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El Paso County Clerk & Recorder

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DELMONICO TOWNHOMES

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DELMONICO TOWNHOMES

ARTICLE I. RECITALS

PWB Investments, a General Partnership, (the "Declarant") as the owner of certain real property subject to this Declaration, located in El Paso County, Colorado, and more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Properties"), which Properties consist of three (3) individual Lots to be improved and sold, and related Common Areas and Common Area Improvements as set forth on Subdivision Plat filed or to be filed, hereby makes the following grants, submissions, and declarations:

Declarant desires to provide for the preservation and enhancement of property values, amenities and opportunities in Delmonico Townhomes, contributing to the personal and general health, safety and welfare of residents and for the maintenance of the Common Area and Improvements and to this end desires to subject the Properties, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said Properties and each Owner thereof.

DECLARATION

NOW, THEREFORE, Declarant declares that Delmonico Townhomes and such additions as may hereafter be made, is, are and shall be held, transferred, sold, conveyed and occupied subject to the following uniform covenants, conditions, restrictions, easements, charges and liens which shall run with the real property and be binding on all persons having or acquiring any right, title or interest in Delmonico Townhomes or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and the Delmonico Townhomes Association, Inc., and its successors in interest.

ARTICLE II. DEFINITIONS

The following terms shall have the following meanings when used, unless the context otherwise requires:

Section 2.1. Association. "Association" shall mean and include Delmonico Townhomes Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 2.2. Board of Directors. "Board of Directors" or "Board" shall mean and include the governing body of the Association as provided in this Declaration, the Articles of Incorporation and the By-Laws thereof.

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Section 2.3. Building. "Building" shall mean and include any building constructed on the Properties.

Section 2.4. Common Area. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described in Exhibit B.

Section 2.5. Common Area Improvements. "Common Area Improvements" shall mean and refer to any and all improvements located in, under or upon the Common Area, as originally developed and constructed by the Declarant or as later added by the Association, which Common Area Improvements may include recreational facilities, perimeter fences, any non-dedicated and private roadways, all as may be located upon the Common Area described herein.

Section 2.6. Common Expense. "Common Expense" shall mean and refer to:

A. Expenses of administration, operation or management, repair, or replacement of the Common Areas of the Project;

B. Expenses declared Common Expenses by the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association;

C. All sums lawfully assessed against the Lots by the Board of Directors of the Association;

D. Expenses determined to be Common Expenses by the Association of Unit Owners; and

E. Expenses as are provided in any management agreement applicable to the Properties.

Section 2.7. Declarant. "Declarant" shall mean and include PWB Investments, a General Partnership, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and sale.

Section 2.8. Declaration. "Declaration" shall mean and include this instrument together with any and all supplements and/or amendments hereto recorded in the Office of the Clerk and Recorder of the County of El Paso, State of Colorado.

Section 2.9. Dwelling Unit. "Dwelling Unit" shall mean and refer to the improvements located upon any Lot in the nature of a portion of a multi-unit structure, or other such structure located within the boundary lines of the Lot, built for single family occupancy as a residence.

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Section 2.10. First Mortgage. "First Mortgage" shall mean and include the holder of any recorded Mortgage under which any interest of any Owner in the Project is encumbered and which Mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

Section 2.11. Lot. "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision Plat of the Properties, with the exception of the Common Area.

Section 2.12. Lot Improvement. "Lot Improvement" shall mean and refer to any improvements located upon a Lot in addition to a Dwelling Unit, as above defined, as such improvements were originally installed by the Declarant or later approved for installation by the Association and intended for use in connection with the ownership of such Lot.

Section 2.13. Member. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration. "Member" and "Owner" (as hereinafter defined) may be used interchangeably herein, unless the context provides otherwise.

Section 2.14. Mortgage. "Mortgage" shall mean and include any recorded mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 2.15. Mortgagee. "Mortgagee" shall mean and include a beneficiary under a Mortgage.

Section 2.16. Owner. "Owner" shall mean and include any person or entity, including the Declarant, at any time owning a Lot. The term "Owner" shall not refer to any Mortgagee as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure, or any proceeding in lieu of foreclosure. The terms "Owner" and "Member" (as hereinabove defined) may be used interchangeably herein, unless the context provides otherwise.

Section 2.17. Project. "Project" shall mean and refer to all of the Properties, including Dwelling Units, Lot Facilities, Common Area Improvements, and other structures and facilities thereon.

Section 2.18. Properties. "Properties" shall mean and refer to that certain real property described on Exhibit A and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2.19. Subdivision Plat. The "Subdivision Plat" or "Plat" shall mean and refer to the subdivision plat which was properly submitted to and approved by the city, county, or other governmental entity having jurisdiction over the approval of such plat, which plat shall include a survey of the Properties, the Lots, and the Common Areas, and shall have been properly recorded in the county in which the Properties

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are located following the approval thereof by the proper governmental entity.

ARTICLE III. PROPERTY RIGHTS

Section 3.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to limit the number of guests of Members, to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

B. The right of the Association to suspend the voting rights and right to use of any Common Area and Common Area Improvements by a Member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any and each infraction of its published Rules and Regulations;

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by 67% of the membership agreeing to such dedication or transfer has been recorded;

D. The right of the Association, in accordance with these Declarations and its Articles and By-Laws to borrow money for the purpose of improving the Common Area, or the existing Common Area Improvements, and in aid thereof, to mortgage or encumber said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the Owners hereunder.

Section 3.2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and Common Area Improvements to the members of his family, his tenants, invitees, or contract purchasers who reside on the Properties.

Section 3.3. Title to Common Area and Improvements Thereon. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title in the Common Area and Common Area Improvements to the Association, free and clear of all liens and encumbrances, except general taxes for the current and subsequent years and subject to easements, rights-of-way, covenants, conditions, exceptions and reservations of record. Prior to conveyance of any Lots included in additional lands, any Common Areas or Common Area Improvements added to the Properties at a later time as provided elsewhere herein shall be transferred to the Association free and clear of all liens and encumbrances except general taxes for the current and subsequent years and subject to easements, rights-of-way, covenants, conditions, exceptions and reservations of record.

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ARTICLE IV. EASEMENTS

Section 4.1. Easements for Encroachments. If any portion of the Common Area, or Common Area Improvements thereon, now or hereafter, encroaches upon any Lot, or if any Lot or Lot Improvement thereon, now or hereafter, encroaches upon any other Lot or upon any portion of the Common Area, as a result of the construction of the Buildings or other Improvements, or if any such encroachments shall occur hereafter as a result of settling or shifting of any Building or other Improvements or for any other reason, a valid easement shall be deemed to exist for the encroachment and for the maintenance of the same for so long as the Building or other Improvements shall exist. In the event any Dwelling Unit, Lot, Improvement, or adjoining Common Area Improvement, shall be partially or totally destroyed or taken as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments due to this rebuilding shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the Building or other Improvements shall stand. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

ARTICLE V. THE ASSOCIATION

Section 5.1. The Association. The administration of the Project shall be governed by this Declaration, the Articles of Incorporation, and the By-Laws of the Delmonico Townhomes Association, Inc., a Colorado nonprofit corporation.

Section 5.2. Membership. An Owner of a Lot shall automatically become a Member of the Association and shall remain a Member for the period of the Owner's Lot ownership. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportion of interests and by the same type of tenancy in which the title of the Lot is held. An Owner shall be entitled to one membership for each Lot owned. Each membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of the Lot. No person or entity other than an Owner may be a Member of the Association, but the rights of membership may be assigned to a Mortgagee as further security for loans secured by a Mortgage of a Lot.

Section 5.3. Classes of Membership and Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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Class B. The Class B Members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The then existing Class B memberships shall be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- (a) when the total votes outstanding in the Class A membership equal and total votes outstanding in the Class B membership; or
- (b) March 1, 1990.

