



DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS

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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 1.28 of this Declaration (Special Declarant Rights), at which time said reserved right 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.

**Section 9.7. *Easement for Unannexed Property.***

The Declarant hereby reserves an Annexable Area Easement for the use and benefit of the Annexable Area. By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services, to those portion(s) of the Annexable Area which have not been included in or have been withdrawn from the Community, from time to time, as provided in Section 16.4 of this Declaration (Annexation; Withdrawal). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to Section 16.4 of this Declaration (Annexation; Withdrawal); and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

**Section 9.8. *Emergency Easement.***

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

**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 Community. The 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, resided upon 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. *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 Condominium Building or Units shall be commenced, erected, placed or maintained, except as provided in this Declaration.

**Section 10.3.      *Interior Changes.***

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 10.4.      *Residential Use; Professional or Home Occupation.***

Subject to Section 16.5 of this Declaration (Declarant's Use), Units shall be used for residential use only, including rental and other uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

10.4.1. The business conducted is clearly secondary to the residential use of the Unit and is conducted entirely within the Unit;

10.4.2. The existence or operation of the business is not detectable from outside of the Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

10.4.3. The business does not result in an undue volume of pedestrian or vehicular traffic or parking within the Community, which determination shall be made by the Board of Directors in its sole discretion from time to time;

10.4.4. The business conforms to all zoning requirements and is lawful in nature; and

10.4.5. The business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time on a uniform basis.

**Section 10.5.      *Household Pets.***

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units; provided, however, that the Owners of each Unit may keep dogs, cats, and/or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to be unreasonable or create a nuisance to any resident of the Units. The Board of Directors shall have, and is hereby given, in its sole discretion, the right and authority to: set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine that any dog(s), cat(s) or

other household pet(s) are being kept for a commercial purpose or are being kept in such number or in such manner as to be unreasonable or create a nuisance; or that an Owner or tenant is in violation of the leash laws of the applicable jurisdiction and other applicable governmental laws, ordinances, or other provisions related to household pets; or determine that an Owner is otherwise in violation of this Section. If the Board decides any of the foregoing, then the Board may take such action or actions as it deems appropriate. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

#### **Section 10.6.      *Signs.***

No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit without the written approval of the Board of Directors, except for the following: (a) a name plate of the occupant and a street number; (b) subsequent to automatic termination of the Special Declarant Rights as provided in Section 1.28 of this Declaration (Special Declarant Rights), "For Sale," "Open House," or "For Rent" sign(s) of not more than a total of five (5) square feet in the aggregate, in a window(s) of the Unit; and (c) two (2) security system signs no larger than one hundred (100) square inches each in a window(s) of the Unit. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale, rental or use of one or more Units, or otherwise in connection with development of or construction in the Community, shall be permissible, provided that such use shall not interfere with an Owners' use and enjoyment of their Unit or with their ingress or egress from a public way to their Unit.

#### **Section 10.7.      *Antenna and Satellite Dishes.***

No exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception devise of any type shall be placed, erected or maintained on any Unit, any Limited Common Elements 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 and/or regulations promulgated thereunder, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, 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 and/or regulations promulgated thereunder, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

#### **Section 10.8.      *Vehicular Parking, Storage and Repairs.***

10.8.1. No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 1 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, nor any commercial vehicle, may be

parked or stored in the Community, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or for the maintenance of the Units, Common Elements, other property, or any Improvements.

10.8.2. Except as hereinabove provided, 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; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

10.8.3. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.8.1 and 10.8.2 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 Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.8.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community.

#### **Section 10.9.      *Nuisances.***

No nuisance shall be permitted on any Unit nor any use, activity or practice 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 residents. 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. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of any Unit or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Units, or any portion thereof, shall be observed; however, the Association shall have no duty or obligation to enforce such laws, ordinances and regulations.

**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 except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

**Section 10.11.     *No Annoying Light, Sounds or Odors.***

No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others.

**Section 10.12.     *Restrictions on Trash and Materials.***

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trashcans or receptacles shall be maintained in an exposed or unsightly manner.

