

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
PENN PLAZA**

THIS DECLARATION is made and entered into by COLORADO CAPITAL LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property situated in the County of Adams, State of Colorado, which is described in Exhibit A, attached hereto and incorporated herein by this reference ("Community"); and

WHEREAS, the Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of furthering a plan for the Improvement, sale and ownership of the Community; and

WHEREAS, the Declarant intends the Community to be a community restricted solely to commercial use; and

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

NOW, THEREFORE, Declarant hereby declares that all of the real property in the Community shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1. DEFINITIONS

Section 1.1. Agencies

"Agencies" collectively means the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the Small Business Administration ("SBA") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.2. *Allocated Interests*

"Allocated Interests" means the Assessment liability in the Association allocated to each Unit, as provided on Exhibit B attached hereto and incorporated herein by this reference. The Allocated Interest of each Unit at any time shall be equal to a fraction, the numerator of which is one (1) (as to all units except Units 201 and 206) or one and one-half (1.5) (as to Units 201 and 206) and the denominator of which is seventeen (17).

Section 1.3. *Assessment*

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Section 4.1, Sections 4.8 through 4.12, and Section 14.6.1, of this Declaration, "Assessment" means annual Assessments, special Assessments, fines, fees, late charges, attorney fees, interest and all other charges (including without limitation, Service Charges) charged pursuant to this Declaration.

Section 1.4. *Association*

"Association" means Penn Plaza Owners Association, Inc.

Section 1.5. *Board of Directors or Board*

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

Section 1.6. *Building*

"Building" means the building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Individual Air Spaces are located.

Section 1.7. *CCIOA*

"CCIOA" means the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et. seq., C.R.S. 1973, as amended.

Section 1.8. *Common Elements*

"Common Elements" means the totality of:

1.8.1. The real property which is part of the Community; and

1.8.2. The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, flues, hallways, roofs, stairs, stairways, elevators, restrooms (except those which may be located inside an Individual Air Space), and the mechanical installations of the Building consisting of the equipment and materials making up any services such as power, light, gas, air conditioning, and exterior security lighting, which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Individual Air Spaces; and

1.8.3. Any amenities and amenity areas, if any, sidewalks, walkways, paths, fences, grass, shrubbery, trees, driveways, parking areas, landscaping, and irrigation systems, if any, now or hereafter located in the Community; and

1.8.4. All apparatus, installations and equipment of the Building existing for common use of some or all of the Owners; and

1.8.5. In general, all other parts of the Community, except the Individual Air Spaces, including, without limitation, the Common Elements depicted on the Map and any items designated by Declarant as Common Elements under other provisions of this Declaration, including General Common Elements and Limited Common Elements, and all other parts of the Community necessary or convenient to its existence, maintenance or safety, or normally in common use.

Section 1.9. *Community*

"Community" means the property described on the attached Exhibit A, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. The Community is a condominium under CCIOA. The name of the Community is Penn Plaza

Section 1.10. *Declarant*

"Declarant" means Colorado Capital LLC, a Colorado limited liability company, and any other Person or group of Persons acting in concert to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

1.10.1. as part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser; or

1.10.2. reserves or succeeds to any Special Declarant Right.

Section 1.11. *Declaration*

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Penn Plaza and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, the Map.

Section 1.12. *Development Rights*

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to add real estate to this Community and to create Units or Common Elements within this Community in connection with the addition of any real estate. The Declarant may exercise its Development Rights in all or any portion of the Community over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of any such

Development Rights. The Declarant's right to exercise Development Rights shall terminate automatically as provided in Section 1.24 of this Declaration.

Section 1.13. *General Common Elements*

"General Common Elements" means all of the Common Elements except the Limited Common Elements.

Section 1.14. *Improvements*

"Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including but not limited to, buildings, outbuildings, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, driveways, fences, screening walls, retaining walls, stairs, decks, railings, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

Section 1.15. *Individual Air Space*

"Individual Air Space" means the air space contained within the enclosed rooms occupying part of a floor or floors in the Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the adjoining walls, if two or more Individual Air Spaces adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is an Individual Air Space containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is an Individual Air Space containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Building, and which is separately identified on the Map; provided that if the adjoining wall, ceiling or floor between any two or more Individual Air Spaces is completely or partially removed so as to provide free access between such Individual Air Spaces, the area of each Individual Air Space shall be determined as if such wall, ceiling or floor were in existence, and each Individual Air Space shall continue to be a separate Unit for purposes of this Declaration.

Section 1.16. *Limited Common Elements*

"Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include: the utility, heating, air conditioning, phone lines, cat 5 cables or lines, cable lines, and other audio or visual lines, cables and appurtenances, if any, associated with or providing service to a Unit; window wells, if any, attached to a Unit; porches, patios and decks attached to Units, as designated on the Map; and other areas or Improvements, if any, designated as Limited Common Elements on the Map. The Limited Common Elements shall be used in connection with the applicable Individual Air Space(s) to the exclusion of the use thereof by the other Owners, except by invitation. No reference to any Limited Common Elements need be made in any instrument of conveyance, encumbrance or other instrument. The Limited Common Elements allocated to Units as provided in this Section may not be reallocated without the consent of the Owners whose Units are affected and any Security Interest

Holders of any such Units. Further, any reallocation of Limited Common Elements between or among Units must be done in compliance with CCIOA.

Section 1.17. *Map*

"Map" means the map(s) of the Community and Improvements thereon that are subject to this Declaration and which is designated as Map of Penn Plaza, recorded or to be recorded in the office of the Clerk and Recorder of Adams County, Colorado. More than one Map or supplement thereto may be recorded, and, if so, then the term "Map" collectively means all of such maps and supplements thereto. The Map shall depict all or a portion of the Community in three dimensions, and shall be executed by a Person who is authorized by CCIOA to execute a declaration relating to this Community. Further, the Map shall include a certificate executed by a licensed or registered engineer, land surveyor, or architect stating that all Improvements shown on the Map have been substantially completed, all structural components of all buildings that contain or comprise any Units in the Community are substantially completed and stating that the Map contains all the information required by Section 38-33.3-209 of CCIOA.

Section 1.18. *Member*

"Member" means all Owners of a Unit collectively; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. There is only one Member per Unit, even if the Unit is owned by multiple Owners. Members shall consist exclusively of all Owners, or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors or assigns.

Section 1.19. *Owner*

"Owner" means each fee simple title holder of a Unit, including without limitation, the Declarant or other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by the Declaration until that Unit is conveyed to another Person who may or may not be a Declarant under this Article. There may be more than one Owner of a Unit, but only one Member for each Unit.

Section 1.20. *Person*

"Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or any combination thereof.

