall be deemed to include the property subject to such Supplement;
- (b) The Owner of each Lot then subject to this Declaration shall be entitled to one vote in the Association for each Lot owned;
- (c) All annual, supplementary and special assessments for Common Expenses incurred subsequent to the recording of the Supplement shall be allocated equally among all the Units then subject to this Declaration, provided, however, Declarant may allocate assessments against the Homes subject to a Supplement in proportion of the number of square feet of floor area in each such Home (exclusive of basements and garages);
- (d) All non-exclusive easements and rights granted to Owners under this Declaration shall be deemed granted to the Owners of all Lots then subject to this Declaration with respect to all property then subject to this Declaration; and
- (e) The Owners of all Lots then subject to this Declaration, their families, guests, tenants and invitees shall have the right and easement for use and enjoyment of the Common Area, as granted in this Declaration and to any additional

Common Area that may be defined in such Supplement or any other Supplements.

34. Special Reservations for Declarant. Notwithstanding anything to the contrary contained in the Declaration, the Declarant expressly reserves unto (a) itself, its employees, successors and assigns, its agents, representatives, contractors and their employees, the purchasers of all or any portion of any property now or hereafter owned by Declarant, and their successors and assigns, easements and rights of way on, over and across all or any part of the Common Area for vehicular and pedestrian ingress and egress to and from any recreational facilities constructed upon the Common Area; (b) itself, its successors and assigns (including any district or other entity providing water, sewer, gas, oil, electricity, telephone, cable television or other similar services to adjacent or proximate property now or hereafter owned by Declarant to which Declarant shall assign any of its rights hereunder) easements on, over and under and across all or any part of the Common Area for installation, use, maintenance and repair of all lines, wires, pipes and all other things necessary for all such services, provided that any such lines, wires or pipes shall be underground and further provided that all work done in connection therewith shall be performed with reasonable care and the surface of said easement and right of way area shall be restored to the level and condition that existed prior to the doing of such work;

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35. General.

(a) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

(b) That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender will include all genders.

IN WITNESS WHEREOF, the undersigned, as Declarant, has duly executed this Declaration this 23 day of June, 1982.

SIENNA TOWNHOMES, a joint venture

By TAUTOG, LTD., a joint venture,  
one of its two joint venturers

By Richard H. Kautz

By Frank R. Smith

By William W. Dunbar

By SIENNA PROPERTIES, INC., a  
Colorado corporation, one of its  
two joint venturers

By Candice J. Johnson  
its President



EXHIBIT A

A part of Lot 13, Block 8, Green Gables Meadows, City of Lakewood, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the Northeast corner of said Lot 13; thence S 01°19'01" W along the East line of said Lot 13 100.00 feet to the True Point of Beginning; thence continuing along said East line S 01°19'01" W 175.19 feet; thence 153.99 feet along the arc of a 100.00 radius curve to the right to a point of tangent, said point of Tangent Being on the South line of Lot 13; thence N 00°27'22" W 100.00 feet; thence N 42°27'22" W 143.13 feet; thence N 00°28'18" W 172.00 feet to a point on the North line of said Lot 13; thence along said North line S 88°40'59" E 79.38 feet; thence S 01°19'01" W 100.00 feet; thence S 88°40'59" E 125.00 feet to the Point of Beginning, containing 45,327 square feet, more or less.



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EXHIBIT B

Parcel 1

A part of Lot 13, Block 8, Green Gables Meadows, City of Lakewood, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the Northeast corner of said Lot 13; thence S 01°19'01" W along the East line of said Lot 13 275.19 feet; thence 153.99 feet along the arc of a 100.00 foot radius curve to the right to a point of tangent, said point being on the South line of Lot 13 and the True Point of Beginning; thence continuing along said South line S 89°32'38" W 280.72 feet to the Southwest corner of Lot 13; thence along the West line of Lot 13 N 00°28'18" W 150.00 feet; thence N 89°32'38" E 125.00 feet; thence N 00°28'18" W 56.37 feet; thence N 89°32'38" E 60.00 feet; thence S 42°27'22" E 143.13 feet; thence S 00°27'22" E 100.00 feet to the True Point of Beginning, containing 45,399 square feet more or less.

Parcel 2

A part of Lot 12, Block 8, Green Gables Meadows, City of Lakewood, County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at the Southeast corner of said Lot 12, thence along the South line of Lot 12 S 89°32'38" W 170.00 feet; thence N 00°28'18" W 173.50 feet; thence S 88°46'47" E 170.07 feet to a point on the East line of Lot 12; thence along said East line S 00°28'18" E 168.50 feet to the True Point of Beginning, containing 29,069 square feet more or less.