**Section 10.13.     *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.

**Section 10.14.     *Oil and Gas Wells.***

10.14.1. Each Owner, by acceptance of a deed to a Unit, acknowledges the existence of oil and gas wells located in the Community and/or the Annexable Area. Such oil and gas wells may be in operation pursuant to leases or similar documents. Such leases may permit certain surface activity in the Community which activity may include drill sites, gathering pipelines, production sites and facilities, and access roads, all as further described in the applicable documents.

10.14.2. By acceptance of a deed to a Unit, each Owner recognizes the existence of oil and gas leases in the Community and Annexable Area and the surface activity associated with such oil and gas leases, and assumes the risk of owning property near or adjacent to an oil and gas well operation. Such risks include, without limitation: injury or



damage to persons and/or property arising out of or resulting from the drilling, operation and maintenance of an oil and gas well; noise associated with an oil and gas well operation; explosion and fire; leakage of oil and/or gas; and vehicles servicing the oil and gas site. The waiver and release set out in Section 16.13 of this Declaration shall apply to this Section.

## **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 such Owner's 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 such Owner's Unit, for the purpose of getting to and from his Unit and public ways, for both pedestrian and vehicular travel, and to use the Common Elements and all other real estate that must become Common elements, if any, for all other purposes. Such rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

### **Section 11.2. *Extent of Owners' Easements.***

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: 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, such rights and easements are subject to the following rights of the Association:

11.2.1. The right of the Association to borrow money for the purpose of improving the Common Elements and to mortgage said property 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

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

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

11.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against such Owner's Unit or any other amounts due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association Bylaws or the rules and regulations of the Association; and

11.2.5. 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. Notwithstanding the foregoing, the granting of permits, licenses and easements for utilities, roads or for other purposes shall not be deemed a transfer within the meaning of this subsection; and

11.2.6. 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

11.2.7. 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 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.      *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 such Owner's 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 11.5.      *New Additions to Common Elements.***

The Declarant and 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, subject to the right of Declarant to designate any General Common Elements as Limited Common Elements. The Assessment liability for any such additions to the Common Elements shall be apportioned among all Units as provided in Article 4 of this Declaration (Assessments). 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 11.6.      *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 Improvements erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed in or removed from the Common Elements except as provided in this Declaration with respect to Limited Common Elements.

**Section 11.7.      *Designation of Common Elements.***

Declarant in recording this Declaration 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 11.8.      *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 11.9.      *Duty to Accept Property and Facilities Transferred by Declarant.***

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 Condominium Map and Declaration.***

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

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

Subsequent to the recording of the Condominium 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:

Unit \_\_\_\_, Condominium Building \_\_\_\_, Roth Park Condominiums,  
according to the Condominium Map thereof, recorded on  
\_\_\_\_\_, \_\_\_\_, 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 Roth Park Condominiums, recorded on \_\_\_\_\_, \_\_\_\_\_, 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 Declaration (Contracts Entered into Subsequent to Recording of Condominium Map and Declaration) 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 Condominium 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 Adams County, 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 a deed or

other instrument of conveyance or assignment, each Owner specifically waives such Owner's 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, the actual attorneys' fees, costs, expenses and all damages that 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, such Owner's 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 Declaration (Mechanic's Liens) 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 and constitute an additional Assessments for collection by the Association subject to all of the provisions of Article 4 of this Declaration (Assessments).

### **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 such Owner's Unit from any such lien shall be equal to the quotient of (a) the amount of the lien divided by (b) 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 such lienholder's rights against the Unit(s) for which payment has not been received.