Section 5.4. Transfer. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth or reserved herein may not be transferred or assigned to any other person or entity. No such transfer or assignment shall relieve the Association of any of the obligations set forth herein. No such transfer or assignment shall revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 5.5. Powers. The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer, and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, unless 67% of the First Mortgagees of Lots who have registered pursuant to Section 21.7 below (based upon one vote for each First Mortgage owned or held), have given their prior written approval as provided in Section 21.8 below, and the Owners to which 67% of the votes are allocated have given their prior written approval, the Association shall not be empowered or entitled to:

- A. By act or omission, seek to abandon or terminate the Project or dissolve the Association;
- B. Partition or subdivide any Lot;
- C. By act or omission, seek to abandon, partition, subdivide, encumber, mortgage, sell or transfer the Common Area or any Common Area Improvements thereon (the granting of easements for public utilities including cable television or for other public purposes consistent with the intended uses of such Common Areas by the Association shall not be deemed a transfer within the meaning of this clause);
- D. Use hazard insurance proceeds for loss to the Common Area Improvements for other than the repair, replacement, or reconstruction of such Common Area Improvements;
- E. Merge or consolidate with another project or association, except for such provisions as may otherwise be provided herein relating to the annexation of additional lands to the Properties;
- F. Except as may result from the exercise of the annexation provisions otherwise herein, change the method of determining the

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obligations, assessments, dues or other charges which may be levied against an Owner;

G. Change the voting rights or the extent of rights and easements of each Owner in and to the Common Areas and Common Area Improvements thereon;

H. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of Dwelling Units, or the maintenance or upkeep of the Common Areas; or

I. Fail to maintain fire and extended coverage on insurable Common Area Improvements on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs).

Section 5.6. Examination of Books and Records. All Owners, First Mortgagees, insurers or guarantors of a First Mortgage of a Lot in the Project shall, upon request, be entitled to:

A. Inspect the books and records of the Association during normal business hours.

B. Receive a copy of a financial statement of the Association for the preceding fiscal year at no charge.

C. Written notice of all meetings of the Association and be permitted to designate a representative to attend all of such meetings.

D. Current copies of this Declaration, By-Laws, Articles of Incorporation and any Rules and Regulations concerning the Project upon payment of the cost for such copies.

If requested by a holder, insurer or guarantor of a First Mortgage in writing, an audited financial statement for the immediately preceding fiscal year will be provided free of charge to the party so requesting, if available. If an audited financial statement is unavailable, then one shall be prepared and furnished within a reasonable time following such request.

ARTICLE VI. CERTAIN RIGHTS AND OBLIGATIONS
OF THE ASSOCIATION

Section 6.1. Common Areas. The Association, subject to the rights of Owners with respect to their individual Lots, shall be responsible for the exclusive management and control of the Common Areas and Common Area Improvements (including furnishings and equipment related thereto), and, to the extent otherwise provided herein, the maintenance of the Dwelling Unit exteriors and Lot Improvements, and shall keep the same in good, clean, attractive and sanitary condition.

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The cost of such management operation, maintenance, and repair by the Association shall be borne as provided in Article IX.

Section 6.2. Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, snow removal, pool service, building and grounds maintenance, sewer service, firewood, and other services as appropriate to the project. During the period Declarant is in control, any contracts or leases entered into shall contain a right of termination, without cause, which is exercisable without penalty at any time after transfer of control to the Class A Members, upon not more than 30 days notice to the other party thereto; however, such right of termination need not be present in those contracts or leases wherein the subject matter is an essential service and when long-term contracts are required. The cost of such services shall be borne as provided in Article IX.

Section 6.3. Professional Management. The Association may obtain and pay for services of a professional "Management Contractor" to manage its affairs, or any part thereof, to the extent it deems advisable, whether such services are in lieu of or supplemental to the services described under Section 6.2 above. During the period when the Declarant is in control, any management contracts entered into by the Association with respect to such professional management of the Properties, and any contracts that such professional management shall enter into on behalf of the Association, shall be for a term not to exceed one (1) year and must contain a provision allowing either party to cancel the contract with or without cause and without a payment of a termination fee or penalty upon 30 days prior written notice. Further, and in connection with the Association's right to contract for management and personnel, whether on-site or off-site in nature, the Association shall have the right to limit the use of portions of the Common Areas for purposes of maintenance and storage facilities, management office facilities, management housing facilities to the extent allowable, and other such purposes as deemed desirable and necessary by the Association for the purposes of management and maintenance of the Properties. Further, any decision by the Association to terminate professional management and assume self-management of the project shall require the prior consent of Owners to which at least 67% of the votes in the Association are allocated and the approval of 67% of the First Mortgagees of Lots within the Project. Said professional Management Contractor shall be an independent contractor and neither the contractor, nor any of its employees, shall be considered as employees of the Association.

Section 6.4. Common Area Use. All Common Areas and Common Area Improvements described in Sections 2.4 and 2.5 of this Declaration are dedicated to the common use and enjoyment of the Owners for general recreation, pedestrian traffic, vehicular traffic, green area, and other such uses common to all the Owners as determined by the Association, pursuant to the covenants, provisions, and restrictions contained herein (except for parking rights which shall be assigned by the Association for the exclusive use of individual Owners pursuant to Section 6.5 below), or as further defined in the Association By-Laws and any Rules and Regulations promulgated by the Association.

Section 6.5. Parking. The Association shall permanently assign one or more vehicle parking spaces to each Dwelling Unit and the Owner of such Unit shall have the exclusive right to the use of such parking spaces, together with the right of ingress and egress in and upon the parking area.

Section 6.6. Fences, Walls, and Plantings. No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said Lots except such as are installed in accordance with the initial construction of the Buildings located thereon, or as may be approved by the Association's Architectural Control Committee or its designated representative, nor may such fences, hedges, walls or planting which shall be installed as part of the initial construction be removed, transferred, or altered in any manner, except as approved by the Architectural Control Committee or its designated representative.

Section 6.7. Maintenance of Individual Lots. The ownership of the Lots, together with Dwelling Units in existing Lot Improvements, shall be evidenced by a Deed to such Lot, together with the Improvements thereon. Maintenance, upkeep, and repairs of any patio area shall be the sole responsibility of the individual Owners thereof. Such maintenance, upkeep and repairs are not in any manner the responsibility of the Association except as provided elsewhere herein.

In the event an Owner(s) shall fail to maintain his patio in a manner satisfactory to the Board of Directors, the Association, after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the patio and any Improvements erected thereon. The cost of such patio maintenance shall be added to and become a part of the assessment to which the lot is subject. In the event the Association should determine that such failure to maintain, upkeep and repair the patio is sufficiently widespread as to the result in the Association's desire to undertake such maintenance, upkeep and repair generally, then the Association shall so notify the Owners, and include the budgeted costs for such maintenance, upkeep and repair as an additional Common Expense chargeable, collectible and enforceable as additional assessments pursuant to the provisions of Article IX.

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Front, side and back portions of each Lot will be landscaped by the Declarant and maintained by the Association. After the initial landscaping is installed by the Declarant, no further landscaping, including without limitation the planting of new items or the removal of existing items, or other such changes in the appearance of such front, side and back portions of their Lots shall be permitted, except with the approval of the Architectural Control Committee as provided in Article XI. However, these portions of each Lot shall be for the exclusive use of the Owner, subject to the reasonable rights of the Association to enter upon and maintain said portions of each Lot and to have said areas kept in neat and orderly condition, as provided above in this Section.

Section 6.8. Identity of Board of Directors. Upon request from an Owner, there shall be mailed by the Association to such Owner a notice containing the names and addresses of the members of the Board of Directors, and the Management Contractor, if any.

Section 6.9. Rights of Action. The Association, and aggrieved Owner(s), shall have an appropriate right of action against Owner(s) for failure to comply with the provisions of this Declaration or with decisions of the Association made pursuant to this Declaration; and an Owner(s) shall have similar rights of action against the Association.

