

Recorded at 10:18 o'clock A.M. SEP 15 1982  
Reception No. 2203939 MARJORIE PAGE, Recorder

CONDOMINIUM DECLARATION

FOR

SABLE COVE CONDOMINIUMS

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KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, U.S. HOME CORPORATION, a Delaware corporation (hereinafter called "Declarant") is the owner of that certain real property situated in the County of Arapahoe, State of Colorado, being more particularly described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant plans to construct multi-unit buildings on the above-described property, including improvements and appurtenances thereto and thereon, and it desires hereby to provide for the condominium ownership of the same pursuant to the provisions of the Condominium Ownership Act of the State of Colorado; and

WHEREAS, Declarant desires to subject and place upon the above-described property certain covenants, conditions, restrictions, easements, reservations, rights-of-way and other charges set forth herein for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale and condominium ownership of said property, to the end that a harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of the Declarant, its successors and assigns in said property, or any portion thereof, promoted and safeguarded.

NOW, THEREFORE, the Declarant hereby submits the above-described property, together with all improvements, appurtenances and facilities thereto and now or hereafter thereon, to condominium ownership under the Condominium Ownership Act of the State of Colorado, as the same may be amended from time to time, and hereby imposes upon all of said property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which shall be deemed to run with the above-described property and all property hereafter annexed to this Declaration and shall be a burden and a benefit to Declarant, its successors, assigns, and any person acquiring or owning an interest in the above-described property and/or annexed property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

DEFINITIONS

1.1 Declaration. "Declaration" shall mean and refer to this Condominium Declaration, as it may be amended from time to time.

1.2 Declarant. "Declarant" shall mean and refer to U.S. Home Corporation, a Delaware Corporation, its successors and assigns, if such successors and assigns acquire one or more portions of the Property from the Declarant for the purpose of constructing Condominium Buildings thereon.

1.3 Association. "Association" shall mean and refer to the Sable Cove Condominium Association, a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and its elected officers.

1.4 Property. "Property" shall mean and refer to the property described in Exhibit A attached hereto, together with any property which is hereafter annexed to this Declaration pursuant to the provisions of Article XVII hereof.

1.5 Individual Air Space Unit. "Individual Air Space Unit" shall mean and refer to the air space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building and bounded by the unfinished interior surfaces of the perimeter walls (or the adjoining walls, if two or more Individual Air Space Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is an Individual Air Space Unit containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is an Individual Air Space Unit containing more than one level), windows and window frames, doors and door frames of a Condominium Building, and separately identified on the Condominium Map. Said Individual Air Space Unit is to be used for residential purposes and shall have access to a public street.

1.6 Condominium Unit. "Condominium Unit" shall mean and refer to the fee simple interest in and to an Individual Air Space Unit, together with all fixtures and improvements therein contained, and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space Unit as shown on Exhibit B attached hereto and incorporated herein by this reference, which undivided interest is subject to being modified by annexations to this Declaration pursuant to the provisions of Article XVII hereof.

1.7 Condominium Building. "Condominium Building" shall mean and refer to any building (including all fixtures and improvements therein contained) located on the Property and within which one or more Individual Air Space Units are located.

1.8 Other Building. "Other Building" shall mean and refer to any building or other similar structure (including all fixtures and improvements therein contained) located on the Property, but excluding any Condominium Building.

1.9 Common Elements. "Common Elements" shall mean and refer to the totality of:

- (a) The Property; and
- (b) The Other Buildings; and
- (c) The Condominium Buildings (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, fireplaces, fireplace flues, patios, balconies, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits, and the mechanical installations of the Condominium Buildings consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Individual Air Space Units; and
- (d) Any yards, sidewalks, walkways, paths, bicycle paths, grass, shrubbery, trees, driveways, private streets, parking areas, landscaping, gardens, swimming pool with dressing and shower facilities, and recreational areas and facilities, if any, located on the Property; and

(e) The tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus, installations and equipment of the Condominium Buildings existing for common use of the Owners; and

(f) In general, all other parts of the Project existing for the common uses of the Owners, and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

1.10 General Common Elements. "General Common Elements" shall mean and refer to all of the Common Elements except the Limited Common Elements.

1.11 Limited Common Elements. "Limited Common Elements" shall mean and refer to those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any patio, balcony, storage area, fireplace and flue adjacent to an Individual Air Space Unit, the interior stairway providing access to not less than one but not to all Condominium Units, and the utility, heating, and domestic hot water equipment contained within such Individual Air Space Unit. The patio, balcony, storage area, fireplace and flue which are accessible from, associated with, and which adjoin a particular Individual Air Space Unit, and the utility, heating, air conditioning and domestic hot water equipment associated therewith shall, without further reference thereto, be used in connection with such Individual Air Space Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance or other instrument.

1.12 Owner. "Owner" shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Condominium Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof). When a person who is an Owner conveys or otherwise assigns of record his fee simple title interest to a Condominium Unit, then, retroactive to the date of such conveyance or assignment, such person shall thereafter cease to be an Owner; provided, however, that the foregoing shall not in any way extinguish or otherwise void any unsatisfied obligation of such person which existed prior to or arose at the time of such conveyance or assignment, specifically including without limiting the generality of the foregoing, any unsatisfied obligation to pay Association assessments, charges or fees.

1.13 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk

and Recorder of the County of Arapahoe, Colorado, show the said Administrator as having the record title to the Condominium Unit.

1.14 First Mortgagee. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including the Administrator of Veterans Affairs, an Officer of the United States of America, or his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the Office of the Clerk and Recorder of the County of Arapahoe, Colorado, show the said Administrator as having the record title to the Condominium Unit), or any successor to the interest of any such person under such First Mortgage.

1.15 Project. "Project" shall mean and refer to the totality of all the Property, Condominium Buildings, Other Buildings, Condominium Units and Common Elements.

1.16 Condominium Map. "Condominium Map" shall mean and refer to the Condominium Map for Sable Cove Condominiums, recorded or to be recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado. More than one Condominium Map or supplement thereto may be recorded; and, without limiting the generality of the foregoing, separate Condominium Maps may be recorded for each Condominium Building and/or for each annexation to this Declaration pursuant to the provisions of Article XVII hereof. If more than one condominium map or supplements thereto are recorded, then the term "Condominium Map" shall collectively mean and refer to all of such condominium maps and supplements thereto.

## ARTICLE II

### DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

2.1 Division Into Condominium Units. The Project is hereby initially divided into twenty (20) separate Condominium Units as identified in Exhibit B attached hereto; provided, however, that such number of Condominium Units may be modified by annexations to this Declaration pursuant to the provisions of Article XVII hereof.

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

2.3 Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 2.3 may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs, expenses and all damages which the Association incurs in connection therewith.