## ARTICLE 14. SECURITY INTERESTS

### **Section 14.1.      *Approval by Members and Security Interest Holders of First Security Interests.***

Notwithstanding any provisions of this Declaration to the contrary, the Association shall not:

14.1.1. except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Elements, unless it has obtained the prior written approval of the Owners (other than the Declarant) casting at least sixty-seven percent (67%) of the Association votes or of those Security Interest Holders holding at least sixty-seven percent (67%) of the First Security Interests (based upon one vote for each First Security Interest owned):

14.1.1.1. by act or omission seek to abandon or terminate the Community;

14.1.1.2. change the pro rata interest or obligations of any Unit in order to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Elements (however, this requirement will be deemed waived to the extent necessary to allow phasing or add-ons in accordance with this Declaration);

14.1.1.3. partition or subdivide any Unit;

14.1.1.4. seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Community is not a transfer within the meaning of this clause. (However, this requirement will be deemed waived to the extent necessary to allow phasing or add-ons, in accordance with this Declaration);

14.1.1.5. use hazard insurance proceeds for losses to any condominium property (whether Units or Common Elements) for other than the repair or replacement of such condominium property.

14.1.2. unless it has obtained the consent of Owners who represent at least sixty-seven percent (67%) of the Association votes, and of Security Interest Holders of First Security Interests who represent at least fifty-one percent (51%) of the Units that are subject to such First Security Interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests), add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which govern any of the following, provided that the implied approval of any



Security Interest Holder of a First Security Interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail with a "return receipt" requested:

- 14.1.2.1. voting rights;
- 14.1.2.2. increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- 14.1.2.3. reductions in reserves for maintenance, repair, and replacement of Common Elements;
- 14.1.2.4. responsibility for maintenance and repairs;
- 14.1.2.5. reallocation of interests in the General Common Elements, Limited Common Elements, or rights to their use;
- 14.1.2.6. redefinition of any Unit boundaries;
- 14.1.2.7. convertibility of Units into Common Elements or vice versa;
- 14.1.2.8. expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community;
- 14.1.2.9. hazard or fidelity insurance requirements;
- 14.1.2.10. imposition of any restrictions on the leasing of Units;
- 14.1.2.11. imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- 14.1.2.12. repair or replacement of Improvements in the Community (after a damage or partial condemnation) in a manner other than that specified in the Declaration, the Articles of Incorporation, or Bylaws of the Association; or
- 14.1.2.13. any provisions that expressly benefit Security Interest Holders, or insurers or guarantors of Security Interests.

#### **Section 14.2.      *Termination of Legal Status.***

Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the Association votes and by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests and who represent at least fifty-one percent (51%) of the Units that are subject to such First Security

Interests. Termination of the legal status of the Community for reasons other than substantial destruction or condemnation of the Community shall be permitted if agreed to by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of such Security Interest Holders of First Security Interests and who represent at least sixty-seven percent (67%) of the Units subject to First Security Interests.

**Section 14.3.      *Notice of Action.***

Upon written request to the Association, identifying the name and address of the Security Interest Holder of a First Security Interest or insurer or guarantor of the First Security Interest, and the residence address of the Unit which is subject to such First Security Interest, each Security Interest Holder of a First Security Interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of:

14.3.1. any condemnation loss or casualty loss which affects either a material portion of the Community or any Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

14.3.2. any delinquency in the payment of Assessments by the Owner of the Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor, when such delinquency remains uncured for a period of sixty (60) days;

14.3.3. any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

14.3.4. any proposed action that requires the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

**Section 14.4.      *Audit.***

At any time after the date when the Community includes at least fifty (50) Units, the Association shall provide an audited statement for the preceding fiscal year to any Security Interest Holder of a First Security Interest, insurer or guarantor of any such First Security Interest, who submits a written request for such audit; and such audit shall be made available within one hundred twenty (120) days of the Association's fiscal year end. When the Community consists of fewer than fifty (50) Units and there is not an audited financial statement available, any Security Interest Holder of a First Security Interest will be allowed to have an audited financial statement prepared at its own expense.

**Section 14.5.      *No Priority Over Rights of Security Interest Holders of First Security Interests.***

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 of a First Security Interest, pursuant to its First 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.

## **ARTICLE 15. DISPUTE RESOLUTION**

### **Section 15.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.***

15.1.1. 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.