ARTICLE VII. PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice; however, it is the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 7.4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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Section 7.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section 7.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall submit such dispute to arbitration, following the general rules of the American Arbitration Association then appertaining, and each shall choose one (1) arbitrator. Such arbitrators shall then choose one (1) additional arbitrator and the decision shall be by a majority of all the arbitrators. Such decision shall be binding on all parties and enforceable in a court of competent jurisdiction.

ARTICLE VIII. MAINTENANCE RESPONSIBILITY

Section 8.1. By the Owner. For purposes of maintenance, repair, alteration and remodeling, an Owner shall have the obligation to pay assessments to the Association to maintain, repair, alter and remodel his individual Lot. The obligation to maintain any Privacy Fence or other structure enclosing a patio, balcony, storage room, yard or deck area shall be that of the Owner. No Owner shall, however, make any changes or alterations of any type or kind whatsoever to the exterior surfaces of his Dwelling Unit or to other Lot Improvements without the prior approval of the Association's Architectural Control Committee pursuant to Article XI hereunder. An Owner shall maintain or, as directed by the Association, pay assessments to maintain, and keep in good repair and in a clean, safe, attractive and sightly condition, the Lot, Dwelling Unit and all Lot Improvements, including landscaping. An Owner shall reimburse the Association for any expenditure (including deductible amounts under insurance policies) incurred for replacing or repairing of any parts of the Common Area and Common Area Improvements damaged through the fault of an Owner, or the Owner's guests, invitees, or tenants, and the Association shall be entitled to assess such Owner for such amounts which shall be payable, collectible, and enforceable in the same manner as assessments pursuant to Article IX. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Association may fulfill the same and charge such Owner therefor, and such amounts so charged shall be payable, collectible and enforceable in the same manner as assessments pursuant to Article IX.

Section 8.2. By the Association. In addition to the maintenance upon the Common Area, including the Common Area Improvements, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care of roof, gutters, downspouts, exterior building surfaces, walks, landscaping, maintenance of the front, side and rear Lots, except patio areas, and other similar exterior Improvements. Such exterior maintenance shall not include the maintenance or the repair of entry doors, frames, or sliding glass doors and windows, which shall be the sole responsibility of the Owner. Determination of whether such repair or maintenance is the obligation of the Association shall rest solely with

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the Association, which shall have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

In the event that the need for maintenance and/or repair of a Lot and its Improvements or of the Common Area and its Improvements is caused through the willful or negligent acts of the Owner, his family, guest, or invitees, the cost of such maintenance and/or repairs shall be added to and become a part of the assessment to which each Owner is subject, as further set forth in Article IX hereunder.

ARTICLE IX. ASSESSMENTS

Section 9.1. Obligation. All Owners (except Declarant, whose obligation is described below) shall be obligated to pay the estimated assessments imposed by the Board of Directors to meet the Common Expenses of maintenance, operation and management of the Property. The Board may establish any reasonable system for collection periodically of Common Expenses, in advance or arrears as deemed desirable. Initially, the assessment for the estimated Common Expenses on an annual basis shall be payable in equal monthly installments in advance on the first day of each calendar month. Assessments made shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all of the Owners. Estimated expenses shall include the cost of maintenance and operation of the Common Areas, and the exterior maintenance of the Lot Improvements and Dwelling Unit Buildings, expenses of management, taxes and special assessments, unless separately assessed, insurance premiums for insurance coverage as required herein or as deemed desirable or necessary by the Board, landscaping, care of grounds, wages, legal and accounting fees, management fees, expenses and liabilities incurred by the Board or Management Contractor under or by reason of this Declaration, payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund for the maintenance or replacement of those Common Area and Lot Improvements which must be maintained or replaced on a periodic basis as well as other costs and expenses relating to the Common Areas and the purposes and responsibility of the Association. The omission or failure of the Board to fix the assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Board shall have the right but not the obligation to make pro-rata refunds of any assessments in excess of the actual expenses incurred prior to the end of the fiscal year.

Declarant shall have the obligation to pay a Common Expense Assessment on each Lot owned by Declarant and subject to this Declaration as provided herein and Article XVII, but this assessment shall be in an amount not less than 25% of the assessment chargeable to a Lot owned by a purchaser other than the Declarant; however, this obligation shall only begin after the first Lot in the phase in which the Declarant's Lots are located has been conveyed to a Class A Owner. This right of the Declarant to pay a reduced assessment shall terminate as to a particular Lot when a certificate of occupancy is issued for a

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Dwelling Unit on that Lot. During the time Declarant is entitled to Class B membership as provided in Section 5.3, Declarant agrees to pay to the Association a sum equal to the difference between the annual cost of operating and maintaining the Common Areas, exclusive of reserves, and the amount of funds payable to the Association as assessments.

Section 9.2. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Two Hundred and No/100 (\$1,200.00) Dollars per Lot.

A. Without a vote of the membership, from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board of Directors may only increase the maximum annual assessment by an amount of 10% of the maximum assessment for the previous year.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by an amount in excess of 10% by a vote of 67% of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 9.3. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, with the exception of Declarant's limited exemption, and may be collected on an annual or more frequent basis, as determined by the Board of Directors.

Section 9.4. Time for Payment of Assessments. Assessments shall be due and payable on or before the 1st of each month. Each assessment shall bear interest at the rate of 21% per annum from the date it becomes due and payable if it is not paid within 15 days after such date, and, in addition, there shall be an automatic \$20.00 late charge for each installment of assessment payment not received by the Association within 15 days after the due date. The Association shall provide written notice to Owners of any increase in the assessments. The Association may elect to have the annual assessments paid monthly, or on such other periodic basis deemed desirable by the Association; and a default in the payment of any one installment of the annual assessment shall additionally give the Association the right to accelerate the remaining amount of annual assessment as immediately due and payable, as further referenced hereinafter.

Section 9.5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article the Board of Directors may levy in any assessment year a special assessment payable over such period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction

or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense or purchase incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing for expense authorized by other Sections hereof which shall make specific references to this Article or as set forth in the preceding sentence. Any amounts assessed pursuant hereto shall be assessed to owners at a uniform rate. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than 30 days after such notice shall have been mailed to the registered mailing address of the respective Owner. A special assessment shall bear interest at the rate of 21% per annum from the date it becomes due and payable if not paid within 30 days after such date, and there shall be a reasonable late charge as set by the Board of Directors.

Section 9.6. Special Assessment Veto. Notwithstanding the provisions contained in Section 9.5 above, written notice of any special assessment approved by the Board of Directors shall be sent to all Owners immediately following such adoption. Such written notice shall be sent to the registered mailing address of each Owner, and shall become effective 30 days from and after the date of the certificate of mailing of such notices to Owners by the Secretary of the Association; provided, however, that the Owners shall have the right to veto such special assessment approved by the Board of Directors by proper written notice of 67% of the Class A Members, indicating specific objection to the special assessment and delivered to the Secretary of the Association prior to the end of the 30 day notice period referenced above. In the event such percentage of Owners should specifically object to the special assessment as indicated above within the time frames required, then such special assessment shall be deemed defeated. Any further adoption of such special assessment by the Board of Directors shall require the same procedure to be followed as referenced above, or pursuant to a special meeting of the Association called for the purpose of approving such special assessment, which approval shall require 67% of the Class A members present in person or by proxy at such meeting, provided a quorum (as defined in the By-Laws) is present.

Section 9.7. Assessment Lien. All sums assessed but unpaid for the share of Common Expenses or special assessments chargeable to any Lot, including any fees, late charges, fines or interest, shall constitute a lien on such Lot superior to all other liens and encumbrances except (a) tax and special assessment liens on the Lot in favor of a taxing authority and (b) all sums unpaid on a First Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence the lien as herein permitted, the Board of Directors may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the Owner, and a description of the Lot and record the same in the Office of the Clerk and Recorder of the County of El Paso, Colorado. Such lien for assessment shall attach

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from the due date of the assessment. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in the manner for foreclosing a mortgage on real property. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties thereon, the costs and expense of such proceedings, the costs and expense for filing the notice of the claim and lien, and all reasonable attorneys' fees in connection therewith.