ARTICLE III  
CONDOMINIUM MAP

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3.1 Recording. The initial Condominium Map, covering all or any portion of the Property, and each subsequent Condominium Map, if any, shall be recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado, prior to conveyance of the first Condominium Unit shown on such Condominium Map.

3.2 Content. Each Condominium Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the Condominium Building(s) in reference to the exterior boundaries of the land; the floor and elevation plans; the location of the Condominium Units within the Condominium Building(s), both horizontally and vertically; a designation of which Common Elements contained in a Condominium Building are Limited Common Elements; the Condominium Unit designations; and the Condominium Building designations. Each such Condominium Map shall contain the certificate of a registered professional engineer, licensed architect or registered land surveyor certifying that the Condominium Map substantially depicts the location and the horizontal and vertical measurements of the aforesaid information, and an affirmation that such Condominium Map was prepared subsequent to substantial completion of the improvements shown thereon. In interpreting the Condominium Map, the existing physical boundaries of each separate Condominium Unit, as constructed, shall be conclusively presumed to be its boundaries.

3.3 Amendments. Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend any Condominium Map in order to conform such Condominium Map to the actual location of any improvement(s) constructed, installed or erected on the Property, and to establish and designate any General Common Elements as Limited Common Elements. The rights accorded to Declarant in this Section 3.3 shall expire on January 1, 1989.

ARTICLE IV

OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS

4.1 Rights of Owner's Easements of Enjoyment and Rights of Ingress and Egress. Every Owner, his family members, guests and licensees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to his Condominium Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to his Condominium Unit for the purpose of getting to and from his Condominium Unit, parking areas, any recreational facilities and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Condominium Unit; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations contained in this Declaration and the Condominium Map; and

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility which is part of the Common Elements; and

(c) The right of the Association to suspend the voting rights and any and all rights of any Owner to the use of any recreational facilities for any period during which any Association assessment against such Owner or against such Owner's Condominium Unit remains unpaid, and, for any period not to exceed sixty (60) days, as a result of such Owner's infraction, or the infraction by any member of such Owner's family or such Owner's guests or invitees, of any rule or regulation of the Association; and

(d) The right of the Association to limit the number of guests or invitees of each Owner which may use any recreational or other facilities contained in the Common Elements; and

(e) The right of the Association to adopt, from time to time, rules and regulations concerning the Common Elements and any facilities located thereon, as the Association may determine is necessary or prudent; and

(f) The right but not the obligation of the Association, from time to time, to assign specific parking spaces or areas for the exclusive use of the Owners of particular Condominium Units or particular Condominium Buildings and to change the assignment thereof; provided, however, that each Condominium Unit shall have the right to use at least one parking space for the purpose of automobile parking and each Owner of that Condominium Unit shall have the right to use such parking space.

4.2 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Condominium Unit.

4.3 Major Recreational Facilities. It is anticipated that the only major recreational facilities which may be constructed by the Declarant on or as part of the Common Elements are a swimming pool with dressing and shower facilities. All major recreational facilities, if any, will be available to be used by all Owners and the members of their families, their guests and invitees, subject to the terms and provisions of Section 4.1 hereof.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

5.1 Membership. Every Owner of a Condominium Unit which is subject to assessment hereunder shall be a member of the Association and shall remain a member for the period of his ownership of a Condominium Unit; provided, however, that in no event shall the total number of Association votes which are cast with respect to such Condominium Unit exceed the total number of votes allocable thereto, as provided in Section 5.2 hereof. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

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

(a) Class A. The Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Condominium Unit owned. When more than one Owner holds an interest in the same Condominium Unit, all such Owners shall be members and the vote for such Condominium Unit shall be cast as the Owners thereof agree, but in no event shall

more than one vote per question be cast with respect to such Condominium Unit. If the Owners of such Condominium Unit do not agree as to the manner in which their vote should be cast when called upon to vote, then they shall be treated as having abstained.

(b) Class B. The Class B member(s) shall be Declarant, and shall be entitled to three votes for each Condominium Unit owned which is neither leased, nor rented, nor otherwise occupied as a residence. Leasing, renting, or allowing entry for residential occupancy shall terminate the Declarant's weighted voting advantage in relation to any Condominium Unit so leased, rented or occupied as a residence, and shall limit Declarant in relation to any such Condominium Units to the same voting rights as a Class A member. In addition, as more fully provided in Article XVII hereof, Declarant shall be entitled to cast three (3) votes for every Condominium Unit described in a Statement of Intention to Annex, upon the recordation thereof in the office of the Clerk and Recorder of Arapahoe County, Colorado. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) On January 1, 1989.

#### ARTICLE VI

#### THE ASSOCIATION

6.1 Management and Maintenance Duties and Duty to Establish Reserve Account. Subject to the rights of Owners as set forth in this Declaration, the Association shall:

(a) be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements (including facilities, furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner shall be responsible for exclusive maintenance and repair of all fixtures, equipment and utilities installed or located within such Owner's Individual Air Space Unit, including without limitation all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances, commencing at a point where such fixtures, equipment and utilities enter said Individual Air Space Unit, regardless of whether such fixtures, equipment and utilities are owned by said Owner or are Common Elements, and for keeping the Limited Common Elements, or portions thereof, designated for use solely in connection with his Condominium Unit, in a good, clean, sanitary and attractive condition;

(b) maintain and repair the exterior surfaces of the Condominium Buildings (including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, and the maintenance and repair of roofs, but excluding windows or window washing or any maintenance, repair or replacement as provided in Section 6.2 of this Declaration;

(c) maintain in good, clean, attractive and sanitary condition, order and repair, any recreational facilities which may become a part of the Common Elements;

(d) maintain in a proper, first class manner, all grass, trees, shrubbery, flowers and similar landscaping constituting part of the Common Elements; and

(e) establish and maintain, out of the monthly installments of the annual assessments, an adequate reserve fund for maintenance, repair and replacement of those Common Elements which must be maintained, repaired or replaced on a periodic basis.

The expenses, costs and fees of such management, operation, maintenance, repair, replacement and improvement by the Association, shall be part of the annual common expense assessment levied by the Association. Prior to the termination of the Class B membership, there shall be no capital additions, alterations or improvements of or to the General Common Elements or Limited Common Elements in any fiscal year which requires an expenditure by the Association in excess of an amount equal to ten percent (10%) of the Association's budget for that fiscal year, without the prior written approval of Owners owning Condominium Units representing two thirds (2/3) of the Condominium Units not owned by Declarant. Following the termination of the Class B membership, there shall be no capital additions, alterations or improvements of or to the General Common Elements or Limited Common Elements in any fiscal year which requires an expenditure by the Association in excess of an amount equal to ten percent (10%) of the Association's budget for that fiscal year, without the prior written approval of a majority of the Owners, except in the event of an emergency. The limitations set forth above shall not apply to any expenditures made by the Association for maintenance or repair of the Common Elements as set forth in this Section 6.1, or for repair in the event of damage, destruction, obsolescence or condemnation, as provided in Article XIII hereof, or for any improvements made by the Declarant in its construction of the Project.