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

15.1.3. 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 15.2. *Definitions Applicable to this Article.***

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

15.2.1. "AAA" means the American Arbitration Association.

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

15.2.3. "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.

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

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

15.2.6. "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and members; any builder or contractor, and their respective officers, directors, members,

partners, employees and agents, who construct residences or other Improvements in the Community; 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.

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

15.2.8. "Subject Property" means the property being inspected pursuant to the inspection right provided in Section 15.7 of this Declaration (Right to Inspect).

15.2.9. "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 15.3.      *Approval Required for Association Actions.***

Except as provided in Section 15.6 of this Declaration (Exclusions from "Claim"), the approval of seventy-five percent (75%) of a quorum (as provided in Section 15.4 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 15.4 of this Declaration (Notice and Quorum for Association Actions).

**Section 15.4.      *Notice and Quorum for Association Actions.***

Written notice of any meeting of Members which includes a vote pursuant to Section 15.3 of this Declaration (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:

15.4.1. 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

15.4.2. 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

15.4.3. 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

15.4.4. A good-faith estimate of the manner in which any monies 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

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

15.4.6. 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 seventy-five percent (75%) 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 15.5.      *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 15.6.      *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:

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

15.6.2. 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 (Design Review Committee); and

15.6.3. 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

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

**Section 15.7.      *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:

15.7.1. 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;

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

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

15.7.4. 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 15.8.      *Mandatory Procedures.***

15.8.1. *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.

15.8.2. *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:

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



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

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

#### 15.8.3. Mediation.

15.8.3.1. 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.

15.8.3.2. 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.

15.8.3.3. 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.

15.8.3.4. 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.

15.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.8.3 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 15.8 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.

#### 15.8.4. Binding Arbitration.

15.8.4.1. 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.

15.8.4.2. 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.

15.8.4.3. 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 15.9.      *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: (a) the director or officer was acting within the scope of such director or officer's duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

**Section 15.10.      *Amendment.***

Notwithstanding anything to the contrary contained in this Declaration, this Article 15 shall not be amended unless such amendment is approved by Members to which at least eighty percent (80%) of the votes in the Association are allocated. An amendment of this Article shall only be effective as to Claims that arise after the effective date of such amendment or recording of such amendment, whichever occurs later.

**ARTICLE 16. GENERAL PROVISIONS**

**Section 16.1.      *Enforcement; Fines.***

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 amended, may be by any proceeding at law or in equity against any Person(s) 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 subject to Article 15 of this Declaration (Dispute Resolution). For each claim, including, but not limited to, counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of CCIOA or of the

Declaration, Articles of Incorporation, Bylaws or rules and regulations of the Association, the prevailing party shall be awarded its reasonable collection costs and attorney fees and costs incurred in asserting or defending the matter. 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 16.2. Severability.**

All provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidity 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 16.3. Conflict of Provisions.**

In 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 16.4. Annexation; Withdrawal.**

16.4.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

16.4.2. Notwithstanding the foregoing, until seven (7) years after recording of this Declaration in Adams County, Colorado, the Declarant may annex to this Declaration the Annexable Area, or any portion(s) thereof, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by recording an Annexation of Additional Land in the office of the Clerk and Recorder of Adams County, Colorado, which document:

16.4.2.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

16.4.2.2. shall identify the owner(s) of the Units thereby created;

16.4.2.3. shall assign an identifying number to each new Unit;

16.4.2.4. shall describe any Common Elements within the property being annexed;

16.4.2.5. shall reallocate the Allocated Interests; and

16.4.2.6. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in this subsection may be amended with the consent of the Owners of sixty-seven percent (67%) of the Units to which such other provisions apply.

16.4.3. Each Person who acquires any property within the Annexable Area after the date of recording hereof, will have agreed pursuant to applicable documents that such property will be governed by this Declaration. The Declarant, therefore, reserves the right (but not the obligation) during the time period set forth in Section 1.28 of this Declaration (Special Declarant Rights) to annex such property to the Declaration without further authorization from the Person who has purchased such property, even if such annexation occurs subsequent to conveyance of the property by Declarant.