The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Any Mortgagee holding a Mortgage on a Lot may pay any unpaid assessment payable with respect to such Lot and any and all costs and expenses with respect thereto, and the lien on such Lot for the amounts paid shall have the same priority as the lien of the Mortgage. The lien for assessments referred to herein shall be at all times subordinate to the lien of any First Mortgage held by a First Mortgagee. By accepting a deed to a Lot, each Owner shall thereby waive and release any and all rights and claims said Owner may have in and to the Lot as a homestead exemption or any other exemption.

Section 9.8. Personal Obligation. The amount of any assessment chargeable against any Lot shall be a personal and individual debt of the Owner thereof. No Owner may become exempt from liability for the assessment by abandonment or waiver of the use or enjoyment of any of the Common Areas or Common Area Improvements. Suit to recover a money judgment for unpaid Common Expenses plus interest and expenses, including attorneys' fees, shall not constitute an election of remedies or a waiver of the assessment lien provided herein; provided, however, that the Association shall only be entitled to collect the assessments for each assessment period once.

Section 9.9. Notice to First Mortgagee. If requested in writing, the Association shall report to the First Mortgagee of a Lot any default hereunder or unpaid assessments remaining in default or unpaid or uncured for longer than 60 days.

Section 9.10. Statement of Status of Assessment Payment. Upon payment of a reasonable fee of not less than \$25.00 (except for First Mortgagees who shall be exempt from such fee) and upon the written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lots. Unless such request shall be complied with within 20 days after receipt of said request by the Association, and if the request was properly addressed and sent by certified or registered mail, then all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. If the request is made by a prospective purchaser, the lien for the unpaid assessment shall be released automatically if the statement is not furnished within the 20 day period herein; provided thereafter, an

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additional written request is made by such purchaser, and the submission of the additional request is properly addressed and evidenced by a certified or registered mail receipt and the request is not complied with within ten (10) days and the purchaser subsequently acquired the Lot.

Section 9.11. Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 9.10 and Section 9.13, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments and installments thereof against the Lot up to the time of conveyance to purchaser, without prejudice to purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

Section 9.12. Working Capital and Assessment Reserves. Each Owner originally purchasing a Lot from the Declarant shall be required to deposit and maintain continuously with the Association an amount equal to two (2) times the amount of the estimated monthly installment of annual assessment, such reserve amount to be held without interest accruing to the Owner, which sum shall be used by the Association or Management Contractor as a working capital fund. Such advance payment shall not relieve an Owner from making the regular monthly installment payment of the Annual Common Assessment as same becomes due, nor shall the Association be required to deduct from such advance payment sums due for Common Assessments by an Owner prior to instituting any proceedings against the Lot Owner for delinquent Common Assessments.

During the initial months of the Project operation, and within 60 days after the date of the conveyance of the first Dwelling Unit in the existing phases, if the Board of Directors deem additional working capital funds are necessary or desirable, the Declarant shall contribute an amount equal to a two months' estimated Common Expense Assessment for each unsold Dwelling Unit. The Declarant shall be entitled to reimbursement for said contribution from the subsequent purchasers of the Dwelling Unit.

The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of the Common Areas and Common Area Improvements maintained by the Association. This reserve fund shall be maintained through regular installments of Common Assessments.

Section 9.13. First Mortgagee-Foreclosure-Liability for Unpaid Assessments. Each First Mortgagee of a Lot within the Project who obtains title to the Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, or any purchaser at foreclosure sale of the first Mortgage, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such First Mortgagee or purchaser at foreclosure sales obtains title to the Lot, but shall not relieve the First Mortgagee or purchaser from liability for, or lien from, any assessments made thereafter. Any unpaid assessment, which was rendered uncollectible by

the effect of this section, may be reallocated and assessed to all Lots as a Common Expense.

Section 9.14. Association's Right of Acceleration Upon Default. In addition to the other remedies provided for the Association upon the default of an Owner in the payment of an annual assessment, special assessment, or any installment thereof, and in the event an Owner shall default in the payment of any installment of an annual or special assessment, then the Association shall have the immediate right of acceleration of the total amount of such annual or special assessment as remains outstanding at the time of such installment default. This right of acceleration in the event of installment default shall apply whether the Association pursues the obligation personally against the owner or through foreclosure of the Owner's Lot, as provided hereinabove.

Section 9.15. Assessment for Utilities. Where one meter measures the water or other utilities used by more than one Owner, the Association shall bill each Owner whose Lot is connected to such meter on a pro rata basis, based on the relative size of the residence owned by each owner in relationship to other units served by said common utility facilities. All such expenses shall be billed at the same time as assessment of the affected Owners, but receipts for utility service charges shall be kept in a separate account. The cost of any common utilities are not included in and are over and above the maximum annual assessment set forth in Section 9.2 hereof. The assessment for utility service shall be paid and collected in the same fashion as annual assessments and shall be subject to all relevant provisions of this Article IX.

ARTICLE X. RESTRICTIVE COVENANTS AND OBLIGATIONS
USE OF DWELLING UNITS

Section 10.1. Residential. The Lots are hereby restricted to residential use and uses related to the convenience and enjoyment of such residential use. No buildings or structures shall be moved from other locations onto the Lots or Common Area, and no Common Area Improvements other than those originally planned and/or installed by Declarant shall be erected or constructed on the Common Area or upon any Lot unless approved by the Architectural Control Committee or designated representative. No garage, barn, or other out-building shall be used or permitted to be kept or stored on any portion of the Lots or Common Areas at any time, either temporarily or permanently, unless otherwise provided for herein.

Section 10.2. Sales Facilities of Declarant. Notwithstanding any provision in Section 10.1, Declarant, its agent, employees and contractors shall be permitted to maintain during the period of construction and sale of the buildings in the Project upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction, sale or rental of Lots and Dwelling

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Units including, but without limitation, a business office, construction and storage area, signs, model Dwelling Units, sales offices, construction and sales trailers, parking areas and lighting, and temporary parking facilities for all employees of Declarant and all prospective tenants or purchasers of Declarant; provided, however, said right shall terminate no later than March 1, 1990; and provided further, that such use shall not interfere in any way with the right of ingress or egress to any privately owned Dwelling Unit and the use and enjoyment thereof as a private residence, nor the right of ingress or egress to the Common Area and Improvements thereon, nor the use thereof for recreation or other proper purposes by the Owners and the Members, agents and officers of the Association.

Section 10.3. Rights of Association to Own Units and to Use Common Areas. Notwithstanding any provision contained herein to the contrary, the Association shall have the right, but not the obligation, to purchase and own any Dwelling Unit for the purpose of maintaining an office for the Association, for storage, recreation, or conference area or any other use which the Association determines is reasonable.

Section 10.4. Compliance With Law. No improper or unlawful use shall be permitted or made of the Properties or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Project shall be observed.

Section 10.5. Rules and Regulations. Rules and Regulations may be adopted by the Board of Directors concerning and governing the use of the Common Areas and Common Area Improvements, provided such Rules and Regulations shall be furnished to Owners prior to the time they are adopted and that Owners be notified as provided in the By-Laws of the Association that the Board of Directors will consider adoption of the Rules and Regulations so that Owners will have an opportunity to be heard or furnish input regarding the adoption and so that such Rules and Regulations shall be uniform and nondiscriminatory. The Association may also adopt a fine system to impose monetary penalties for infractions or violations of such Rules and Regulations, or take judicial action against any Owner to enforce compliance with such Rules, Regulations, or other obligations including injunctive relief or to obtain damages for noncompliance, all to the extent permitted by law. The Board of Directors may adopt and publish a fine schedule which shall list fines which shall be imposed for violation of this Declaration.