#### 6.2 Owner's Negligence: Prohibition of Certain Activities.

(a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family or by an Owner's guests or invitees (such determination of negligence or willful act or omission, and the amount of the Owner's liability therefor, having been determined by the Association by a hearing after notice to the Owner), then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Condominium Unit and Owner, and the Association may proceed in accordance with Section 7.9 hereof.

(b) Further, nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner, or by any member of an Owner's family, or by a guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, the members of his family, his guests, invitees or contract purchasers, which is in violation of this Section 6.2(b). At its own initiative or upon the written request of any Owner (and, if the Association



determines that further action by it is proper), then after notice and a hearing by the Association, it shall enforce the foregoing indemnity in the same manner as provided in Section 10.2 hereof with respect to an Owner's indemnity against mechanic's liens.

### 6.3 Management Agreements and Other Contracts.

(a) The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent while there is a Class B Membership, shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Class B membership. All such management contracts entered into by the Association with a manager or managing agent while there is a Class B Membership shall be subject to review and approval by the Federal Housing Administration of the U. S. Department of Housing and Urban Development or the Veterans Administration. The preceding language in this Section 6.3(a) shall be contained, verbatim, in every such management agreement.

(b) Subject to the terms and provisions of Subsection (a) of this Section 6.3, any contracts, licenses or leases entered into by the Association while there is a Class B membership shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of the Class B membership, upon not more than ninety (90) days prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto without cause and without payment of a termination fee upon ninety (90) days' prior written notice. Notwithstanding anything to the contrary contained in this Section 6.3(b), the Association may enter into contracts, licenses and leases in violation of this Section 6.3(b) upon a waiver of any requirements contained herein by the Veterans Administration and the Federal National Mortgage Association.

6.4 Acquiring and Disposing of Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Condominium Unit. Transfer of a Condominium Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, provided that such use shall not hinder or encroach upon the lawful rights of other Owners.

6.5 Promulgation of Rules and Regulations. The Board of Directors of the Association may promulgate and enforce, including without limitation enforcement by levying and collecting fines for the violation thereof, reasonable rules and regulations governing the use of the Condominium Units and the Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The

Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations, to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto.

6.6 New Additions to Common Elements. Subject to the other provisions of this Declaration (specifically including, but not limited to, Section 7.6 hereof), the Association shall have the right to construct new additions to the Common Elements. Ownership of, and the common expenses for any such additions to the Common Elements, shall be apportioned among all Condominium Units in proportion to the respective undivided interest in the Common Elements appurtenant thereto, as shown in Exhibit B attached hereto, which undivided interests may be modified by annexations to this Declaration pursuant to the provisions of Article XVII hereof. Except with respect to any annexations to this Condominium Declaration pursuant to the provisions of Article XVII hereof, the construction of new additions to the Common Elements shall not affect an Owner by way of modification of his voting power in the Association.

## ARTICLE VII

### ASSESSMENTS

7.1 Personal Obligation for Assessments. All Owners, including Declarant and including any purchaser or its assigns under an executory land sales contract wherein the Administrator of Veterans Affairs is identified as the seller, covenants and agrees, and shall be personally obligated, to pay to the Association: (a) annual common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 7.6 of this Declaration; and (c) other charges, fees and assessments, including without limitation default assessments, as provided in this Declaration. All Owners of each Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees and charges attributable to their Condominium Unit. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by non-use of the Common Elements or the facilities contained therein or by abandonment or leasing of his Condominium Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. The charges for utilities which are master metered shall be included in the annual common expense assessments levied by the Association and shall be assessed equally against each Condominium Unit, subject to the rate of assessment against Condominium Units owned by Declarant as more fully provided in Section 7.5 hereof.

### 7.2 Amount of Maximum Annual Common Expense Assessments.

(a) The initial maximum annual common expense assessment for each Condominium Unit shall be the amount of Seven Hundred Forty-Four and no/100 Dollars (\$744.00), payable Sixty-two and no/100 Dollars (\$62.00) per month, multiplied by the number of months in such first annual common expense assessment year.

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(b) Commencing with the second assessment year and thereafter, the maximum annual common expense assessment shall be based upon the Association's advance budget of all cash requirements which may be needed by the Association to provide for the payment of all estimated expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and improvement of the Project, the Common Elements, and personal property owned by the Association, except as otherwise provided in this Declaration. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of common grounds; common lighting and heating; repairs and renovations of Common Elements; trash collection; wages; common water and sewer charges; taxes, except those certain taxes as more fully provided in Section 9.4 hereof, legal and accounting fees; management fees; costs, expenses and liabilities incurred by the Association's Board of Directors on behalf of the Owners under or by reason of this Declaration, the Articles of Incorporation or Bylaws of the Association; the creation of reasonable reserves, working and/or sinking funds; and any and all other costs and expenses relating to the Common Elements and/or the Project. Written notice of any change in the maximum annual common expense assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of the annual assessment year. In the event notice of an increase in the maximum annual common expense assessment is not provided, as aforesaid, it shall be presumed that the maximum annual common expense assessment will remain at the amount of the maximum annual common expense assessment then in effect.

(c) Subject to the terms and provisions of Section 7.5 hereof, relating to Declarant's obligation to subsidize the Association in the event of a shortfall in assessments, in the event the Board of Directors of the Association determines, at any time and from time to time, during any annual assessment period, that all important and essential functions of the Association may be adequately funded by levying a common expense assessment in an amount less than the maximum for that annual common expense assessment period, then, upon written notification thereof to each Owner, the Association may levy and collect such lesser common expense assessment. In the event the Board of Directors of the Association determines, at any time and from time to time, during any annual common expense assessment period in which the Association shall have levied a common expense assessment in an amount less than the maximum, that the rate of common expenses assessment then in effect is less than may be necessary to adequately fund all important and essential functions of the Association, then the Association may increase the common expense assessment against each Condominium Unit, upon written notification thereof to each Owner, to an amount not in excess of the maximum annual common expense assessment for that annual common expense assessment period.

7.3 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. Such reserves shall be funded through the monthly payments of the annual common expense assessments.

7.4 Date of Commencement of Annual Common Expense Assessments. The initial annual common expense assessment period shall commence on the date of conveyance by Declarant of the first Condominium Unit, and the second and each subsequent annual common expense assessment period shall correspond with the fiscal year of the Association. The annual common expense assessments shall be made due and payable in twelve (12) monthly installments per annum on such dates as determined by the Board, provided that the first annual common expense assessment period shall be

adjusted according to the number of months in the first annual common expense assessment year. Any Owner purchasing a Condominium Unit between installment due dates shall pay a pro rata share of the last installment due.