Section 1.21. *Security Interest*

"Security Interest" means an interest in real estate or personal property in the Community, or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.22. *Security Interest Holder*

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest, or any successor to the interest of any such Person under such Security Interest.

Section 1.23. *75% Control Period*

"75% Control Period" means a length of time expiring three (3) years after initial recording of this Declaration in Adams County, Colorado. However, if either of the following events occur prior to the expiration of the three years, the 75% Control period shall terminate at the earlier of: a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than a Declarant, or b) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business.

Section 1.24. *Special Declarant Rights*

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of a Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Rights; to maintain sales offices, construction offices, management offices, signs advertising the Community, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any member of the Board of Directors during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as Declarant no longer owns any portion of the property described on the attached Exhibit A.

Section 1.25. *Unit*

"Unit" means an Individual Air Space, together with all fixtures and Improvements therein contained and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space (which shall be the Allocated Interest of such Unit) as shown on the attached Exhibit B. However, each of the Units listed on the attached Exhibit B shall become a "Unit" under this Declaration only at such time as a Map is recorded in Adams County, Colorado, with respect to such Unit. The Community consists of sixteen (16) Units, which is the maximum number of Units the Declarant reserves the right to create.

Section 1.26. *Vote or Votes*

"Vote" or "Votes" means the number of votes allocated to each Unit, as set forth on the attached Exhibit B.

**ARTICLE 2.
MEMBERSHIP; VOTING RIGHTS**

Section 2.1. The Association.

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs.

Section 2.2. One Class of Membership; Votes.

The Association shall have one class of voting membership. Each Member shall be entitled to the number of Votes as set forth on the attached Exhibit B, except that no votes allocated to a Unit owned by the Association may be cast. The total number of Votes which may be cast in connection with any matter shall not exceed the total number of Votes in the Association as shown on the attached Exhibit B.

**ARTICLE 3.
THE ASSOCIATION**

Section 3.1. Board of Directors.

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to offices of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 3.2. Authority of Board of Directors.

Except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, the Board of Directors may act in all instances on behalf of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

Section 3.3. Authority of Declarant During 75% Control Period.

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Board of Directors which have been appointed by such Declarant. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.4. Election of Part of Board of Directors During 75% Control Period.

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Members other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Members other than a Declarant.

Section 3.5. Termination of 75% Control Period.

Not later than termination of the 75% Control Period, the Members shall elect the Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. The Board of Directors members and officers shall take office upon election.

Section 3.6. Delivery of Property by Declarant.

After the Members other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by CCIOA.

Section 3.7. Budget.

Within thirty (30) days after adoption by the Board of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to all Members and shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by the vote or agreement of Members to which at least eighty percent (80%) of the Votes are allocated, then the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Members must be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

Section 3.8. Books and Records.

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

Section 3.9. Cooperation with other Community Associations and/or Districts.

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, any other community associations and/or any districts, to share the costs and/or responsibility for any maintenance, repair, reconstruction, or other matters, to perform maintenance, repair or reconstruction for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association and/or any other community associations

and/or any districts, or to otherwise cooperate with, any other community associations, or any districts, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with or one or more community associations and/or districts to collect Assessments, other charges, or other amounts which may be due to any other community association(s) and/or district(s), and to permit any other community association(s) and/or district(s), to collect Assessments, other charges, or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such community association(s) and/or district(s), as applicable, of any amounts collected by the Association or to the Association of any amounts collected by any other community association(s) and/or district(s).

Section 3.10. Rules and Regulations.

Rules and regulations concerning and governing the Units, Common Elements, Limited Common Elements and/or this Community, and/or any parking facilities provided for the use of the Community, may be adopted, amended or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. By way of example, and not by way of limitation, the Board may determine that a specified activity constitutes a nuisance pursuant to Section 10.9 hereof. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

Section 3.11. Management Agreements and Other Contracts.

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days prior written notice; provided however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall terminate absolutely no later than thirty (30) days after termination of the 75% Control Period.

Section 3.12. Merger.

The Declarant hereby reserves the right to merge the Association with one or more other community associations without the approval of any Owner or any other Person. This right shall terminate automatically as provided in Section 1.24 hereof.

**ARTICLE 4.
ASSESSMENTS**

Section 4.1. Personal Obligation for Assessments.

Each Owner of a Unit, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual or special Assessments as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments attributable to their Unit during their ownership of such Unit. Each Assessment under this Declaration, together with interest, late charges, costs, and reasonable attorney's fees, shall be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. Purpose of Annual and Special Assessments.

The annual and special Assessments levied by the Association shall be used for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to pay for water and/or sewer service, repairs and renovation, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such Assessments levied during the 75% Control Period may not be used for the purposes of constructing capital Improvements.

Section 4.3. Initial Annual Assessment.

Until the effective date of a budget ratified by the Members with a different amount for the annual Assessment, as provided above, the amount of the annual Assessment against each Unit shall be computed at a rate not in excess of One Hundred Fifty and No/100 Dollars (\$150.00) per month per Unit, except for Units 201 and 206, which shall be assessed at a rate not to exceed Two Hundred Twenty-Five and No/100 Dollars (\$225.00) per month per Unit, which amounts do not include any amount levied by any district.

Section 4.4. Rate of Annual and Special Assessments.

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Units in accordance with their Allocated Interests. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

4.4.2. During the 75% Control Period, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall be treated as an advance against future amounts due from the Declarant;

provided, however, that any such advances which have not been credited against amounts due from the Declarant as of termination of the 75% Control Period shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the 75% Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against future amounts due from the Declarant until conveyance by the Declarant of all of the property described on the attached Exhibit A. If the Declarant elects in its discretion to pay any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in future years.

Section 4.5. Date of Commencement of Annual Assessments.

The annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. Annual Assessments shall initially not be greater than the amount set forth in Section 4.3 of this Article, and thereafter shall be based on a budget adopted by the Association as provided above. A budget shall be so adopted by the Association no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine in its discretion from time to time; provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. Special Assessments.

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of the Votes of a quorum of the Association cast by the Members voting in person or by proxy at a meeting duly called for this purpose, a special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Common Elements or any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements, or for the funding of any deficit incurred by the Association. Any such special Assessment shall be set against each Unit in accordance with the Allocated Interests therefor. Notwithstanding the foregoing, special Assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

Section 4.7. Charges for Services that Benefit Less than All of the Units.

The Association may, at any time from time to time, provide services that benefit less than all of the Units, and the Owners of such Units shall pay the Association for such services as, when and in such manner as may be determined by the Board of Directors in its discretion from time to time, which amounts shall include overhead expenses of the Association. Such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Units for which such service(s) are to be provided, with such agreement to include a statement

and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such service(s). Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned or maintained by such Owner(s); (b) the provision of any services or functions to or for such Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

Section 4.8. Lien for Assessments.