Section 10.6. Animals. The Association may, by Rules and Regulations, prohibit or limit the raising, breeding or keeping of animals, birds, fish or other such live species, in any Dwelling Unit, or on the Common Areas or any part thereof.

Section 10.7. Leases. The Owner of a Dwelling Unit shall have the right to lease or rent Dwelling Unit, but only under the following conditions:

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A. No Owner may lease less than the entire Dwelling Unit;

B. All leases shall be in writing and shall be on a Lease Form approved by the Association's Board of Directors;

C. All leases shall provide that the terms of the lease and lessee's occupancy of the Dwelling Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles of Incorporation and By-Laws of the Association. Any failure by the lessee to comply therewith shall be a default under the lease. Any owner who leases Dwelling Unit shall, within ten (10) days after the execution of such lease, forward a copy of same to the Association or the Association's Management Contractor;

D. Any owner who leases Dwelling Unit shall, and hereby does, appoint the Association his attorney-in-fact and grant to the Association the right to terminate such lease by a written notice to the tenant, in the event that such Owner's tenant shall fail to comply with any of the terms and provisions hereof, or the Association's By-Laws, Rules and Regulations; and

E. Except for a First Mortgagee in possession of a Dwelling Unit following the default under its Mortgage or in connection with foreclosure proceedings or any deed or other arrangement in lieu of foreclosure proceedings by such First Mortgagee, no Owner may lease Dwelling Unit for transient or hotel purposes or for an initial term of less than six (6) months, except in the event of a sale-leaseback or lease-purchase transaction.

Section 10.8. No Other Business. No business activity of any kind shall be conducted in any Dwelling Unit or on the Project, except that permitted by the Association or otherwise provided herein.

Section 10.9. No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on or upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is, or may become, a nuisance; or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project, and no improvements shall be made or constructed on any part of the Property, which might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the project which is unreasonably bright or causes unreasonable glare.

Section 10.10. No Unsightliness. No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in garage areas) on the Common Area or the exterior of any Lot; nor shall any Owner hang, erect, affix or place anything upon any of

the Common Area Improvements or the exterior of a Dwelling Unit; and nothing shall be placed on or in windows or doors of Units which would or might create an unsightly appearance.

Section 10.11. Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Units therein.

Section 10.12. Owner Caused Damages. If, due to the act or neglect of an Owner or an Owner's Guest, loss or damages shall be caused to any person or property, including the Project or any Lot or Dwelling Unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Lot of such Owner as provided hereinabove for assessments or other charges.

Section 10.13. Restrictions on Parking and Storage. No part of the Project, including the public streets and private streets, drives, or parking areas, unless specifically designed by the Association therefor, shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, truck or recreational vehicle, except as a temporary expedience for loading, delivery, emergency, etc. (provided that this restriction shall not restrict trucks, or other commercial vehicles within the Project which are necessary for the construction or maintenance of the Project).

Section 10.14. Authority of Board of Directors. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article X shall be made initially by the Board of Directors and such determination shall be binding upon all Owners.

ARTICLE XI. ARCHITECTURAL CONTROL COMMITTEE

Section 11.1. Membership.

A. The Board of Directors may appoint an Architectural Control Committee (hereinafter referred to as the "Committee") which may be composed of three (3) or more members. In the event no such appointment is made, then the Board of Directors shall constitute the Architectural Control Committee and shall have all the duties and responsibilities of said Committee as set forth herein.

B. In the event of death, disability, or resignation of any member of the Committee, the Board of Directors shall have full authority to designate a successor or successors.

C. An affidavit executed by a majority of the members of the Committee, and recorded in the Office of the Clerk and Recorder of El Paso County, Colorado, shall be sufficient evidence of the membership and of the other recitals therein contained.

Section 11.2. Evidence of Action. The Committee's approval or disapproval as required in these covenants shall be in writing, as indicated by the signatures of a majority of the Committee. The Committee shall not be required to maintain records of plans submitted. Approval by the Committee shall be conclusive evidence of compliance with these covenants provided that the improvements are constructed in substantial compliance with the plans as approved. In the event the Committee fails to approve, conditionally approve, or disapprove a proposal within 30 days after plans and specifications have been submitted to it and the submission is evidenced by a certified or registered mail receipt; or, in any event, if no suit to enjoin the proposed construction has been commenced within one (1) year after the proposed construction had begun, and became apparent, such approval will not be required, and the related covenants shall be deemed to have been complied with fully.

Section 11.3. Duties. The Committee shall act upon and approve or disapprove any and all matters to be submitted to the Committee pursuant to any of the provisions of this Declaration and shall have all duties and powers as are hereinafter provided and set forth. Neither the members of the Committee nor its designated representatives, shall be entitled to any compensation for services performed, nor shall the Committee or any members thereof be liable, in any manner, for any action or failure of action done in good faith arising out of their service on the Committee.

Section 11.4. Approval of Plans.

A. All plans and specifications in connection with the construction of any residence, fence, wall, driveway, or other structure, and in connection with any exterior maintenance and remodeling of any residence or other structure, including but not limited to installation of any television antenna, air conditioning unit, or solar energy devices on the exterior of any Unit, or any alteration of any wall, fence, driveway or the installation or removal of landscaping on the front, back or side portions or individual Lots, shall be submitted to the Committee or its designee, and prior written approval shall be required.

B. Before any construction or alteration or landscaping work begins, plans and specifications showing the nature, kind, shape, height, materials and location, the exterior design, the exterior materials to be used, the color scheme, the site plan, a topographic

survey, the location of the driveway and plans for the proper drainage of the Lot with respect to adjacent Lots must be submitted to the Committee for its prior written approval.

C. In passing upon such plans, specifications and other requirements, the Committee may take into consideration whether the proposed residence or other structure or alteration and the materials of which it is to be built are reasonably suitable for the Lot upon which the residence or other structure or alteration is to be erected, the harmony thereof with the surroundings, and the effect of the residence or other structure or alteration as planned on the outlook from adjacent or neighboring property. The Committee shall, in the exercise of its judgment and determination, use reason and good faith.

D. No residence, fence, wall, driveway, structure, alteration of any kind, or planting and removal of landscaping items on the individual Lots, which has not received such prior written approval by the Committee and which does not fully comply with such approved plans and specifications, shall be erected, constructed, placed or maintained upon any Lot. No changes or deviations in and from such plans and specifications as so approved shall be made without the prior written consent of the Committee. The Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

Section 11.5. Reserved Right of Declarant. Notwithstanding the above provisions, and until the Declarant has conveyed its last Dwelling Unit to a Purchaser, Declarant shall have the right, and said right is hereby specifically reserved unto Declarant, to appoint the members of such Architectural Control Committee and to fill any vacancies therein created. (This Section supersedes the authority granted in Section 11.1 above.)

Section 11.6. Binding Agreement to Pay Legal Costs. In the event that an Owner shall dispute the determination of the Architectural Control Committee and files a lawsuit to overrule, vacate or otherwise mitigate the effect of any determination of the Committee, or if an Owner(s) fails to submit for approval any action as required by Section 11.4 and the Committee brings an action to enforce these provisions; then the Owner(s) and the Association are hereby bound to the agreement that any and all costs, including reasonable attorneys' fees, associated with the institution and defense of such a suit, shall to the extent permitted by a court of competent jurisdiction, be paid to the prevailing party by the losing party.

Section 11.7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions or restrictions imposed by this Declaration. Such variances or adjustments shall only be granted if it is not material or detrimental or injurious to the other property or improvements of the neighborhood, and shall not defeat the general intent and purpose hereof.

Section 11.8. Minor Violations of Setback Restrictions. If, upon erection of any Dwelling Unit upon any of the Lots which are subject to these restrictions, it is disclosed by survey that a minor violation and infringement of setback lines has occurred, such violation and infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation and infringement occurs, and such waivers shall be binding upon all other Owners who are subject to this Declaration. Nothing herein contained shall prevent the maintenance of suit for any other violation of the restrictions contained in this Declaration. A "minor violation" for the purpose of this Section is a violation of not more than 30 inches beyond required setback lines or Lot lines. This provision shall only apply to the original structures and shall not be applicable to any alterations or repairs to such structures.