**7.5 Rate of Assessment.** Both annual common expense and special assessments shall be fixed at equal rates for all Condominium Units in sufficient amounts to meet the advance budget of the Association as provided in Section 7.2, hereof. Notwithstanding anything to the contrary contained in this Declaration, the annual common expense and special assessment rate set for each Condominium Unit owned by Declarant and which is neither leased, nor rented, nor otherwise occupied as a residence, nor which is owned by the Declarant and used as a model home in the marketing of Condominium Units, shall be fixed at twenty-five percent (25%) of the assessment rate for other Condominium Units; Condominium Units which are owned by Declarant and which are used as model homes, as aforesaid or which are leased, rented, or otherwise occupied as residences shall, commencing on the date of use as a model home or residential occupancy, as applicable, be assessed at the same rate as other Condominium Units. In the event that, prior to the termination of the Class B membership, assessments for annual common expenses, exclusive of those amounts necessary for an adequate reserve fund and for the working fund, fail to equal or exceed the actual expenses incurred by the Association during any common expense assessment period because of such partial Declarant assessment, then Declarant shall pay a sufficient amount, up to the amount of full parity on such assessments, to the Association to meet any such shortfall so long as (a) written notice must be given by the Association within sixty (60) days following the termination of the then-current fiscal year of the Association at the time of the termination of the Class B membership, but in no event more than one (1) year following the termination of such Class B membership, and (b) Declarant shall have no obligation for any such shortfall caused by expenditures for capital improvements or by any decrease in assessments, including without limitation the levying of any common expense assessment in an amount less than the maximum for any annual common expense assessment period, which amount is established subsequent to the termination of the Class B membership, unless the same has been previously approved in writing by Declarant; provided, however, that in the event there is more than one Declarant, as defined in this Declaration, each such Declarant shall pay its proportional share of such shortfall, as hereinabove provided, such proportional share to be based on the square footage of the Property owned by each Declarant compared to the total square footage of the Property owned by all Declarants.

**7.6 Special Assessments.** In addition to the assessments authorized above, the Association may at any time, from time to time, determine, levy and assess, a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Elements, specifically including without limitation any fixtures and personal property related thereto; provided, however, that such determination, levy and assessment shall be made by the Association's Board of Directors with the consent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for that purpose. Any such special assessment shall be levied and assessed equally against each Condominium Unit, provided that the Declarant shall be assessed at a rate which is twenty-five percent (25%) of the rate assessed against other Condominium Units, and shall be due and payable as determined by the Association's Board of Directors. As long as there is a



Class B membership, any special assessment for capital improvement(s) shall also require the written approval of the Veterans Administration or the Federal Housing Administration of the U. S. Department of Housing and Urban Development. "Capital Improvements", as used herein, shall mean the construction, erection or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction, reconstruction, erection, installation, maintenance, repair or replacement of Common Elements presently located on the Property or which may hereafter be constructed, erected or installed on the Property by Declarant in its development of the Project. Notice in writing setting forth the amount of such special assessment per Condominium Unit and the due date for payment thereof shall be given to the Owners not less than thirty (30) days prior to such due date.

7.7 Notice of Quorum for Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of voting on a special assessment pursuant to Section 7.6 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Lien for Assessments. The assessments, charges and fees, including, without limitation, any default assessment arising under the provisions of Section 6.2, 10.2 or 11.9 hereof, as well as any monthly or other installments thereof, provided for in this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorney's fees which may arise under the provisions of this Declaration), shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Condominium Unit to which such assessments apply. To evidence such lien upon a Condominium Unit, the Association may prepare a written lien notice setting forth a description of the Condominium Unit, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner or Owners thereof and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors of the Association or by an officer of the Association, and shall be recorded in the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado. The recording of any written lien notice shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon each Condominium Unit and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed.

7.9 Effect of Non-Payment of Assessments. Any assessment charge or fee provided for in this Declaration, including, without limitation, any default assessment arising under the provisions of Section 6.2, 10.2 or 11.9 hereof, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, shall bear interest at the rate of eighteen percent (18%) per annum, and the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Condominium Unit. An action at law or in equity by the Association

against an Owner to recover a money judgment for unpaid assessments, charges or fees, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. In the event that any such assessment, charge or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or crossclaim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Condominium Unit, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, and all late charges and accrued interest under this Section 7.9, the Association's costs, expenses and reasonable attorney's fees incurred for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Condominium Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Condominium Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

7.10 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Condominium Unit shall not affect the lien for assessments, charges or fees levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, cancellation or forfeiture of any such Veterans Administration executory land sales contract, shall extinguish the lien of Association assessments which became due prior to any such sale or transfer or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such Veterans Administration executory land sales contract; provided, however, that any such assessments, charges or fees which are extinguished as provided herein may be reallocated and assessed to all Condominium Units as a common expense. Further, no First Mortgagee shall be liable for any unpaid assessments, charges or fees, or portion thereof, accruing against a Condominium Unit prior to the time such First Mortgagee takes title to such Condominium Unit pursuant to any remedy provided in its First Mortgage or by law. No such sale, transfer, foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such Veterans Administration executory land sales contract, shall relieve any Owner from liability for any assessments, charges or fees, or any portion thereof, thereafter becoming due, nor such Owner's Condominium Unit from the lien thereof.

7.11 Subordination of Association's Lien for Assessments. The Association's perpetual lien on a Condominium Unit for assessments, charges and fees, provided for herein, shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Condominium Unit subject to this Declaration shall constitute a waiver of the homestead exemption against all such assessments, charges or fees. Said assessment lien shall also be superior to

all other liens and encumbrances except: (a) real property ad valorem tax and special assessment liens duly imposed by a Colorado governmental subdivision, and (b) the lien of any First Mortgage recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado, prior to the date such assessment became due, or the lien of any executory land sales contract wherein the Administrator of Veterans Affairs is seller, whether owned by the said Administrator or his assigns, and whether recorded or not, encumbering any Condominium Unit, including any and all advances made by a First Mortgagee or executory land sales contract seller, and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's lien.