4.8.1. The Association has a statutory lien on a Unit for any Assessment levied against that Unit. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.8.2. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the Assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

4.8.3. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due.

4.8.4. Unless the Declaration otherwise provides, if two (2) or more associations have liens for Assessments created at any time on the same property, those liens have equal priority.

Section 4.9. Priority of Association Lien.

4.9.1. A lien under this Article is prior to all other liens and encumbrances on a Unit except:

4.9.1.1. Liens and encumbrances recorded before the recordation of the Declaration;

4.9.1.2. A Security Interest on the Unit which has priority over all other Security Interests on the Unit and was recorded or perfected before the date on which the Assessment sought to be enforced became delinquent; and

4.9.1.3. Liens for real estate taxes and other governmental assessments or charges against the Unit.

4.9.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.9.1.2 to the extent, if any, provided by law.

4.9.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other Assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of Section 15-11-201, C.R.S. 1973, as amended.

Section 4.10. Certificate of Status of Assessments.

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.11. Effect of Non-Payment of Assessments; Remedies of The Association.

Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amounts as may be determined by the Board of Directors in its discretion from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.12. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for the Association expenses and any prepayment of or provision for reserves shall be retained by the Association and need not be paid to the Owners or credited to them to reduce their future Assessments.

Section 4.13. Working Capital Fund.

The Association or Declarant shall require the first Owner (other than Declarant) of any Unit who purchases that Unit from Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment at the time of closing (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee (but not from the Association) for the aforesaid contribution to working capital fund.

Section 4.14. Charges for Water, Sewer and/or Storm Drainage and Trash Removal.

4.14.1. All charges for water, sewer and/or storm drainage, and for trash removal services ("Service Charges") provided to or for Units, may be billed to the Association. If such Service Charges are so billed, the Association shall pay the same on or before the date they become due. The Association may, at the election of the Board of Directors, collect the Service Charges from Owners as Assessments in addition to the annual and special Assessments provided in this Article and/or may collect from the Owners amounts sufficient to reimburse the Association for all Service Charges actually incurred by the Association. The Board of Directors may change the method of collecting Service Charges at any time and from time to time. The manner in which the Service Charges are apportioned shall be determined by the Board of Directors in its sole discretion from time to time; by way of example, and not as a limitation, the Service Charges may be assessed uniformly to all Units or be based on actual usage by each Unit.

4.14.2. At any time that the Board of Directors determines to collect Service Charges as monthly Assessments, the Board of Directors shall provide a budget to the Owners in accordance with Section 3.7 and the first Service Charges Assessment shall be in accordance with the budget so adopted. Service Charges Assessments shall thereafter commence at such time as the Board of Directors may determine in its discretion. Unless the Board determines to cease collecting Service Charges as Assessments, a budget shall be so adopted by the Association no less frequently than annually. The Service Charges shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first Service Charges shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

4.14.3. In the event the Board of Directors determines not to collect Service Charges as monthly Assessments or determines to bill Owners for Service Charges actually incurred by the Association in addition to Assessments, Owners shall reimburse the Association for Service Charges incurred by the Association. The Association shall, each

month (or at such other times as the Association may deem appropriate), apportion to and collect from each Unit an amount which is sufficient to pay or reimburse the Association for all Service Charges incurred by the Association.

Section 4.15. Other Charges.

The Association may levy and assess to each Owner, and his/her Unit, charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person(s): copying of the Association or other documents; return checks; telefaxes; long distance telephone calls; charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s).

Section 4.16. Charges for Misconduct.

If any Association expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner and his Unit.

**ARTICLE 5.
ARCHITECTURAL REVIEW**

Section 5.1. Prohibitions Against Changes in General Common Elements and Structural Changes.

Other than as to the Declarant or the Association, no Improvement shall be constructed, erected, placed, altered, planted, applied or installed on any General Common Elements; nor shall any structural alteration be made to any Unit or Common Elements. Nothing contained in this Declaration shall be construed so as to require approval for non-structural changes to the interior of any Individual Air Space, except those portions of Individual Air Spaces visible from outside of such Individual Air Space (as more fully provided in Section 5.2.2 of this Article).

Section 5.2. Review by Board for Changes in Limited Common Elements or Individual Air Spaces.

5.2.1. Nothing shall be constructed, erected, placed, altered, planted, applied or installed on any Limited Common Elements unless complete plans and specifications therefor shall have been first submitted to and approved in writing by the Board of Directors; such plans and specifications may, include, without limitation, such information and materials as may be required by the Board in its discretion from time to time.

5.2.2. Nothing shall be constructed, erected, placed, altered, planted, applied or installed in or on any portion of any Individual Air Space which is visible from outside of such Individual Air Space, unless complete plans and specifications therefor, including without limitation such information and materials as may be required by the Board in its discretion from time to time, shall have been first submitted to and approved in writing by the Board of Directors.

5.2.3. The Board of Directors shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, landscaping and structures, and do not affect the structural integrity of any Unit or other Improvement.

Section 5.3. Governmental Approvals.

In addition to the required approvals by the Board of Directors, as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements on any Limited Common Elements, shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permits by the City of Louisville, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement on a Limited Common Element.

Section 5.4. Reimbursement of Review Expenses.

In its review of plans, specifications and other materials and information, the Board may require that the applicant(s) reimburse the Board for the actual expenses incurred by the Board in the review and approval process. Such amounts, if any, shall be levied against the Unit, and the Owner thereof, for which the request for Board approval was made.

Section 5.5. Procedures.

The Board of Directors shall decide all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the Board may require in conjunction therewith. If the Board fails to approve or disapprove any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then the application shall be deemed to have been disapproved.

Section 5.6. Vote and Appeal.

A majority vote of the Board is required to decide a request for approval pursuant to this Article, unless the Board of Directors has appointed a representative to act for it in such matters, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Board decides a request for architectural approval which adversely affects any Owner, then such Owner shall have the right to an appeal of such decision to the full Board upon a request therefor submitted to the Board within thirty (30) days after such decision by the Board's representative.

Section 5.7. Prosecution of Work After Approval.

After approval of a request for architectural approval, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within (1) year after the date of approval of the application therefor (which length of time may be extended by the Board of Directors in its discretion, in writing), or to complete the Improvement in accordance with the description and materials furnished to the Board and the conditions imposed with such approval, shall constitute a violation of this Article.

Section 5.8. *Notice of Completion.*

Upon completion of the Improvement, the applicant for approval of the same ("Applicant") shall give a written "Notice of Completion" to the Board of Directors. Until the date of receipt of such Notice of Completion, the Board of Directors shall not be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

Section 5.9. *Inspection of Work.*

The Board of Directors or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article. However, unless the Board expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof. The right of inspection shall terminate 60 days after the Board shall have received a Notice of Completion from the applicant.