16.4.4. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to Units in the annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

16.4.5. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration by the Declarant shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with this Declaration and CCIOA. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than the automatic termination provided in Section 1.28 of this Declaration (Special Declarant Rights).

#### **Section 16.5.      *Declarant's Use.***

Notwithstanding anything to the contrary contained in this Declaration: Declarant hereby reserves a right and easement to perform development, construction, reconstruction, repair and warranty work on the property described on the attached Exhibits A and D; 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 reasonable discretion. 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. Any real estate used as a sales office, management office, construction office or a model shall be a Unit or Common Elements, as shown on the Condominium Map or other recorded document(s).

**Section 16.6.      *Designation of other Common Elements.***

For the period of time until automatic termination of the Special Declarant Rights, as provided in Section 1.28 of this Declaration, Declarant reserves the unilateral right to convert any General Common Elements into Limited Common Elements and to allocate such Limited Common Elements among one or more Units as Declarant, in its discretion, as it deems appropriate, for the period of time until automatic termination of the Special Declarant Rights, as provided in Section 1.28 of this Declaration.

**Section 16.7.      *Duration, Revocation, and Amendment.***

16.7.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as provided in Article 15 of this Declaration, or elsewhere in this Section, this Declaration may be amended by the vote or agreement of Members holding more than sixty-seven percent (67%) of the Association votes; provided, however, that as long as Declarant owns any portion of the property described on the attached Exhibits A and D, no amendment of this Declaration shall be effective without the vote or agreement of more than ninety percent (90%) of the Association votes.

16.7.2. Notwithstanding anything to the contrary contained in this Declaration, this Declaration 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 1.28 of this Declaration (Special Declarant Rights).

16.7.3. Notwithstanding anything to the contrary contained in this Declaration, this Declaration 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 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 1.28 of this Declaration (Special Declarant Rights).

16.7.4. 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 and/or Security Interest Holders of First Security Interests, 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.

**Section 16.8.      *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 7200 S. Alton Way, Suite 110A, Centennial, CO 80112, 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 16.9.      *HUD or VA Approval.***

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more First Security Interests, and HUD or VA require their approval of the action: annexation of additional real property (if the Declarant desires to obtain VA or HUD approval of the property that is being annexed); amendment of this Declaration, except as provided in Sections 16.7.2 and 16.7.3 hereof; termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.13 of this Declaration (Merger) of this Declaration.

**Section 16.10.    *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. The release and waiver set forth in Section 16.13 of this Declaration (Waiver) shall apply to this Section.

**Section 16.11.    *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. The release and waiver set forth in Section 16.13 of this Declaration (Waiver) shall apply to this Section.

**Section 16.12. *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. THE RELEASE AND WAIVER SET FORTH IN SECTION 16.13 OF THIS DECLARATION (WAIVER) SHALL APPLY TO THIS SECTION.

**Section 16.13. *Waiver.***

By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazard, disclosure or risk set forth in this Declaration, including without limitation, those contained in Sections 16.10, 16.11 and 16.12.

**Section 16.14. *Headings.***

This 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 16.15. *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 16.16. *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 his hand and seal this 16 day of June, 2005.

DECLARANT:

T & S DEVELOPMENT, LLC, a Colorado limited liability company

By: [Signature]

Title: Manager

STATE OF COLORADO )

COUNTY OF Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 16 day of June, 2005, by Tom Collins as Manager of T & S DEVELOPMENT, LLC, a Colorado limited liability company.

Witness my hand and official seal.