**7.12 Certificate of Status of Assessments.** Upon receipt of a written request from any Owner, any First Mortgagee of a Condominium Unit or any other person, and upon payment of a reasonable fee, but in no event less than Twenty-Five Dollars (\$25.00), the Association, through its Board of Directors or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the subject Condominium Unit, the amount of the current monthly common expense assessment and the date that such assessment becomes due, the due date of any special assessment then existing against the Condominium Unit, the amount of any credit for any advanced payments of assessments and for prepaid items (such as insurance premiums), and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

**7.13 Working Fund.** The Association or Declarant shall require the first private Owner of any Condominium Unit who purchases that Condominium Unit from Declarant to make, at closing, a non-refundable payment to the Association in an amount equal to two (2) times the monthly installment of the maximum annual common expense assessment for that period, which sum shall be held, without interest, by the Association in a segregated account as a Working Fund. Said payment shall be held for the use and benefit of the Association as it deems desirable, including but not limited to insuring that the Board of Directors of the Association will have cash available to meet unforeseen expenditures, or acquiring additional equipment or services deemed necessary or desirable by the Board. Such deposit shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon the transfer of his Condominium Unit, an Owner shall be entitled to a credit from his transferee in an amount equal to that portion of the first private Owner's payment into the Working Fund which remains in the account, which amount shall be calculated by multiplying such first private Owner's payment to the Working Fund by a fraction, the numerator of which is equal to the amount in the fund as of the date of the Association's last financial statement (or, if readily available, such amount as of a more current date) and the denominator of which is equal to the total amount which would have been in such account had there been no expenditures as of such date.

**7.14. First Mortgagees May Pay Assessments and Cure Defaults.** In the event any assessment, or monthly or other installment thereof, on any Condominium Unit shall not be paid by the Owner thereof within ten (10) days after the same is due, or if a default by any Owner of any provision of this Condominium Declaration, the Articles of Incorporation or Bylaws of the Association, shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such assessment or monthly

or other installment thereof, together with any other amounts secured by the Association's lien created by this Article VII, and may (but shall not be required to) cure any such default.

7.15 Liens. In accordance with the requirements of the Colorado Condominium Ownership Act, as amended, Declarant hereby declares that additional liens, other than mechanics' liens, assessment liens or tax liens may be obtained against the Common Elements or any Owners' interest therein.

#### ARTICLE VIII

##### INSURANCE

8.1 Duty to Obtain and Maintain Insurance. The Association shall obtain and maintain at all times, to the extent that such coverage is reasonably available, considering the availability, cost and risk coverage provided by such insurance, the following types of insurance:

(a) A multi-peril policy with extended coverage and standard all-risk endorsements, including coverage for fire, vandalism and malicious mischief, as well as such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use, insuring the Project and all Common Elements, but excluding coverage on furniture, furnishings or other personal property supplied or installed by an Owner; said policy shall provide coverage in an amount equal to One Hundred percent (100%) of full replacement cost without deduction for depreciation. All policies shall contain a standard noncontributory mortgagee clause in favor of each First Mortgagee of a Condominium Unit, which shall provide that any loss thereunder shall be payable to the Association for the use and benefit of First Mortgagees as their interests may appear.

(b) If the Project is located in an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage has been made available under the National Flood Insurance Program ("NFIP"), a "master" or "blanket" policy of flood insurance on the Condominium Buildings, Other Buildings and any other property covered by the required form of policy (herein "insurable property") in an amount deemed appropriate, but not less than the lesser of:

(i) the maximum coverage available under the NFIP for all Condominium Buildings, Other Buildings and other insurable property within any portion of the Project located within a designated flood hazard area; or

(ii) one hundred percent (100%) of current "replacement cost" of all Condominium Buildings, Other Buildings and other insurable property within any portion of the Project located within a designated flood hazard area.

Any policy of insurance carried by the Association pursuant to this Section 8.1(b) shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(c) Public liability and property damage insurance providing coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, covering claims for bodily injury, personal injury and property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project, as well as such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.



(d) Workmen's Compensation, employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms as may now or hereafter be required by law.

(e) A policy providing fidelity coverage or fidelity bonds in an amount equal to the estimated maximum amount of funds, including reserves, in the custody of the Association at any given time, but in no event less than the amount of three (3) months' aggregate assessments, plus reserves, to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall name the Association as an obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(f) The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

All policies of insurance carried by the Association shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association, and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of each Condominium Unit. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Condominium Unit upon written request. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (by name and Condominium Unit number designation) and First Mortgagee. Further, the Association may require the insurance company or companies providing the insurance coverages described herein to provide each Owner and First Mortgagee with a Certificate of Insurance in regard to such Owner's Condominium Unit.

8.2 Insurance Obtained by Owners. Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper and other items of personalty, or other property belonging to an Owner, and public liability coverage within each Condominium Unit, shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Board of Directors and/or the managing agent of the Association shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

8.3 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

## ARTICLE IX

CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

9.1 Contracts Entered into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and/or this Declaration in the office of the Clerk and Recorder of Arapahoe County, Colorado, may legally describe such Condominium Unit in the manner set forth in Section 9.2 hereof and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in Arapahoe County, Colorado, such description shall be conclusively presumed to describe the corresponding Condominium Unit shown on the Condominium Map and such Condominium Unit shall be subject in all respects to this Declaration.

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

Condominium Unit \_\_\_\_\_ in Condominium Building \_\_\_\_\_, SABLE COVE CONDOMINIUMS, according to the Condominium Map thereof, recorded on \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_, in the records of the office of the Clerk and Recorder of Arapahoe County, Colorado, and as defined and described in the Condominium Declaration for SABLE COVE CONDOMINIUMS, recorded on \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_, in said records.

9.3 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit which legally describes said Condominium Unit in the manner set forth in Section 9.2 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Unit, but also the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to ownership of a Condominium Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Condominium Unit and the use of all the General Common Elements as well as all of the Limited Common Elements appurtenant to said Condominium Unit, all as more fully provided in this Declaration.

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

ARTICLE X

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MECHANIC'S LIENS

10.1 Mechanic's Liens. No labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent or at the request of the Owner thereof, his agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Condominium Unit of any other Owner, the Common Elements, or any part thereof, for labor performed or for materials furnished in work on the first Owner's Condominium Unit.

10.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 10.1 hereof by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Condominium Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, of the amount to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 10.2 and such amount to be indemnified shall automatically become a default assessment determined and levied against such Condominium Unit, and the Association may proceed in accordance with Section 7.9 hereof.

ARTICLE XI

RESTRICTIVE COVENANTS

11.1 Residential Use. Subject to Section 11.2 hereof, Condominium Units shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use, and no structures of a temporary character, trailer, shack, garage, barn or other outbuilding shall be used or permitted to be kept or stored on any portion of the Project at any time, either temporarily or permanently.

11.2 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Condominium Units and development of the Project, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units, sales offices, parking areas and lighting facilities. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Project in such a way as to unreasonably

interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Condominium Unit, parking areas, any recreational facility existing upon the Common Elements, and to a public right of way.

**11.3 Household Pets.** No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Project; provided, however, that a reasonable number of dogs, cats or other household pets may be kept in any Condominium Unit, so long as they are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to other Owners. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of the provisions of this Section 11.3, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s).