ARTICLE XII. INSURANCE

Section 12.1. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance shall be purchased by the Board of Directors and shall be maintained in force at all times, the premiums thereon to be paid by the Association as a Common Expense. If Declarant pays the premium, it shall be entitled to reimbursement from the Association. The insurance shall be carried with reputable companies authorized to do business in the State of Colorado, in such amounts as the Board may determine; the insurance carrier should have a current rating by Best's Insurance Reports of VI or better, or a financial rating of Class VI and a general policyholder's rating of at least A. If the insurer does not meet this rating requirement, the insurer must be reinsured by a company that does have a current rating by Best's Insurance Reports of VI or better.

A comprehensive policy of general liability insurance shall be in force for minimum amount of \$1,000,000 per occurrence, covering all claims for bodily injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles, liability for property of others, and, if applicable, host liquor liability and other risks which are customarily covered with projects similar in construction, location, and use. The policy or policies shall name as insured all of the Owners and the Association. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant shall have conveyed all the Dwelling Units in the Project. The policy or policies shall insure against loss arising from perils in both the Common Areas and on the Lots and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association or the Board of Directors.

The policy or policies shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying a claim of an Owner or the Association because of negligent acts of the Association or other Owners.

Section 12.2. Fire and Hazard Insurance. Fire and other hazard insurance shall be purchased by the Board of Directors and shall thereafter be maintained in force at all times, the premiums thereon to be paid by the Association as a Common Expense, such policy to cover all Common Area Improvements and all Buildings and Lot Improvements in the Project. Policies shall provide for a standard noncontributory mortgagee clause in favor of each First Mortgagee whether or not named therein, and shall provide that the policy cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice to all insureds thereunder, including each Owner and each First Mortgagee. The policies shall also provide that the interest of each First Mortgagee in the insurance shall not be invalidated by any action or neglect of the Board of Directors, Owners, or their tenants, invitees or agents. The policies shall further provide for waiver by the insurer of any policy provisions which would render the Mortgagee clause invalid by reason of failure of the Mortgagee to notify the insurer of any hazardous use or vacancy in any Dwelling Unit and any policy requirement that the Mortgagee pay the premium thereon. The policy or policies shall be of a master or blanket type with a standard all risk endorsement, and insure against loss from perils therein including coverage on all of the Improvements in the Project, except such as may be separately insured, and except land, foundation, excavation and other items normally excluded from coverage. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The Improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the Owners, the Association, and the Declarant, so long as Declarant is the Owner of any of the Dwelling Units in the Project. The policy or policies shall also cover personal property owned by the Association or in common by the Owners, their tenants, invitees or agents, and shall further contain a waiver of subrogation rights by the carrier as to negligent Owners. If Declarant pays the premium for said policy or policies, it shall be entitled to reimbursement from the Association.

The insurance shall be carried with reputable companies authorized to do business in the State of Colorado, in such amounts as the Board may determine. The insurance carrier should have a current rating by Best's Insurance Reports VI or better or a financial rating of Class VI and a general policyholder's rating of at least A. If the insurer does not meet this rating requirement, the insurer must be reinsured by a company that does have a current rating by Best's Insurance reports of VI or better.

Section 12.3. No Individual Fire Insurance. Except as expressly provided in this clause, no Owner shall separately insure his Dwelling Unit or any part thereof against loss by fire or other casualty covered

by the insurance carried under Section 12.2 above. Should any Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance, and/or failure to have the proceeds of such insurance payable pursuant to the provisions of Section 12.2 shall be chargeable to the Owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds. Such liability may be enforced as an assessment lien under Article IX.

The blanket policy or policies to be carried by the Association and referenced under Section 12.2 above must provide that it is primary over any policy or policies separately carried by an individual Lot Owner and that proceeds of the individual policy or policies carried by such Owner shall only be used to the extent that the proceeds of the insurance carried by the Association are insufficient to cover any losses to the Lot.

Section 12.4. Owner's Personal Liability and Property Insurance.

An Owner may carry such personal liability insurance, in addition to that herein covered, as such Owner may desire. In addition, any improvements made by an owner to the real property within a Lot, as well as the personal property of the Owner, may be separately insured by such Owner, such insurance to be limited to the type and nature of coverage often referred to as "Tenant's Improvement and Betterments". All such insurance separately carried shall contain waiver of subrogation rights by the carriers as to negligent Owners.

Section 12.5. Fidelity Insurance Coverage. The Association shall provide for fidelity coverage against dishonest acts on the part of the Officers, Directors, Management Contractors, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than 1.5 (one and one-half) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person or persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. If requested by an Owner or First Mortgagee, such policies shall additionally provide that the policies cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice to all who have requested such notice.

Section 12.6. Flood Insurance. In the event the Project is or shall become located in an area identified by the Federal Emergency Management Agency (FEMA) as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of 100% of current "replacement cost" of all such buildings and other insurable property or the maximum limit of coverage available, whichever is less. The name of the insured under each required policy must be stated in form and substance similar to the following:

"Delmonico Townhomes Association, Inc. for use and benefit of the individual Owners and their First Mortgages."

Section 12.7. Other Insurance. The Board of Directors may purchase and maintain in force as a Common Expense, debris removal insurance, plate or other glass insurance, fidelity bonds, and other insurance or bonds that it deems necessary. The Board shall purchase and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the Association.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance, and a fidelity bond, meeting the insurance and fidelity bond requirements for such project established by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and Government National Mortgage Association, so long as any are a Mortgagee or Owner of a Lot within the Properties, except to the extent such coverage is not available or has been waived in writing by either or all of the above.

Section 12.8. Attorney-In-Fact. The Association is hereby appointed the attorney-in-fact for all Owners to negotiate loss adjustment on the policy or policies carried by the Association under this Article XII.

Section 12.9. Proceeds. The Association shall receive the proceeds of any casualty insurance payments received on the policies obtained and maintained pursuant to this Article. To the extent that repairs and reconstruction are required herein and there is a determination that the Properties shall not be rebuilt, the proceeds shall be distributed in the manner provided in Article XIII regarding casualty damage or destruction.

Section 12.10. Notice of Cancellation or Modification. The policy and/or policies required by Sections 12.1, 12.2, 12.3, and 12.6 must provide that they cannot be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association, and to each holder of a First Mortgage which has requested in writing that it be listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 12.11. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors to ascertain whether the coverages contained in the policies are sufficient for the upcoming year, whether any necessary repairs or replacements of the property which occurred in the preceding year were covered by insurance, and that all possible insurance claims have been filed.

Section 12.12. Deductibles. No insurance policy applicable to either fire or extended coverage shall contain a deductible clause which exceeds the greater of:

A. \$500.00

B. One percent (1%) of the face amount of the policy.

If an Owner, who by a negligent or willful act, causes damage to the Common Area or other Properties which are insured as a Common Expense, then said Owner shall bear the whole cost of the deductible required in the blanket insurance policy for the Association on the Common Area and other such Properties. An Owner shall be responsible for any action of members of his family, his tenants or his guests which cause damage to said Common Areas or other Properties.

Section 12.13. Directors' and Officers' Liability Insurance. The Association shall maintain adequate liability coverage to protect against any negligent act upon the part of the Directors or Officers of the Association.

Section 12.14. Waivers. All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on an invalidity arising out of the acts of a Member of the Association.

ARTICLE XIII. CASUALTY

Section 13.1. Association as Agent and Attorney-in-Fact. All of the owners irrevocably constitute and appoint the Association as their true and lawful agent and attorney-in-fact in their name, place and stead for the purpose of dealing with the Property upon its damage, destruction, obsolescence and/or condemnation as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Association as agent and attorney-in-fact as herein provided.