{S E A L}



My Commission Expires 10/25/2008

Notary Public

My Commission expires: 10/25/08

ajr/t&s development/roth park/declaration/20118.36000/6/16/05 12:05 PM

EXHIBIT A  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS

(Community)

A PARECEL OF LAND BEING A PART OF LOT 1, ROTH PARK CONDOMINIUMS SUBDIVISION AS RECORDED IN THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE AT FILE 18, MAP 920, LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF FEDERAL HEIGHTS, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE ON THE WEST LINE OF SAID LOT 1; S00°11'04"E A DISTANCE OF 173.08 FEET TO THE POINT OF BEGINNING;

THENCE N89°41'19"E, A DISTANCE OF 474.74 FEET; THENCE S00°28'31"E, A DISTANCE OF 100.00 FEET; THENCE ON THE SOUTH LINE OF SAID LOT 1 S89°37'03"W, A DISTANCE OF 25.00 FEET; THENCE N00°28'31"W, A DISTANCE OF 75.03 FEET; THENCE S89°41'19"W, A DISTANCE OF 225.29 FEET; THENCE S00°06'52"W, A DISTANCE OF 75.31 FEET; THENCE ON THE SOUTH LINE OF SAID LOT 1; S89°37'03"W A DISTANCE OF 194.08 FEET; THENCE A DISTANCE OF 47.23 FEET ON A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 30.00 FEET, A DELTA OF 90°11'53"; THENCE ON THE WEST LINE OF SAID LOT 1 N00°11'04"W A DISTANCE OF 70.49 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 30,480 SQUARE FEET OR 0.70 ACRES, MORE OR LESS.

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**EXHIBIT B**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**ROTH PARK CONDOMINIUMS**  
 (Allocated Interests)

| <b><u>Unit</u></b> | <b><u>Condominium Building</u></b> | <b><u>Allocated Interests and Undivided Interest in the<br/>Common Elements Appurtenant to the Unit*</u></b> |
|--------------------|------------------------------------|--|
| F101               | F                                  | 1/12   |
| F102               | F                                  | 1/12   |
| F103               | F                                  | 1/12   |
| F104               | F                                  | 1/12   |
| F201               | F                                  | 1/12   |
| F202               | F                                  | 1/12   |
| F203               | F                                  | 1/12   |
| F204               | F                                  | 1/12   |
| F205               | F                                  | 1/12   |
| F206               | F                                  | 1/12   |
| F207               | F                                  | 1/12   |
| F208               | F                                  | 1/12   |

\* The Allocated Interest, and undivided interest in the Common Elements, that are allocated or appurtenant to each Unit are subject to change as more fully provided in the Declaration, including without limitation Section 16.4 (Annexation; Withdrawal) thereof.

EXHIBIT C  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS  
(Certain Title Exceptions)

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

1. Real property taxes and assessments for the year of recording of this Declaration and subsequent years, not yet due and payable.
2. An easement for sanitary sewer line and incidental purposes granted to Federal Heights Sanitation District by the instrument recorded May 15, 1971 in Book 1691 at Page 385.
3. Terms and conditions contained in Subdivision Dedication and Improvements Agreement recorded June 27, 1979 in Book 2360 at Page 730.
4. Terms, conditions, provisions, agreements and obligations specified under the Agreement by and between Pecos/Huron Partnership and the City of Federal Heights recorded July 31, 1979 in Book 2371 at Page 912.
5. an easement for storm sewer and drainage facilities and incidental purposes granted to the City of Federal Heights, Colorado, by the instrument recorded December 30, 1997 in Book 5196 at Page 264.
6. The effect of Roth Condominiums Federal Heights, Colorado, Planned Unit Development Plan recorded August 27, 2003 at Reception No. 12000287.
7. An easement for utilities and incidental purposes granted to Public Service Company by the instrument recorded August 19, 2004 at Reception No. 20040819000792020.

EXHIBIT D  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS  
(Part of Annexable Area)

LOT 1, ROTH PARK CONDOMINIUMS SUBDIVISION AS RECORDED IN THE ADAMS COUNTY CLERK AND RECORDERS OFFICE AT FILE 18, MAP 920, LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF FEDERAL HEIGHTS, COUNTY OF ADAMS, STATE OF COLORADO, AS AMENDED, EXCEPTING AND EXCLUDING THE PROPERTY DESCRIBED IN THE ATTACHED EXHIBIT A.