**11.4 Use of Common Elements.** Subject to the rights of Declarant as provided in Section 12.8 of this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in or removed from the Common Elements without the prior written approval of the Board of Directors of the Association.

**11.5 Exterior Changes.** Except for those improvements erected or installed by Declarant in its construction and completion of the Project, no exterior additions to, alterations or decoration of any Condominium Building, including but not limited to any structural alterations to any Condominium Unit or Common Element, nor any changes in fences, hedges, walls or other structures, nor installation of window mounted air conditioning units or any exterior television, radio or other communication antennas of any type, shall be commenced, erected, placed or maintained, without the prior written approval of the Board of Directors of the Association.

**11.6 Signs and Advertising.** Except as hereinafter provided, no signs, advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Condominium Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with its sale or rental of Condominium Units, or otherwise in connection with its development of the Project, shall be permissible, provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Common Elements, their Condominium Units, or their ingress and egress from a public way to the Common Elements or their Condominium Units.

**11.7 Commercial Vehicles.** Subject to Sections 11.2 and 12.3 hereof, no commercial vehicles and no trucks shall be parked within the Project except while temporarily engaged in transport to or from a Condominium Unit, and except such construction vehicles and equipment which may be necessary or incidental to the construction of improvements within the Property by Declarant. For the purposes of this Section 11.7, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.



**11.8 Abandoned or Inoperable Vehicles.** No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or any vehicle which does not have an operable propulsion system installed therein; provided, however, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Owners while on vacation or during a period of illness. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

**11.9 Prohibition of Increases in Insurable Risks and Certain Activities.** Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of any insurance on the Project, or any part thereof, or increase in the rate of any insurance on the Project, or any part thereof, over what the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, the members of his family, his guests, invitees or contract purchasers, which is in violation of this Section 11.9. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then after notice and a hearing by the Association, it shall enforce the foregoing indemnity in the same manner as provided in Section 10.2 hereof with respect to an Owner's indemnity against mechanic's liens.

**11.10 Leases.** The term "lease", as used herein, shall include any agreement for the leasing or rental of a Condominium Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

(a) All leases shall be in writing.

(b) All leases shall provide that the terms of the lease and the lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

(c) No lease shall be for less than thirty (30) days.

**11.11 Maintenance of Interiors.** Each Owner shall keep the interior of his Condominium Unit, including, without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and in a good state of repair.

11.12 Nuisances. No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

11.13 Garbage Collection. Each Owner shall deposit the garbage collected within his Individual Air Space Unit into containers of such dimensions and at such locations as the Association shall designate in its published rules and regulations.

## ARTICLE XII

### EASEMENTS

12.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Property, or any portion thereof, and as shown on the recorded Condominium Map.

12.2 Encroachments. In the event that any portion of the Common Elements encroaches upon any Condominium Unit(s) or in the event that any portion of a Condominium Unit encroaches upon any other Condominium Unit(s) or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of a Condominium Building, or (ii) alteration or repair to the Common Elements, or (iii) repair or restoration of one or more Condominium Buildings and/or Condominium Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Condominium Units, Condominium Buildings or other improvements comprising part of the Common Elements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Condominium Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Condominium Units, the actual location of a Condominium Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Condominium Unit as indicated on the Condominium Map.

12.3 Utility Easements. There is hereby created a general easement upon, across, over, in and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone and electrical. By virtue of this

easement, it shall be expressly permissible and proper for the companies providing electrical and telephone services to erect and maintain the necessary poles and other necessary telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Condominium Buildings. Notwithstanding anything to the contrary contained in this Section 12.3, no water, sewer, gas, telephone or electrical lines, systems or facilities may be installed or relocated on the Property except as initially approved by Declarant during the development of the Project, or thereafter as approved by the Association. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant shall have, and is hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof; provided, however, that such power shall cease and determine upon conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant). The easement provided for in this Section 12.3 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Property.

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

**12.5 Maintenance Easement.** An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

**12.6 Drainage Easement.** An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

**12.7 Easements of Access for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within Individual Air Space Units or may be conveniently accessible only through Individual Air Space Units. The Owners of other Individual Air Space Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Individual Air Space Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. The Association shall also have such right, independent of any agency relationship. Subject to the provisions of Section 6.2 hereof, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any Individual Air Space Unit at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours' notice to the occupants of the Individual Air Space Unit wherein such repairs are to be made, except where the

occupants have no objections to earlier entry for repairs. In emergency situations the occupants of the affected Individual Air Space Unit shall be warned of impending entry as early as is reasonably possible.

12.8 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the complete construction of the Project; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, his family members, guests or invitees to or of his Condominium Unit or the General Common Elements.

12.9 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article XII, even though no specific reference to such easements or to this Article XII appears in the instrument for such conveyance.

#### ARTICLE XIII

##### DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

13.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Condominium Units, Condominium Buildings, Common Elements or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or Grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is herein-after provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact shall be appointed to deal with the Project upon its destruction, damage, obsolescence or condemnation. Such appointment must be approved by the Owners representing an aggregate ownership interest of sixty-six and two-thirds percent (66-2/3%) or more of the Common Elements and at least seventy-five percent (75%) of the First Mortgagees of Condominium Units.

13.2 Damage or Destruction. "Repair and reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being recon-



structed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration or replacement, in accordance with the provisions hereinafter set forth:

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

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment which, notwithstanding anything to the contrary contained in Section 7.6 hereof, shall be made without a vote of the Owners, against all of the Owners and their Condominium Units. Such special assessment shall be levied equally against each Condominium Unit and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s), using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit, and may be enforced and collected as provided in Section 7.9 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(c) Notwithstanding the foregoing provision of this Section 13.2 and subject to the provisions of Article XVIII hereof, relating to the approval of specific percentages of Owners and/or First Mortgagees, the Owners may agree not to repair or reconstruct the improvements; in such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of Arapahoe County, Colorado, setting forth such facts and upon the recordation of such notice executed by the Association President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and Bylaws of the Association. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided into portions by the Association, each portion representing one Condominium Unit, with the amount of each portion to be reasonably, and in good faith, allocated by the Board of Directors of the Association to each Condominium Unit based on the comparative value of the Condominium Units as they existed immediately prior to the damage and destruction, using such evidence of the appraised values as is then available, including but not limited to recent MAI appraisals of the Property, portions thereof, or comparable property. Such divided proceeds shall be paid into separate accounts, with each such account in the name of the Association

and further identified by the Condominium Unit designation and the name of the Owner(s) thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any First Mortgage encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from sale of the Property. Such apportionment shall be determined as hereinabove provided. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any First Mortgage;
- (2) For payment of taxes and special assessment liens in favor of any assessing entity and the customary expenses of sale;
- (3) For payment of unpaid Association common expense assessments, other assessments, charges and fees, and all costs, expenses and fees incurred by the Association;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

### 13.3. Obsolescence.

(a) Subject to the provisions of Article XVIII hereof, the Owners may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded in Arapahoe County, Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid common expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as provided in Section 7.9 hereof.

