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FIRST AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
HIGHLINE CLUB

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is dated as of the 5th day of December, 1984.

WHEREAS, on June 15, 1984 Michael E. Thomas Development Co., Inc., executed a Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club ("Original Declaration") which was recorded in the office of the Clerk and Recorder of the City and County of Denver on July 18, 1984 in Book 3150 at Page 392; and

WHEREAS, Declarant intends to construct a total of sixty (60) single family residential homes (instead of the twenty-one (21) residential homes erroneously stated in the Original Declaration) on the real property described on Exhibit A to this First Amended and Restated Declaration; and

WHEREAS, after the recording of the Original Declaration the Declarant sold certain lots subject to the Original Declaration ("Sold Lots") some of which lots are also subject to First Mortgages (as hereinafter defined); and

WHEREAS, the correct corporate name of the Declarant and the owner of all the Lots other than the Sold Lots was originally Michael E. Thomas Development Company, a Michigan corporation, and has subsequently changed its name to The Thomas Group, Inc.; and

WHEREAS, the Original Declaration provides that the Original Declaration may be amended with the consent of owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Lots, seventy-five (75%) or more the First Mortgagees (based on one vote for each such mortgage so held) and the Declarant; and

WHEREAS, the Declarant, the First Mortgagee on the Lots owned by the Declarant and the undersigned Owners and First Mortgagees of the Sold Lots together represent an aggregate ownership interest of seventy-five percent (75%) or more of Lots and seventy-five percent (75%) or more of the First Mortgagees and such undersigned parties agree to amend and restate the Declaration as hereinafter set forth.

NOW, THEREFORE, the Original Declaration is hereby replaced in its entirety by this First Amended and Restated Declaration and the undersigned do hereby declare that from and after the recording of this First Amended and Restated Declaration the terms, covenants, conditions, easements, restrictions, uses, limitations and obligations set forth herein shall be deemed to run with the land, shall be a benefit and burden to the Declarant, its successors and assigns and any persons acquiring or owning an interest in the real property and improvements described in Exhibit A hereto, their successors and assigns and shall replace in its entirety the Original Declaration which from and after the recording of this First Amended and Restated Declaration shall be null and void and of no further force and effect.

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

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(a) "Association" shall mean The Highline Club Owners Association, a Colorado non-profit corporation;

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

(c) "Building" shall mean an entire detached structure comprising two or more Homes and shall include the Garages that are a part of such Homes;

(d) "Common Area" or "Common Areas" shall mean and refer to all parts of the Property except the Lots, and any other real property now or hereafter owned by the Association and all improvements now or hereafter constructed or installed thereon;

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

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

(g) "Driveway" shall mean that portion of a Lot that is paved and provides ingress and egress from the Private Streets to the Garage.

(h) "First Mortgagee" shall mean the holder of a first deed of trust or first mortgage (collectively referred to as "First Mortgage") encumbering a Lot;

(i) "Garage" shall mean that portion of a Lot that is designed for use as an enclosed garage.

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

(k) "Lot" shall mean and refer to a parcel of real property designated as a Lot on the Plat of Highline Club and any supplements thereto or amendments thereof, and all improvements constructed thereon;

(l) "Owner" means a person, firm, corporation, partnership, association, or other legal entity or any combination thereof owning one or more Lots;

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

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

(o) "Patio" shall mean and refer to that portion of a Lot designated as a Patio on the Plat of Highline Club;

(p) "Plat" shall mean and refer to the Final Plat of Highline Club Subdivision recorded on June 8, 1984 in Book 29 at Pages 91 and 92 of the records of the Clerk and Recorder of the City and County of Denver, State of Colorado and all supplements thereto and amendments thereof;

(q) "Private Streets" shall mean the portion of the Common Area with a paved or improved surface that are designed for vehicular traffic and provide vehicular access to and among the Lots and to the public street system.

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

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

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

3. Conveyance Subject to Covenants. All easements, restrictions, covenants, reservations, liens, charges, rights, benefits, burdens and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall be binding upon any person having an interest or a stake in the Property or any part thereof and their respective heirs, successors, representatives and assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust or any other instrument to a Lot, shall be deemed to affect that Lot, together with the Home constructed thereon, all rights of ownership of such Lot, and all limitations on such ownership as described in this Declaration.