Section 13.2. General Authority of Association. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and construction of the Common Area Improvements as used in this Article means restoring Project to substantially the same condition in which it existed prior to damage. The proceeds of any insurance collected shall be used by the Association for the purpose of repair or reconstruction unless Owners, to which at least 67% of the votes are allocated, and 67% of the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Section 13.3. Notices and Cost Estimates. As soon as practical after an event causing damage to, or destruction of any Dwelling Unit or any part of the Common Area, or any other part of the Project, the Association shall provide the First Mortgagees of affected lots within the Project notice of such damage, and the Association shall immediately obtain estimates that it deems reliable of the cost of repair or reconstruction of that part of the Project damaged or destroyed.

Section 13.4. Insurance Proceeds Sufficient to Repair. In the event that proceeds from insurance coverage are sufficient to cover the cost of repair or construction after a casualty pursuant to the estimate of costs obtained by the Association, then such repair or reconstruction shall be promptly performed by the Association as attorney-in-fact for the Owners pursuant to this Article.

Section 13.5. Insurance Proceeds Insufficient to Repair. If insurance proceeds are insufficient to repair or reconstruct the damaged or destroyed Property, the following provisions shall govern:

A. Partial Damage. For the purpose of this Article XIII, total destruction is defined as such damage or destruction as to render, in the judgment of the Board of Directors, all of the Dwelling Units untenable. Any damage or destruction less than total destruction is defined as partial damage for the purpose of this Article XIII. The partial damage to the Property, whether insurance proceeds shall be sufficient to cover the same or not, shall be repaired as promptly as possible by the Association as attorney-in-fact, and any cost of such repair or reconstruction in excess of insurance proceeds available, shall be assessed against all owners as a Common Expense pursuant to Article IX.

B. Total Destruction. In the event of total destruction of the Building(s) as defined in subparagraph A above, and the further event that insurance proceeds are estimated to be insufficient to repair and reconstruct in the judgment of the Board of Directors, the Board shall advise all Owners of such decision, which notice shall advise of the special meeting of the Owners, pursuant to the Articles of Incorporation and By-Laws of the Association, which meeting shall be held as soon as reasonably possible after the date of the casualty, for the purpose of determining whether or not the repair or reconstruction should be done. The Building(s) shall be reconstructed unless 67% of the Ownership interests, plus 67% of the First Mortgagees, agree in writing to sell the entire remaining Project as hereinafter provided. Any necessary assessment made in connection with the plan shall be a Common Expense and charged as an assessment to each Owner during the course of reconstruction at the times deemed necessary or desirable by the Board. Any such assessment shall be an obligation of each Owner and a lien on such Owner's Lot shall be enforced and collected as a Common Expense pursuant to Article IX. If 67% of the Ownership interests or more, and 67% of the First Mortgagees agree in writing, the entire Project shall be sold by the Association, as attorney-in-fact, free and clear of the provisions contained in this Declaration and other related documents. In such case, the insurance proceeds payable as a result of the casualty and the sale proceeds, if any, shall be apportioned between the Owners on a percentage basis determined by dividing the original purchase price of each Lot and Dwelling Unit by the total purchase price of all Lots and Dwelling Units in the Project. Such apportioned proceeds shall be paid into separate accounts, each account representing one Lot. Each such account shall be in the name of the Association, and shall be further identified by the Dwelling

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Unit number designation and the name of the Owner. The Association, as attorney-in-fact shall use and disburse the total amount of such separate account without contribution from one account to another as follows:

(i) for payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale;

(ii) for payment of the balance of the lien of any First Mortgage;

(iii) for payment of unpaid Common Expenses and all costs, expenses and fees incurred by the Association;

(iv) for payment of junior liens and encumbrances in the order and to the extent of their priority; and

(v) the balance remaining, if any, shall be paid to the Owner.

ARTICLE XIV. OBSOLESCENCE

Section 14.1. Renewal and Reconstruction. The Owners, representing 80% or more of the Association votes, may agree that the Property is obsolete and adopt a plan for the renewal and reconstruction, which plan shall have the written approval or consent of 67% of the First Mortgagees of Lots. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all the Owners as Common Expenses; PROVIDED, HOWEVER, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the date of adoption of such plan that his Dwelling Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have 30 days within which to cancel such plan. If such plan is not canceled, the Dwelling Unit of the requesting Owner shall be purchased according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within 30 days after such agreement. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned hereafter shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be an umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn

by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, but in no event later than 20 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding, and a judgment based upon the decision rendered may be entered in any court having jurisdiction thereof. The expense and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within 15 days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same manner and order as is provided in subsections (i) through (v) of Section 13.5 B, above.

Section 14.2. Sale of Property. The Owners representing 80% or more of the Association votes may agree that the Property is obsolete and that the same should be sold, which plan shall have the written approval of 67% of the First Mortgagees. In such instance, the Association shall forthwith record a notice executed by the Association's President and Secretary setting forth such fact, and upon the recording of such notice the Property shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration and other related documents. The sales proceeds shall be collected, apportioned and disbursed by the Association as attorney-in-fact, in the same manner and order as is provided in subsections (i) through (v) of Section 13.5 B, above.

ARTICLE XV. CONDEMNATION

Section 15.1. Consequences of Condemnation. If at any time during the continuance of the Ownership pursuant to this Declaration, all or any part of the Properties shall be taken, or condemned by any public authority, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article XV shall apply.

Section 15.2. Proceeds and Notice. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association; PROVIDED, HOWEVER, that the Association shall provide timely notice of such condemnation proceeding or condemning authority acquisition to all First Mortgagees of record of Dwelling Units within the project who request such notice.

Section 15.3. Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the owners on the same basis as set forth in Section 13.5 B, above, provided that if a standard different from the value of the Property as a whole is employed to measure the Condemnation Award in the negotiation,

judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the shares of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner and order as is provided in subsections (i) through (v) of Section 13.5 B, above.

Section 15.4. Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner:

A. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Area and be apportioned among Owners on an equal basis;

B. The total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned;

C. The respective amounts allocated to the taking of or injury to a particular Lot and/or Improvements an Owner had made within his own Lot shall be apportioned to the particular Lot involved; and

D. The amount allocated to consequential damages and other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees of record.

Section 15.5. Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a Member of the Association.

Section 15.6. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XIII, above.

ARTICLE XVI. GENERAL RESERVATIONS

Section 16.1. Reservation of Easement, Exceptions and Exclusions. Declarant reserves the right to establish from time to time by dedication or otherwise, utility and other easements, for purposes including

but not limited to streets, paths, walkways, drainable recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, cable television, and to create other reservations, exceptions and exclusions consistent with the ownership of the Properties for the best interest of all Owners and the Association in order to serve all the Owners within the Project. The rights herein reserved unto Declarant shall continue until Declarant no longer retains any interest in the Project, or March 1, 1990, whichever occurs first.

ARTICLE XVII. ENLARGEMENT OF PROJECT (ANNEXATION)

Section 17.1. Special Rights Reserved to Declarant; Enlargement of Project. The Declarant shall have the absolute right, but not the obligation, the same is hereby specifically reserved unto Declarant to be exercised prior to March 1, 1990, to annex to the land and Improvements described in this Declaration and to the Subdivision Plat herein referred to, and thereby to submit to each and every provision of this Declaration the land described on Exhibit "C", attached hereto and incorporated herein by this reference, or any portions thereof as further referenced hereunder, together with the Improvements to be constructed thereon as further referenced herein. It is the intention of the Declarant that the lands described on Exhibit "C" may be annexed to the land covered by this Declaration by additional phases. Such phases may be added by the Declarant either in the aggregate or on a phase-by-phase basis, by a portion of a phase, or any combination thereof, with the result being that this Project may be increased up to a maximum number of 14% Dwelling Units, or such lesser amount of Dwelling Units as may be reflective of the Declarant's decision to add either no additional phases or such lesser number of phases desired.