(b) Subject to the provisions of Article XVIII hereof, relating to the approval of specified percentages of Owners and/or First Mortgages, the Owners may agree that the Condominium Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the office of the Clerk and Recorder of Arapahoe County, Colorado, a notice setting forth such facts, and upon the recording of such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and Bylaws of the Association. The sale proceeds shall be divided by the Board of Directors of the Association as more fully provided in Section 13.2(c) hereof and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner(s) thereof. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 13.2(c) hereof.

13.4 Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 13.4 shall apply:

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

(b) In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association as more fully provided in Section 13.2(c) hereof; provided, however, that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof.

(c) Subject to the provisions of Article XVIII hereof, relating to the approval of specified percentages of Owners and/or First Mortgagees, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the General Common Elements shall be apportioned among the Owners on the basis of each Owner's undivided interest in Common Elements; (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Condominium Unit, including but not limited to the Limited Common Elements appurtenant thereto, and to the improvements an Owner has made within his Condominium Unit, shall be apportioned to the particular Condominium Unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Condominium Unit shall be based on the comparative values of the affected Condominium Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including but not limited to recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof.

(d) In the event a partial taking results in the taking of a complete Condominium Unit, the Owner(s) thereof shall

automatically cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Condominium Declaration according to the principles employed in this Condominium Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Condominium Units for amendment of this Condominium Declaration as provided in Section 15.1 and Article XVIII hereof. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.2 hereof.

#### ARTICLE XIV

##### BURDENS AND BENEFITS OF DECLARATION

14.1 Covenants Running with Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

14.2 Binding Upon and Inure to the Successors. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity.

#### ARTICLE XV

##### AMENDMENT OF DECLARATION

15.1 Amendment. Subject to Article XVIII hereof, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by an instrument (which instrument may be executed in identical counterparts, in which event all of such counterparts shall be taken as one and the same instrument of amendment) approved as follows:

(a) This Declaration may be amended by an instrument signed by not less than fifty-one percent (51%) of each class of Members.

(b) The foregoing approvals required by Section 15.1(a) hereof shall not be required for, and with respect to, any annexations to this Declaration by the Declarant pursuant to the provisions of Article XVII hereof.

15.2 Amendment by Declarant. Notwithstanding the provisions of Section 15.1, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to the following sentence of this



Section 15.2, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of the Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws of the Association shall be made, if at all, by Declarant prior to termination of the Class B membership as provided in Section 5.2 hereof; and each such amendment must contain thereon the written approval of the Veterans Administration or the Federal Housing Administration of the U.S. Department of Housing and Urban Development.

15.3 Recording of Amendments. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

#### ARTICLE XVI

##### VETERANS ADMINISTRATION OR FEDERAL HOUSING ADMINISTRATION APPROVAL

16.1 Amendments, Dissolutions, Mergers, Dedications, Etc. Until such time as the Class B membership has terminated, in accordance with the provisions of Section 5.2 hereof, the prior written approval of the Veterans Administration or the Federal Housing Administration of the U. S. Department of Housing and Urban Development shall be required for the following:

- (a) Amendment of the Declaration;
- (b) Amendment of the Articles of Incorporation or the Bylaws of the Association;
- (c) Annexation of additional properties to this Declaration;
- (d) Dedication or mortgaging of all or any part of the Common Elements by the Declarant; or
- (e) Merger, consolidation or dissolution of the Association.

#### ARTICLE XVII

##### ANNEXATIONS

17.1 Annexations by Declarant. Subject only to the prior written approval of the Veterans Administration or Federal Housing Administration of the U. S. Department of Housing and Urban Development, as set forth in Section 16.1(c) hereof, except that the approval of the Federal National Mortgage Association may also be required as hereinafter provided, the Declarant shall have and hereby specifically reserves the right until January 1, 1989 to annex to the Property from time to time any portion or portions of the property described in Exhibit C attached hereto and incorporated herein by this reference, and to subject such additional property to the terms and provisions of this Declaration. Each such annexation shall be effected, if at all, in two stages: (a) first, by the recording in Arapahoe County, Colorado of a Statement of Intention to Annex, which document shall declare the number of additional Condominium Units which Declarant intends to annex to this Declaration, the undivided interest in the Common Elements which shall be appurtenant to each such Condominium Unit upon the annexation thereof, shall provide that, upon the recordation thereof, each Condominium Unit enumerated in such document shall be and constitute a "Condominium Unit," as defined in this Declaration, but only for purposes of voting the Association membership votes appurtenant

thereto and determining the total number of Association votes, as provided in Article V hereof, and for purposes of the payment of assessments and the obligations incident thereto, as provided in Article VII hereof, and shall further provide that, upon the recording of a supplemental Condominium Map in the office of the Clerk and Recorder of Arapahoe County, Colorado, showing the Condominium Units described in such Statement of Intention to Annex, all of the property described in such supplemental Condominium Map shall be annexed for all purposes to this Declaration; and (b) second, upon the recording of such supplemental Condominium Map, as aforesaid, all of the property described therein shall thereupon, for all purposes, be annexed to this Declaration and be subject to all provisions contained herein. Improvements which are constructed by Declarant on any property annexed by Declarant shall be consistent, in terms of quality of construction, with improvements constructed on the Property by Declarant prior to such annexation, unless construction of improvements inconsistent in quality, as aforesaid, has been approved by the Federal National Mortgage Association. Annexation, merger or consolidation, if any, will increase the number of members of the Association. Any Supplemental Condominium Map recorded pursuant to this Section 17.1 shall be recorded prior to the conveyance by Declarant of the first Condominium Unit in the real property described therein.

17.2 Modification of Undivided Interests. Upon the Declarant's annexation of any additional property to this Declaration as provided in Section 17.1 hereof, the undivided interest in the Common Elements appurtenant to each Condominium Unit (including all Common Elements located on the Property described in Exhibit A attached hereto, all Common Elements located on the additional property contained in such annexation and all Common Elements contained in any other property annexed to this Declaration prior to such annexation) shall automatically be reduced to a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Condominium Units then subject to this Declaration; and the undivided interest in the Common Elements appurtenant to each Condominium Unit described in and annexed by such supplemental Condominium Map shall be the same fraction. Such reduction of undivided interest in the Common Elements appurtenant to a Condominium Unit shall be automatic and no further documentation need be filed of record or further action need be taken by the Declarant, any Owner or any First Mortgagee to reflect such modification in undivided interests. The maximum number of additional Condominium Units which may be contained in properties annexed to this Declaration shall not exceed three hundred twenty (320) and, accordingly, the minimum undivided interest in Common Elements appurtenant to a Condominium Unit shall be 1/340. (As an example only and as a means of illustrating the foregoing modifications of undivided interests, if the number of Condominium Units initially subject to this Declaration is twenty (20) and if the Declarant shall file a supplemental Condominium Map for the annexation of additional property to this Declaration containing twenty (20) Condominium Units, then the undivided interest in the Common Elements appurtenant to each of the twenty (20) Condominium Units enumerated in Exhibit B attached hereto shall automatically be reduced from 1/20 to 1/40, and the undivided interest in the Common Elements appurtenant to each of the twenty (20) Condominium Units in such annexed property shall also be 1/40.)