Section 5.10. *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the Board of Directors finds that any Improvement has been done without obtaining the approval of the Board, or was not done in substantial compliance with the approval that was granted pursuant to Section 5.7 (Prosecution of Work After Approval) the Board shall notify the applicant in writing of the noncompliance; which notice shall be given ("Notice of Noncompliance"), in any event, within 60 days after the Board receives a Notice of Completion from the applicant. The notice shall specify the particulars of the noncompliance.

Section 5.11. *Correction of Noncompliance.*

If the Board of Directors determines that a noncompliance exists, the applicant shall remedy or remove the same, and return the subject property or structure to its original condition within a period of not more than 45 days from the date of receipt of the Notice of Noncompliance. If the applicant does not comply with the Board of Directors' ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the property on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the applicant shall reimburse the Board, upon demand, for all costs and expenses incurred with respect thereto.

Section 5.12. *Records.*

The Board of Directors shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.13. *Liability.*

Neither the Board of Directors, nor any members thereof, nor any representative of the Board appointed to act on its behalf, shall be liable in damages to any Person submitting requests

for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Board of Directors shall not be responsible for the safety, whether structural or otherwise of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the Board of Directors shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Board of Directors.

Section 5.14. Variance.

The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to any other property or Improvements in the Community and shall not militate against the general intent and purpose hereof.

Section 5.15. Waivers; No Precedent.

The approval or consent of the Board of Directors or any representative thereof to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Board or any representative thereof as to any other application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

Section 5.16. Architectural Standards/Guidelines.

The Board of Directors may, at any time, promulgate, modify, amend, repeal, re-enact and enforce architectural standards, guidelines, rules and regulations or other standards for the Community, to interpret and implement the provisions of this Article. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Board, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Board. The guidelines may contain blanket approvals, interpretations, or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with the provisions of this Article, and shall not be inconsistent therewith

Section 5.17. Exemptions as to Declarant.

Notwithstanding anything to the contrary contained in this Declaration, the Declarant shall be exempt from the requirements of this Article until such time as the Special Declarant Rights terminate as provided in Section 1.24 of this Declaration.

ARTICLE 6. INSURANCE

Section 6.1. Insurance.

The Association shall maintain insurance in connection with the Common Elements to the extent that such insurance is reasonably available, considering the cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense of the Association. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA; such insurance shall include, without limitation, property insurance and commercial general liability insurance. The Association may maintain insurance against such other property and risks as the Board of Directors may elect from time to time, including, but not limited to, fidelity coverage and personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

Section 6.2. Worker's Compensation Insurance.

Subject to the following sentence, if the Association performs any work, including without limitation any maintenance, repair or replacement, the Association shall obtain and maintain worker's compensation insurance. The Association need not carry worker's compensation insurance if the work performed by or on behalf of the Association is performed by a Person who carries worker's compensation insurance and the Association has obtained proof of such insurance. All policies of worker's compensation insurance shall be in conformance with state law.

Section 6.3. General Provisions of Insurance Policies.

Except for worker's compensation insurance which shall comply with Section 6.2 of this Article, all policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.4. Deductibles.

The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among

the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question in such amount(s) as the Board of Directors deems appropriate.

Section 6.5. Payment of Insurance Proceeds.

Any loss covered by an insurance policy described in Section 6.1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 7.1 of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

Section 6.6. The Association Insurance as Primary Coverage.

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such the Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner. Any such Owner's policy shall also contain waivers of subrogation.

Section 6.7. Acceptable Insurance Companies.

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.8. Insurance to be Maintained by Owners.

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Individual Air Space, shall be the responsibility of the Owner of such Individual Air Space.

Section 6.9. *Notice of Cancellation.*

If the insurance that is required to be carried by the Association, as provided in Section 6.1 of this Article, is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE 7.
DAMAGE OR DESTRUCTION

Section 7.1. *Damage or Destruction.*

7.1.1. Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. The Community is terminated;

7.1.1.2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

7.1.1.3. Sixty-seven percent (67%) of the Votes are cast not to rebuild, including all Votes cast by Members whose Units will not be rebuilt; or

7.1.1.4. Prior to the conveyance of any Unit to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a common expense of the Association. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Members vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned as provided in Section 15.10 hereof, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 7.2. *Use or Distribution of Insurance Proceeds.*

In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the

damaged or destroyed area, the Association shall levy a special Assessment in the aggregate amount of such insufficiency pursuant to Section 4.6 hereof, but without approval of the Owners, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units.

Section 7.3. Damage or Destruction of Units.

If due to casualty, or for any other reason, an Individual Air Space shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, not to exceed 120 days after the event resulting in such damage or destruction, commence and diligently pursue repair and reconstruction of the Individual Air Space, using any available personal insurance proceeds and personal funds of such Owner, unless the Common Elements are not repaired and reconstructed as hereinabove provided.

**ARTICLE 8.
MAINTENANCE**

Section 8.1. Management and Maintenance Duties.

Subject to the rights of, and obligations, requirements and limitations on Owners as set forth in this Declaration:

8.1.1. The Association shall be responsible for the management, control, maintenance, repair, replacement and Improvement of the Common Elements (including the Limited Common Elements except as provided below), any parking areas provided for the use of the Community, and any property owned by the Association, including facilities, furnishings and equipment related thereto, and (except for the Limited Common Elements as provided below) shall keep the same in good, clean, attractive and sanitary condition, order and repair.

8.1.2. The Association shall also be responsible for maintenance, repair and replacement of any drainage structures or facilities, or other public Improvements, required by the local governmental entity as a condition of development of the Community or any part thereof, and of any other property or Improvements that the Board of Directors may elect on behalf of the Association, unless such Improvements have been dedicated to and accepted by a governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

8.1.3. Except as otherwise provided above, each Owner shall be responsible for the maintenance, repair and replacement of the following:

8.1.3.1. all fixtures, equipment, utilities and any appurtenances to the same which are installed on or located within such Owner's Individual Air Space; and

8.1.3.2. all air conditioning units and appurtenant connections thereto which service that Owner's Unit; and

8.1.3.3. all phone lines, cat 5 lines or cables, cable lines, and similar audio or visual lines, cables and appurtenances, which are Limited Common Elements; and

8.1.3.4. all windows and window screens; doors; electrical fixtures and equipment (including light bulbs); plumbing fixtures and equipment (excluding any landscaping irrigation system); other utility fixtures and equipment, as well as any appurtenances, which provide exclusive service to an Owner's Unit, regardless of whether any such fixtures, equipment, utilities and appurtenances are installed on or located in the Common Elements.