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

5. Restrictions on Use.

(a) All Lots shall be used and occupied principally for residential purposes by the Owner, by the Owner's family or by the Owner's guests and tenants; provided that one home office will be permitted in each Home if the same complies with the following: (i) no chattels, goods, wares or merchandise shall be commercially created, displayed, exchanged, stored or sold; (ii) the office shall be operated entirely within the Home (but not within the garage); (iii) the office shall be operated by a person whose principal residence is in the Home; (iv) there shall be no more than one person employed by or associated with the office who does not maintain his principal residence in the Home; (v) there shall be no separate entrance to the office from the outside of the Home; (vi) the office shall not utilize more than 300 square feet of floor area; (vii) the office shall not create any external evidence of the operation of an office; and (viii) there shall be no signs used in

connection with the office except such signs (if any) that the Board may approve in writing. In addition, Declarant, his employees, representatives, agents and contractors may maintain business and sales offices, construction facilities, model units, and such other facilities on the Property and Common Area and shall have an easement and right of access over and across the Common Areas for said purpose.

(b) All use and occupancy of the Lots and the Common Areas shall be governed by the Rules of the Association. The Board, on behalf of the Association, may promulgate and enforce rules governing the use, maintenance, and appearance of the Common Areas.

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

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

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

(f) Unsightly objects or materials and swing sets shall not be placed upon the exterior portions of a Lot, or upon the Common Areas. No heating or cooling devices of any kind which protrude beyond the exterior perimeter of the windows in the Home shall be installed or maintained in a Home; provided, however, central air conditioning units may be installed on the Lot provided they are not installed in front of the Home. No part of a Lot or the Common Areas may be used as a dumping ground for garbage, trash or other waste and the same shall be disposed of in a sanitary manner. All equipment for the storage or disposal of garbage, trash or waste shall be kept in a clean and sanitary condition in the Garage or on the Patio. Garbage, trash or waste shall be disposed of in such a manner as may be established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is prohibited. No materials, objects or refuse piles shall be stored upon the exterior portion of any Lot. The Association shall have the right to enter upon a Lot to remove any refuse piles or other unsightly objects and materials at the expense of the Owner, following due notice to such Owner and the failure of the Owner to comply with this Paragraph. Such entry shall not be deemed a trespass. The limitations and requirements of this Paragraph shall pertain to all lots, whether or not a fence is erected around the perimeter of the Lot or any portion thereof.

(g) No vehicles shall be parked on the Property except in Garages in Driveways or in a Parking Space. No maintenance of vehicles shall be performed on the Property except in a Garage, and no vehicles shall be placed on jackstands or blocks outside of a Garage except on a temporary basis for emer-

gency repair. The Board may pass Rules further limiting where vehicles may be parked on Driveways and the types of vehicles permitted to be parked outside of a Garage, provided that such Rules shall permit at least two (2) vehicles to be parked in a Driveway. Other than permitted vehicles, no items of any kind shall be placed or stored on Driveways.

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

(i) No Home or Lot may be partitioned or subdivided without the prior written approval of the Board. No trees, shrubs, or other improvements shall be removed from a Lot and no exterior structure, antenna, or any other exterior addition or alteration to a Lot shall be permitted without the prior written approval of the Board which may impose regulations applicable to all Homes, provided that Declarant shall not be required to obtain approval for improvements constructed on the Property within five (5) years after the recording of this Declaration.

(j) No repair, reconstruction or repainting of the exterior portion of the improvements on a Lot except the interior surfaces of fences and Patios, shall be permitted without the approval of the Board.

(k) Privacy fences may be placed along the perimeter of a Lot only with the prior written approval of the Board. Landscaping, irrigation, cleaning, maintenance, repair and replacement of landscaping, ground cover, trees and shrubs on a Lot partially or wholly enclosed by a privacy fence and maintenance of the privacy fence itself shall be the responsibility of the Owner, notwithstanding any provision of this Declaration to the contrary, provided that any such landscaping shall be approved by the Board or be consistent with applicable rules of the Board, if such rules have been adopted by the Board, and provided further that such Owner shall still be responsible for his pro rata share of all of the Assessments including those attributable to the landscaping, irrigation, cleaning, maintenance, repair and replacement of the other Lots. No privacy fence shall be constructed so as to block any sprinkler and interfere with the irrigation of the Common Area or another Lot. The Owner of a Lot on which a privacy fence is constructed shall give the Association access to his Lot as reasonably required for the Association to perform its duties pursuant to this Declaration.