Any such expansion or annexation as herein reserved unto Declarant shall be accomplished by the recording of a supplement or supplements to this Declaration, and such documents shall be recorded in the records of the office of the Clerk and Recorder for El Paso County, Colorado.

There is hereby reserved unto Declarant the irrevocable power of attorney, coupled with an interest, to execute, acknowledge and deliver such further instruments and to do such further acts and/or things as may be from time to time required in order to accomplish the purposes of this Article XVII, including the right, if necessary, to amend the Articles of Incorporation or By-Laws, and to act on behalf of the Association to obtain such accomplishment. Each Owner and each and every Mortgagee of a Lot in the Project shall be deemed to have acquiesced to the supplements to this Declaration and to any required supplements to the Subdivision Plat for the purpose of adding additional Lots and Common Areas to the Project in the manner set forth in this Article XVII, and shall be deemed to have granted unto said Declarant an irrevocable power of attorney, coupled with an interest, to effectuate, execute, acknowledge and deliver any such instruments, if any, and to do such other acts and things as may be deemed necessary or desirable by the Declarant, its successors and assigns, to properly

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accomplish the supplements contemplated by this Article XVII. Such supplements shall contain at least the following information:

A. A legal description of the particular phase(s) being annexed, including a proper legal description of the Lots and the Common Area located therein;

B. A statement that said lands are being annexed pursuant to the particular provisions of Article XVII hereof; and

C. A further statement to the effect that said phase(s), when annexed, shall be deemed to be included within the Project covered by this Declaration and, thereby, subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens, including assessments, applicable hereunder as well as expressly subject to all of the provisions of the Articles of Incorporation and the By-laws of the Association referenced hereunder.

All such supplements shall be subject to the prior approval of the Federal Housing Administration, and shall be consistent with the original Plat as approved by the Federal Housing Administration, unless amendments thereto have been properly promulgated, processed and approved by both the Federal Housing Administration and any governmental entity having jurisdiction thereof.

Section 17.2. Assessments and Voting Rights. On the date of recordation of any annexation by supplement to these Declarations, the assessment responsibility indicated in Section 9.1 and the voting rights outlined in Section 5.3, appurtenant to the annexed Lots, shall become effective.

Section 17.3. Future Improvements. All future Improvements to the Project shall be consistent with initial Improvements in terms of quality of construction.

ARTICLE XVIII. GRANT OF EASEMENTS

Section 18.1. Construction Easements. If any portion of an exterior wall of a residence is situated within three (3) feet of any adjoining Lot line, a valid easement shall and does exist, three (3) feet in width along the adjoining Lot and adjacent to the said Lot line, which easement may be used for the purpose of construction, reconstruction and maintenance of said exterior wall of a residence that is situated within three (3) feet from the nearest point of said easement. The Owner of any Lot subject to this easement shall not erect or build any structure upon or over said easement which will interfere with the purposes of said easement.

Section 18.2. Encroachment. If any exterior wall of a residence shall be constructed in a manner in which it encroaches upon any other Lot or upon the Common Area, a valid easement shall exist for such

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structure for as long as such structure shall exist, and no Member shall interfere with such easement.

Section 18.3. Maintenance Easement. If any portion of a residence encroaches upon the Common Area or upon the easement of any adjoining Lot established under the provisions of the construction and encroachment easements thereon, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 18.4. Right of Entry. The Association shall have a reasonable right of entry upon any Dwelling Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Project. The Association shall also have the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

ARTICLE XIX. PRE-EXISTING RESERVATIONS, RESTRICTIONS
EASEMENTS AND COVENANTS

The Property was subject to the following reservations, restrictions, conditions, exceptions, easements and covenants at the time of the recordation of this Declaration:

Section 19.1. County of El Paso. Any restrictions in the use of property created by plats or zoning ordinances approved or adopted by the City of Colorado Springs or the County of El Paso, State of Colorado.

Section 19.2. Other Easements. Any other easements and covenants not enumerated under this Article, this Declaration or the Association By-laws, but which exist of record at the time of the recordation of this Declaration.

ARTICLE XX. REVOCATION OR AMENDMENT OF DECLARATION

Section 20.1. Revocation. Except as provided specifically elsewhere herein, this Declaration shall not be revoked unless 90% of the Owners and 67% of the First Mortgagees consent and agree to such revocation by instrument(s) duly recorded.

Section 20.2. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration shall not be amended, except as otherwise herein provided, without the consent of Owners of Lots to which at least 67% of the votes in the Association are allocated, and approval of 67% of the First Mortgagees. Such amendment may be evidenced by either a recorded instrument indicating such consent or by a recorded certificate of the Secretary of the Association certifying

that at a meeting of the Owners, duly called, the Owners of Lots, to which 67% of the votes in the Association are allocated, consented to the Amendment, and that 67% of the First Mortgagees have given approval (as provided in Section 21.8 below) to the Amendment, and that copies of such written consent are in the corporate records of the Association.

Section 20.3. Amendments to Conform to VA, FHA, FVHA or FHLBC Requirements. Notwithstanding any provision to the contrary, during the period of Class B Membership, the Declarant shall have the right to unilaterally amend this Declaration in order to comply with the requirements and regulations of the Veteran's Administration, Federal Housing Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation. Any such amendment shall not require the vote or consent of the Owners in the Project.

ARTICLE XXI. MISCELLANEOUS PROVISIONS

Section 21.1. Mailing Address. Each Owner shall register his mailing address with the Association, and all notices, demands and statements shall be sent by regular United States mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices to the Declarant shall be sent by certified or registered mail to the following address:

Declarant:
PWB Investments
Suite 200
650 Erin Park Drive
Colorado Springs, Colorado 80907

until such address is changed by notice of address change given to the Association.

Section 21.2. Compliance With Provisions. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-Laws, Rules and Regulations, resolutions, and contracts of the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, together with reasonable attorneys' fees, court costs, and injunction bond premiums maintainable by the Board of Directors, or the Management Contractor, on behalf of the Owners.

Section 21.3. Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section or the application thereof in any circumstances is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase, word, or section in any other circumstances shall not be affected thereby.

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Section 21.4. Terminology. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural and the singular; and the use of any gender shall include all genders.

Section 21.5. State Law. The provisions of this Declaration shall be in addition and supplemental to all laws of the State of Colorado.

Section 21.6. Declarant's Rights Transferable. Any right or interest of Declarant hereunder, established or reserved, may be transferred or assigned by Declarant either separately, or with one or more of such rights or interest, to any person or entity.

Section 21.7. Registration of First Mortgagees. Whenever these Declarations require that a First Mortgagee receive notice, such requirement of notice shall be waived if the First Mortgagee has failed to register its name and proper address with the Association for the purpose of such notices.

Section 21.8. Approval by First Mortgagees. Whenever these Declarations require the approval of First Mortgagees, only those First Mortgagees who have registered as provided under Section 21.7 need be included in the request for approval and in any determination of whether applicable percentage of First Mortgagees have approved any intended action.

Section 21.9. Case of Conflict. In the case of any conflict between the Articles of Incorporation and the By-Laws, the Articles shall control; in the case of any conflict between this Declaration and the By-Laws, the Declaration shall control; and in the case of any conflict between the Articles and this Declaration, this Declaration shall control.

DATED this _____ day of _____, 1985.

PWE INVESTMENTS, a General Partnership

BY: 

STATE OF ~~ILLINOIS~~)
Cook) SS.
COUNTY OF ~~LA SALLE~~)

The above and foregoing Declaration of Covenants, Conditions, and Restrictions for Delmonico Townhomes was subscribed and sworn to before me this 18th day of March, 1985, by Steve A. P. [unclear] of FWS Investments, a General Partnership.

My commission expires: May 20, 1985.

Witness my hand and official seal.

Richard A. [unclear]
Notary Public
Address: 1069 [unclear]
Calumet City, Ill. 60440