8.1.4. Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and Improvement of the Common Elements or Improvements thereon shall give rise to any interest of the Association in any Unit or the quality of any Improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any member thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such Improvements or the construction thereof.

Section 8.2. Maintenance, Repair and Replacement Obligations.

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Unit shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Unit, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner(s) of such Unit. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

Section 8.3. The Association's Right to Repair, Maintain and Replace.

In the event any Owner shall fail to perform such Owner's maintenance, repair and replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board of Directors, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit on which such work is performed.

Section 8.4. Owner's Negligence.

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, a Unit, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any employee or tenant of such Owner, or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal

obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the Assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any employee of an Owner or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 8.5. Limited Common Elements.

Subject to the maintenance, repair and replacement obligations set forth above, each Owner with a right to use Limited Common Elements shall keep such Limited Common Elements in a clean, sanitary and attractive condition and order.

**ARTICLE 9.
EASEMENTS**

Section 9.1. Easement for Maintenance Access and Entry; Easement for Installation of Audio or Visual Lines.

Each Owner grants to the Association and the other Owners, and to their agents, employees or contractors, a right of access and easement on, over, across and through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements to be maintained, repaired or replaced by the Association or the Owner who seeks such access. In addition, each Owner grants to the Association and the other Owners, and to their agents, contractors and employees, access to such Owner's Unit as may be reasonably necessary for installation, in the Common Elements, of phone line(s), cat 5 cable(s) or line(s), cable line(s) and other audio or visual line(s), cable(s) and appurtenance(s). If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. The easements provided in this Section may only be exercised during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

Section 9.2. Easement for Encroachments.

To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists.

Section 9.3. Drainage Easement.

An easement is hereby granted to the Association, its directors, officers, agents, employees, successors and assigns, to enter upon, across, over, in and under the Common Elements for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Community so as to maintain or improve the drainage of moisture in or from the Community.

Section 9.4. Utilities.

Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall automatically terminate at such time as the Special Declarant Rights terminate as provided in Section 1.24 of this Declaration, at which time said reserved rights shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

**ARTICLE 10.
RESTRICTIONS**

Section 10.1. General Plan; Restrictions Imposed.

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Units. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Units shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

Section 10.2. Use.

Units shall be used only in conformance with all applicable laws, ordinances and regulations.

Section 10.3. Exterior Changes.

Except for those Improvements erected, constructed or installed by Declarant in its completion of the Community, no exterior additions to, alterations or decoration of any building or Unit shall be commenced, erected, placed or maintained, except as provided in this Declaration with respect to Limited Common Elements.

Section 10.4. Interior Changes

Except as provided in Section 5.2 hereof, nothing in this Declaration shall be construed to require any Owner to obtain approvals to make non-structural changes to the interior of such Owner's Individual Air Space. If two or more Individual Air Spaces are owned by the same Owner, such Owner may remove all or part of the non-structural interior walls, ceilings or floors separating such Individual Air Spaces so as to allow free access between such Individual Air Spaces.

Notwithstanding the removal of all or part of any such interior wall, ceiling or floor which would otherwise separate and delineate the boundaries of one or more Individual Air Spaces, each Individual Air Space shall continue to be a separate Unit for all purposes of this Declaration. For example, the number of Units in the Community shall not be affected by the removal of such a wall, ceiling or floor, nor shall the Allocated Interests be affected.

Section 10.5. *Signs.*

10.5.1. No signs which are visible from the outside of an Individual Air Space shall be permitted except that reasonable signs used by the Owner/tenant/occupant of a Unit in connection with the conduct of such Owner's/tenant's/occupant's business shall be permissible, as long as such sign(s) have been approved by the Board of Directors prior to installation; provided that prior approval will not be required if a sign conforms with architectural standards/guidelines adopted by the Board of Directors from time to time, which may include standards as to size, content, color and location. Any sign installed by an owner/tenant/occupant shall be maintained, repaired and replaced by such Person at their sole cost and expense.

10.5.2. Signs advertising and/or identifying the Community may be installed by the Declarant and/or the Association on the Common Elements and shall thereafter be maintained, repaired and replaced by the Association.

10.5.3. Additionally, the Association may rent or lease space on the Common Elements to Owners for the placement of signage approved by the Board of Directors identifying the name or business of the Owner or occupant of a Unit. If the Board permits an Owner or occupant of a Unit to install signage on the Common Elements, all maintenance, repair and replacement of such signage shall be performed by the owner of such signage at such owner's sole cost and expense. If the Person who owns any signage on the Common Elements does not perform such Person's maintenance, repair and replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Person by the Board of Directors, perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit for which such work is performed.

Section 10.6. *Window Coverings.*

10.6.1. No window coverings which are visible from the outside of an Individual Air Space shall be permitted except that such window coverings used by the Owner/tenant/occupant of a Unit in connection with the conduct of such Owner's/tenant's/occupant's business shall be permissible, as long as such window coverings have been approved by the Board of Directors prior to installation; provided that prior approval will not be required if a window covering conforms with architectural standards/guidelines adopted by the Board of Directors from time to time, which may include standards as to size, content, color and location. Any window covering installed by an Owner/tenant/occupant shall be maintained, repaired and replaced by such Person at their sole cost and expense.

Section 10.7. Antenna and Satellite Dishes.

No exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Unit or the Common Elements unless such antenna, satellite dish, or other audio or visual device has been professionally installed and the installation of such device has been approved by the Board of Directors; provided, however that any such devices may be erected or installed by the Declarant during its sales or construction in the Community; and provided further, however, that the requirements of this Section shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 or regulations thereunder, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 or regulations promulgated thereunder, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 or regulations promulgated thereunder, as amended, establish reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

Section 10.8. Vehicular Parking and Assignment of Parking Spaces.

10.8.1. Vehicles may be parked in designated parking spaces in the Community; provided that such vehicles are parked pursuant to the use of a Unit or the conduct of business therein. No vehicles may be stored in the Community on a long term basis, and no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which does not have a current license plate thereon.

10.8.2. In the event the Board of Directors shall determine that a vehicle is parked or stored in violation of subsection 10.8.1 of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Board of Directors in its discretion from time to time, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.8.3. The Board of Directors shall have the right to assign the use of any parking space(s) to any Unit for such period(s) of time and for such consideration as the Board of Directors deems appropriate from time to time.

Section 10.9. Nuisances.

No nuisance shall be permitted on any Unit nor any use which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Unit or which interferes with the peaceful enjoyment or possession and proper use of any Unit, or any portion thereof, by its occupants. As used herein, the term "nuisance" shall not include any activities of Declarant which

are reasonably necessary to the development and construction of, and sales activities on, the Units. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done or placed on any Unit which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, and no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Unit as to be visible from a street or from any other Unit. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Units, or any portion thereof, shall be observed.