17.3 New Additions of General and Limited Common Elements. Annexations to this Declaration pursuant to this Article XVII will contain new additions to the General and Limited Common Elements, which additions may contain any or all of the types of General and Limited Common Elements described in

Sections 1.9, 1.10 and 1.11 hereof. Notwithstanding any such annexation, each Owner (regardless of whether such Owner is the owner of a Condominium Unit enumerated in Exhibit B attached hereto or is the owner of a Condominium Unit contained in annexed property) shall remain fully liable in accordance with Article VII hereof with respect to his obligations for the payment of assessments, charges and fees of the Association, including the expenses for such new General and Limited Common Elements and new recreational facilities, costs and fees, if any. Annexation of Additional Condominium Units to this Declaration will increase the number of members of the Association and, hence, lessen the relative voting power of each Owner.

#### ARTICLE XVIII

##### FIRST MORTGAGEES

18.1 Member and First Mortgagee Approval. Notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members and sixty-seven percent (67%) of the First Mortgagees of Condominium Units (based on one vote for each First Mortgage owned).

(1) seek to abandon or terminate the Project, whether by act or omission, except:

(A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or

(B) in the case of a taking by condemnation or eminent domain, in which event the provisions of Section 13.4 of this Declaration shall control; or

(C) for amendments to this Declaration, the Articles of Incorporation or By-Laws of the Association made as a result of destruction, damage or condemnation of the Property or improvements thereon;

(2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of:

(A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(B) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

(3) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes consistent with the intended use of the Common Elements and reasonably necessary or useful for the proper maintenance or operation of the Project);

(4) partition or subdivide any Condominium Unit; or

(5) use hazard insurance proceeds for losses to any condominium property (whether to Condominium Units or Common Elements) for other than the repair, replacement or reconstruction of such condominium property, except as may be provided by statute in the case of substantial loss to such Condominium Units and/or Common Elements.

(b) unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members, and fifty-one percent (51%) of the First Mortgagees of Condominium Units (based upon one vote for each First Mortgage owned):

(1) add or amend any material provisions of this Declaration, the Articles of Incorporation or By-Laws of the Association, which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request to approve shall be deemed to have approved such request, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (1) shall not apply to amendments to this Declaration, the Articles of Incorporation or By-Laws of the Association, made as a result of destruction, damage or condemnation of the Project or the improvements thereon, or to a reallocation of interests in the Common Elements which might occur pursuant to any plan of expansion or phased development contained in this Declaration:

(A) voting;

(B) assessments, assessment liens or subordination of such liens;

(C) reserves for maintenance, repair and replacement of those elements of the Common Elements which must be maintained, repaired or replaced on a periodic basis;

(D) insurance, including but not limited to fidelity bonds;

(E) rights to use of the Common Elements;

(F) responsibility for maintenance and repair of any portion of the Project;

(G) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(H) boundaries of any Condominium Unit;

(I) interests in the Common Elements;

(J) convertibility of Condominium Units into Common Elements or of Common Elements into Condominium Units;

(K) leasing of Condominium Units;

(L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Condominium Unit;



(M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

(2) effectuate any decision to terminate professional management and assume self-management of the Association, when professional management has previously been required by any First Mortgagee, insurer or guarantor of a First Mortgage.

(c) unless it has obtained the prior written consent of at least fifty-one percent (51%) of the First Mortgagees of Condominium Units (based upon one vote for each First Mortgage owned):

(1) restore or repair the Project, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Project and the construction of improvements thereon;

(2) terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project.

18.2 Notice of Action. Subject to the registration requirements of Section 19.5 hereof, a First Mortgagee shall be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Project or any Condominium Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(b) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Condominium Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or By-Laws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of thirty (30) days;

(c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XVIII.

18.3 Audit. At any time after that date on which the Project has been expanded, pursuant to Section 17.1 hereof, to include fifty (50) or more Condominium Units, the Association shall provide an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Condominium Unit, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor made by any such First Mortgagee, insurer or guarantor of such a First Mortgage. So long as the Project includes less than fifty (50) Condominium Units, fifty-one percent (51%) or more of the First Mortgagees of Condominium Units shall be entitled to have such an audited financial statement prepared at their expense if one is not otherwise available.

18.4 Association Books and Records. The Association shall make available to Owners, First Mortgagees of Condominium Units and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, books, records and financial statements of the Association. The Association shall make available to prospective purchasers of Condominium Units current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, and the most recent annual audited financial statement, if such is prepared, of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

#### ARTICLE XIX

##### MISCELLANEOUS

19.1 Period of Condominium Ownership. The condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is terminated in any manner provided in this Declaration.

19.2 Supplement to Condominium Ownership Act. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado, as it may be amended from time to time, and to all other applicable provisions of law.

19.3 Conveyance of Condominium Units. All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time-to-time.

19.4 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons, including the Association, violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto.

19.5 Registration of Mailing Address. Each Owner and First Mortgagee, or any insurer or guarantor of a First Mortgage, shall register his mailing address with the Association and notices or demands intended to be served upon an Owner, First Mortgagee, or insurer or guarantor of a First Mortgage, shall be delivered by messenger or sent by mail, postage prepaid, addressed in the name of such person or entity at such registered address.

19.6 Non-Waiver. Failure by the Declarant, the Association, any Owner, First Mortgagee, person, or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

19.7 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion

thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

19.8 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

19.9 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

19.10 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or By-Laws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and By-Laws of the Association, the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of SEPTEMBER, 1982.



By: [Signature]  
Division Secretary

U.S. HOME CORPORATION,  
a Delaware corporation

By: [Signature]  
Division President

STATE OF COLORADO

COUNTY OF BOULDER

The above and foregoing CONDOMINIUM DECLARATION FOR SABLE COVE CONDOMINIUMS was subscribed and sworn to before me this 14th day of September, A.D., 1982, by James B. Lenhoff as President and Robert D. Mahan as Secretary of U.S. HOME CORPORATION.

Witness my hand and official seal.

My commission expires: April 17, 1985

[Signature]  
Notary Public  
Address: 725 Glendale Place  
Deane, Colorado 80514