Section 10.10. No Hazardous Activities; No Hazardous Materials or Chemicals.

No activities shall be conducted on any Unit or in the Community which are, or might be, unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit or Common Elements except, as to Units, such as may be contained in products normally kept at businesses for use of the employees thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 10.11. Leases.

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, but all leases shall be in writing and all leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association.

**ARTICLE 11.
PROPERTY RIGHTS IN THE COMMON ELEMENTS**

Section 11.1. Owners' Easements.

Subject to this Article, every Owner shall have a non-exclusive right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to his Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to his Unit, for the purpose of getting to and from his Unit and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

Section 11.2. Extent of Owners' Easements.

The Common Elements may not be used in any manner which violates the statutes, rules or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, the rights and easements created hereby shall be subject to the following:

11.2.1. The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration; and

11.2.2. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property (as provided in Section 11.7) as security for any such loan; provided, however that the Association may not subject any portion of the Common Elements to a Security Interest, except in accordance with CCIOA; and

11.2.3. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.4. The right of the Association to promulgate, amend, repeal, re-enact and publish standards, guidelines, rules and regulations with which each Member shall strictly comply, including, but not limited to, the right to regulate vehicular parking, Improvements and/or restrictions; and

11.2.5. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Unit or any other amount due from such Member to the Association remains unpaid and for any infraction of the Bylaws of the Association or the Association's rules and regulations; and

11.2.6. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with Section 11.7, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and

11.2.7. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

11.2.8. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

Section 11.3. Use of Common Elements by Declarant.

An easement is hereby granted to the Declarant on, over, across and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's rights or obligations, or exercising any Special Declarant Rights, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Elements.

Section 11.4. Delegation of Use.

Any Owner may delegate his rights of use of and access over the Common Elements to any officers, directors, partners, employees, members, or authorized agents of each such Owner, or the officers, directors, partners, employees, members, or authorized agents of such Owner's tenants, or contract purchasers who occupy such Owner's Unit.

Section 11.5. Limited Common Elements.

Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit, and such right shall be exclusive except as to those other Owners, if any, with a right to use such Limited Common Elements.

Section 11.6. New Additions to Common Elements.

The Association shall have the right to construct new additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Units in proportion to the respective undivided interest in the Common Elements appurtenant thereto, as shown on the attached Exhibit B. The Assessment liability for any such additions to the Common Elements shall be apportioned among all Units as provided in Article 4 hereof. The construction of new additions to the Common Elements shall not affect an Owner by way of modification of his voting power in the Association.

Section 11.7. Conveyance or Encumbrance of Common Elements.

Except as otherwise provided in Section 11.2.6 of this Declaration:

11.7.1. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if Persons entitled to cast at least sixty-seven percent (67%) of the Votes, including sixty-seven percent (67%) of the Votes allocated to Units not owned by a Declarant, agree to that action; and all Owners of each Unit to which the right to use any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a Security Interest.

11.7.2. An agreement to convey Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratification thereof must be recorded in every county in which a portion of the Community is situated and is effective only upon recordation.

11.7.3. The Association, on behalf of all Owners, may contract to convey an interest in the Community pursuant to subsection 11.7.1, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

11.7.4. Unless in compliance with this Section, any purported conveyance, encumbrance, judicial sale or other transfer of Common Elements is void.

11.7.5. A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its rights of ingress and egress to the Unit and support of the Unit.

11.7.6. A conveyance or encumbrance of Common Elements pursuant to this Section does not affect the priority or validity of preexisting encumbrances.

Section 11.8. Prohibition Against Allocation of General Common Elements As Limited Common Elements.

General Common Elements which are part of the Community may not subsequently be allocated as Limited Common Elements.

Section 11.9. Use of Common Elements.

Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements except as permitted if such Common Elements are Limited Common Elements. Other than those Improvement erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed on or removed from the Common Elements except as provided in this Declaration with respect to Limited Common Elements.

Section 11.10. Designation of Common Elements.

Declarant in recording this Declaration of Covenants, Conditions and Restrictions has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Elements are not dedicated hereby for use by the general public.

Section 11.11. Acquiring and Disposing of Real and Personal Property.

The Association may acquire, own and hold for the use and benefit of all Owners tangible and intangible personal property and real property for such uses and purposes as the Board of Directors may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Unit. Transfer of a Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board of Directors in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

Section 11.12. Payment of Taxes or Insurance by Security Interest Holders.

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or Assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 11.13. Duty to Accept Property.

The Association shall accept title to all property, including personal property, equipment, and easements, if any, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association (as long as such does not require the Association to perform in a manner that is inconsistent with the duties and functions of the Association as provided in this Declaration or the Articles of Incorporation or Bylaws of the Association).

**ARTICLE 12.
CONVEYANCE, OWNERSHIP AND TAXATION OF UNITS**

Section 12.1. Contracts Entered into Prior to Recording of Map and Declaration.

A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Map and/or this Declaration in the office of the Clerk and Recorder of the County of Adams, Colorado, may legally describe such Unit in the manner set forth in Section 12.2 of this Article and may indicate that the Map and/or this Declaration are to be recorded. Upon recordation of the Map and this Declaration in Adams County, Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Map and such Unit shall be subject in all respects to this Declaration.

Section 12.2. Contracts Entered into Subsequent to Recording of Map and Declaration.

Subsequent to the recording of the Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit as follows:

12.2.1. Unit _____, Penn Plaza, according to the Map thereof, recorded on _____, 20____, at Reception No. _____, in the records of the office of the Clerk and Recorder of Adams County, Colorado, and as defined and described in the Declaration of Covenants, Conditions and Restrictions of Penn Plaza, recorded on _____, 20____, at Reception No. _____ in said records.

Section 12.3. Legal Effect of Description.

Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit substantially in the manner set forth in Section 12.2 of this Article shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the Common Elements

appurtenant thereto and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from each Unit and the use of all the General Common Elements, as well as all of the Limited Common Elements appurtenant to said Unit, all as more fully provided in this Declaration.

Section 12.4. Taxation.

Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special Improvement district, and any other taxing or assessing authority, in accordance with CCIOA. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Adams, Colorado, and to all other appropriate Persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 12.5. Inseparability.

Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

Section 12.6. Non-Partitionability.

The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, actual attorneys' fees, costs, expenses and all damages which the Association incurs in connection therewith.

**ARTICLE 13.
MECHANIC'S LIENS**

Section 13.1. Mechanic's Liens.

No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, his agent, contractor or subcontractor, shall be the basis for the filing of a lien against a 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 Individual Air Space of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit.

Section 13.2. Enforcement by the Association.

At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 13.1 of this Article by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section and such amount to be indemnified shall be the personal obligation of such Owner.

Section 13.3. Effect of Part Payment.

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

**ARTICLE 14.
DISPUTE RESOLUTION**

Section 14.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

14.1.1. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) each alleges to have to the procedures set forth in this Article and not to a court of law.

14.1.2. By acceptance of a deed for a Unit, each Owner agrees to abide by the terms of this Article.

14.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 14.2. *Definitions Applicable to this Article.*

For purposes of this Article only, the following terms have the meanings set forth in this Section:

14.2.1. "AAA" means the American Arbitration Association.

14.2.2. "Claimant" means any Party having a Claim.

14.2.3. "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of Improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

14.2.4. "Governing Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association and any rules, regulations, guidelines or standards adopted by the Board of Directors.

14.2.5. "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

14.2.6. "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all persons subject to this Declaration; any builder, its officers, directors, partners, members, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Article.

14.2.7. "Respondent" means any Party against whom a Claimant asserts a Claim.

14.2.8. "Subject Property" means the property being inspected pursuant to the inspection right provided in Section 14.7 of this Declaration (Right to Inspect).

14.2.9. "Termination of Mediation" means a period of time expiring thirty (30) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of the Claim and if the parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

Section 14.3. *Approval Required for Association Actions.*

Except as provided in Section 14.6 below (Exclusions from "Claim"), the approval of seventy-five percent (75%) of a quorum (as provided in Section 14.4 of this Declaration (Notice and Quorum for Association Actions) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, or voting pursuant to written ballot, must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit or other action brought against the Association. Such approval must be obtained in accordance with the requirements of Section 14.4 of this Declaration (Notice and Quorum for Association Actions).

Section 14.4. *Notice and Quorum for Association Actions.*

Written notice of any meeting of Members which includes a vote pursuant to Section 14.3 hereof (Approval Required for Association Actions) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

14.4.1. A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

14.4.2. A good-faith estimate of the costs and fees, including the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

14.4.3. A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of assessments payable by the Owners to the Association; and

14.4.4. A good-faith estimate of the manner in which any moneys reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

14.4.5. A good faith estimate of the projected time frame for resolution of the Claim; and

14.4.6. All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast sixty-seven percent (67%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

Section 14.5. *Required Form of Proxy or Ballot.*

Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement:

Despite the fact that my annual assessments may be significantly increased by the costs and fees associated with the proposed claim, I/we APPROVE the authority of the Association to bring such claim.

Section 14.6. *Exclusions from "Claim".*

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim or cross-claim and the same shall not be subject to the provisions of this Article:

14.6.1. An action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); and

14.6.2. An action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enforce any of the provisions of Article 10 of this Declaration (Restrictions) or of Article 5 of this Declaration (Architectural Review); and

14.6.3. any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

14.6.4. any suit in which any indispensable party is not a Party.

Section 14.7. *Right to Inspect.*

Prior to any Party commencing any proceeding to which another Party is a party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the Inspecting Party shall:

14.7.1. Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements to the Subject Property;

14.7.2. Minimize any disruption or inconvenience to any person who occupies the Subject Property;

14.7.3. Remove daily all debris caused by the inspection and located on the Subject Property; and

14.7.4. In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property and repair and replace all damage, and restore the Subject Property to the condition of the Subject Property as of the date of the inspection unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Subject Property. The Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the Inspecting Party.

Section 14.8. *Mandatory Procedures.*

14.8.1. *Good Faith Negotiations.* The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation.

Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

14.8.2. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

14.8.2.1. the nature of the Claim, including all persons involved and Respondent's role in the Claim;

14.8.2.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

14.8.2.3. the specific relief and/or proposed remedy sought.

14.8.3. *Mediation.*

14.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

14.8.3.2. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

14.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

14.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

14.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.8.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.8 of this Declaration (Mandatory Procedures). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

14.8.4. *Binding Arbitration.*

14.8.4.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

14.8.4.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

14.8.4.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim.

Section 14.9. *Liability for Failure of Association to Maintain an Action*

No director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was acting in good faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

Section 14.10. *Severability.*

All provisions of this Article are severable. Invalidation of any of the provisions of this Article, by judgment, court order or otherwise, shall in no way affect or limit any other provisions of this Article which shall remain in full force and effect.

Section 14.11. *Amendment.*

Notwithstanding anything to the contrary contained in this Declaration, this Article 14 (Dispute Resolution) shall not be amended unless such amendment is approved by Members to which at least seventy-five percent (75%) of the votes in the Association are allocated.

**ARTICLE 15.
GENERAL PROVISIONS**

Section 15.1. *Enforcement.*

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents, subject to Article 14 of this Declaration (Dispute Resolution). In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.2. *Severability.*

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 15.3. Conflict of Provisions.

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

Section 15.4. Conflict with CCIOA.

In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with CCIOA, the terms and provisions of CCIOA shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with CCIOA, and any conflict with or violation of CCIOA by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

Section 15.5. Annexation.

The Declarant may amend this Declaration at any time until the termination of the Special Declarant Rights without the consent of any Owner, any Security Interest Holder, or any other Person, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this Section does not exceed ten percent (10%) of the total area described in the attached Exhibit A (or such larger percentage or number as may be permitted by CCIOA at the time such action is taken).

Section 15.6. Declarant's Use.

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Community such facilities, as Declarant deems reasonably necessary or incidental to the construction and sale of Units, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations as Declarant may determine from time to time in its sole discretion. Further, nothing contained in the Declaration shall limit the right of the Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements; (b) to use any structure on any property as a construction or management office, model, or sales or leasing office, in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain the approval of the Board of Directors or of the Association for any activity or Improvement by Declarant on any property owned by Declarant. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Community in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees, of and to his Unit and to a public right-of-way. Any real estate used as a sales office, management office, construction office or a model shall be a Unit.

Section 15.7. Duration, Revocation, and Amendment.

15.7.1. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided elsewhere in this Section, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by a vote or agreement of Members holding at least sixty-seven percent (67%) of the Votes; provided, however, that as long as Declarant owns any portions of the property described on the attached Exhibit A, no amendment of this Declaration shall be effective without the vote or agreement of eighty percent (80%) of the Votes.

15.7.2. Every amendment, if any, to the Declaration must be done in compliance with CCIOA.

15.7.3. Except as to amendments which may be made by the Declarant, amendments to the Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

15.7.4. Notwithstanding anything to the contrary contained in this Declaration, the Declaration or map may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical or technical errors, which right of amendment shall expire and terminate as provided in Section 1.24 of this Declaration.

15.7.5. Notwithstanding anything to the contrary contained in this Declaration, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirement, standards, or guidelines of any of the Agencies or any recognized secondary mortgage markets, which right of amendment shall expire and terminate as provided in Section 1.24 of this Declaration.

Section 15.8. Registration of Mailing Address.

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of

Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, to Colorado Capital LLC, 3000 Pearl Street, Suite 101, Boulder, Colorado 80301, unless such address is changed by the Association during the 75% Control Period; subsequent to termination of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

Section 15.9. Transfer of Special Declarant Rights.

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with CCIOA.

Section 15.10. Eminent Domain.

The taking by eminent domain of a Unit(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including without limitation CCIOA.

Section 15.11. Confirmation of Rights of Security Interest Holders.

No provision of this Declaration, the Articles of Incorporation, or Bylaws of the Association give (or are intended to give) any Owner, or any other party, priority over any rights of the Security Interest Holder, pursuant to its Security Interest, in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Elements.

Section 15.12. Termination of Community.

The Community may be terminated only in accordance with CCIOA.

Section 15.13. Limitation on Liability.

The Association, the Board of Directors, the Declarant, and any officer, director, member, partner, agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

Section 15.14. No Representations or Warranties.

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association, the Board of Directors, the Declarant, and any officer, director, member, partner, agent or employee of any of the same, in connection with any portion of the Community or any Improvement, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 15.15. Disclaimer Regarding Safety.

DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED

TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Section 15.16. Headings.

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 15.17. Number and Gender.

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

Section 15.18. Run with Land; Binding upon Successors.

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6 day of FEBRUARY, 2001.

DECLARANT:

COLORADO CAPITAL LLC, a Colorado limited liability company

By: Benny R. Smiley
Its: Manager

STATE OF COLORADO)
) ss.
_____ COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 6th day of February, 2001, by Barry L. Sinkey as Manager of COLORADO CAPITAL LLC, a Colorado limited liability company, as Declarant.

Witness my hand and official seal.



Carolyn Doorenbos
Notary Public
My Commission expires: 11/20/01

ajr/Penn Plaza/20067.36000/2/6/01 3:19 PM

EXHIBIT A
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
PENN PLAZA

[Legal Description]

All of Lot 4, Block 1, Washington Square Subdivision Filing No. 6, being a part of the SE ¼
Section 34, T1S, R68W of the 6th P.M., City of Thornton, County of Adams, State of Colorado.

EXHIBIT B
 TO
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS OF
 PENN PLAZA

<u>Unit No.</u>	<u>Allocated Interests and Undivided Interest in the Common Elements Attributable to the Unit</u>	<u>Votes in the Penn Plaza Association Allocable to the Unit</u>
101	1/17	1.0
102	1/17	1.0
103	1/17	1.0
104	1/17	1.0
105	1/17	1.0
106	1/17	1.0
107	1/17	1.0
108	1/17	1.0
109	1/17	1.0
110	1/17	1.0
201	1.5/17	1.5
202	1/17	1.0
203	1/17	1.0
204	1/17	1.0
205	1/17	1.0
206	1.5/17	1.5

EXHIBIT C
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
PENN PLAZA

The following documents, if they are recorded, are recorded in the office of the Clerk and Recorder of Adams County, Colorado:

1. Taxes and assessments for the year of recording of the Declaration, and subsequent years, not yet due and payable.
2. Covenants, Conditions and Restrictions, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded February 20, 1974 in Book 1914 at Page 416, First Amendment to Declaration of Protective Covenants recorded April 29, 1981 in Book 2550 at Page 158, Second Amendment to Declaration of Protective Covenants recorded April 29, 1983 in Book 2741 at Page 563, Designation of Declarant recorded May 24, 1983 in Book 2749 at Page 781, Designation of Declarant recorded February 11, 1986 in Book 3109 at Page 141, Notice of Resignation recorded March 10, 1986 in Book 3118 at Page 151, Third Amendment to Declaration of Protective Covenants recorded May 7, 1987 in Book 3313 at Page 633:
3. Terms, agreements, provisions, conditions and obligations as contained in Agreement by and between City of Thornton and the City of Northglenn recorded September 8, 1980 in Book 2488 at Page 220.
4. Terms, agreements, provisions, conditions and obligations as contained in Reciprocal Access Easement Agreement by and between Stanley A. Carlson and Diamond Shamrock Stations, Inc., a Delaware Corporation as amended by instrument recorded April 19, 1995 in Book 4498 at Page 799.
5. Terms, agreements, provisions, conditions and obligations as contained in Agreement for Pedestrian Trail Easement by and between Farmers' High line Canal and Reservoir Company and the City of Thornton, Colorado recorded July 7, 1992 in Book 3925 at Page 576.
6. Terms, agreements, provisions, conditions and obligations as contained in Developer's Agreement recorded March 24, 1995 in Book 4485 at Page 87 as amended by instrument recorded August 25, 1995 in Book 4575 at Page 201.
7. Terms, agreements, provisions, conditions and obligations as contained in Declaration of Restrictions and Grant of Easements recorded April 26, 1995 in Book 4502 at Page 556.

8. Terms, agreements, provisions, conditions and obligations as contained in Declaration of Drainage Easement recorded October 12, 1995 in Book 4606 at Page 176.
9. Terms, conditions, provisions, obligations and easements, contained in a Resolution of the Thornton Planning Commission approving a Satellite Communications Access Permit for Space Imaging pursuant to Chapter 22 of the Thornton City Code, as amended, recorded November 11, 1996 in Book 4876 at Page 210.
10. Ground Lease Agreement and Facilities Lease Agreement by and between Brazos River Leasing, L.P., Lessor and Diamond Shamrock Refining and Marketing Company, Lessee, evidenced by Amendment to Memorandum of Ground Lease Agreement and Memorandum of Facilities Lease Agreement as recorded January 3, 1997 in Book 4912 at Page 172.
11. An easement for purposes of operating and maintaining a ditch and ditch works for the transportation of water and incidental purposes granted to Farmers High Line Canal and Reservoir Company by an instrument recorded February 26, 1976 in Book 2047 at Page 504, upon the terms and conditions therein set forth.
12. Terms, Agreements, provisions, conditions and obligations as contained in Easement Agreement with Space Imaging L.P. by and between Washington Real Estate Associates, L.P., a Colorado limited partnership and Space Imaging L.P., a Delaware limited partnership recorded January 2, 1997 in Book 4910 at Page 930 and re-recorded April 4, 1997 in Book 4975 at Page 872.
13. Easements, Notes, Covenants and Restrictions as shown on the recorded plat of said subdivision, as well as all non-tributary ground water as granted to the City of Thornton by the recorded plat of said subdivision.

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
PENN PLAZA

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