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

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

6. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a Lot with the consent or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be the basis for filing a lien against the Lot or Home of any other Owner not expressly consenting to or requesting the same or against the Common Areas. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Common Areas or any other Owner's Lot for construction performed or for labor, material, services or other products incorporated in or otherwise attributable to the Owner's Lot. No labor performed or materials furnished and incorporated in the Common Area with the consent or at the request of the Association or its agent, contractor or subcontractor shall be the basis of filing a lien against a Lot.

7. Easements.

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

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

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

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

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

(f) The easements and rights herein created for an Owner shall be deemed appurtenant to the Lot of that Owner and all conveyances and instruments affecting title to a Lot

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shall be deemed to grant and reserve the easements provided herein as though fully set forth in said document.

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

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

9. The Maintenance of Homes.

(a) Each Owner shall be responsible for the maintenance, repair and replacement of the interior portions of his Home, the repair and replacement of all windows and glass whether the same be interior or exterior to the Home, and for the Patio. Each Owner shall keep his Patio in good order and repair, free from trash and waste. Each Owner shall be responsible for those portions of the water, sewer, electrical and other utility systems that are inside his Home from the point they enter the exterior wall of his Home. An Owner shall not paint or modify any exterior surface of his Home, or a Patio or fence other than to render it to its condition as constructed by Declarant, without the prior written consent of the Board. In the event an Owner constructs a privacy fence, such Owner shall be responsible for additional maintenance as provided for in Paragraph 5(k).

(b) The Association shall provide for the maintenance, repair and replacement of the exterior surfaces of the Home and those portions of the Lot upon which no structure has been erected exclusive of the Patio. The maintenance and repair to be provided by the Association shall include the following:

(i) maintenance, repair and replacement of those portions of the water, sewer, electrical and other utility systems that are located on the Common Area and the portions located on the exterior portions of the Lots;

(ii) maintenance, repair and replacement of roofs, steps, Patio fences, balconies and outer surfaces of exterior walls, but not including glass;

(iii) painting, repainting, staining and resurfacing the exteriors of Homes;

(iv) landscaping and irrigation on those portions of a Lot, exclusive of Patios, upon which no structure is erected, except that such landscaping and irrigation shall be the responsibility of the Owner if a privacy fence erected as provided in paragraph 5(k);

(v) maintenance, repair and resurfacing of Driveways;

(vi) water service, including the provision of water to each Home and all Common Areas and the installation, maintenance and repair of all taps, lines and related equipment, except those portions lying inside a Home which shall be the responsibility of the Owner.

(c) Gas and electric service shall be separately metered to each Home and payment therefor shall be the responsibility of the Owner. Water service to the Homes, Lots and Common Area shall be on a common meter or meters. Notwithstanding an Owner's actual water usage, the Owner of each Lot shall pay an equal share of the total water charges for all of the Homes, Lots and Common Area. Such charges shall be included in the assessments against the Owners and Lots.

(d) Each Owner shall make reasonable inspection of his Lot and Home and immediately inform the Association of any maintenance, repair or replacement required.

(e) Notwithstanding any other provision contained in this Agreement, the cost of any repair, replacement, maintenance or other work which would normally be the responsibility of the Association (whether on the Common Area, the Lot involved or another Lot) but which was necessitated by the negligence or abuse of an Owner, a tenant or any other resident of a Home, or guest or invitee of such Owner, tenant or resident shall be the sole responsibility of the Owner of the Home involved and the Association may provide for or perform the necessary work and may levy an Extraordinary Assessment against the Owner and the Lot with respect thereto.

10. Failure of an Owner to Maintain. If an Owner fails to perform his obligation to maintain his Lot in accordance with all of the provisions of this Declaration, the Board may give such Owner written Notice of such failure, including in the Notice the item or items which require maintenance, repair, replacement or removal. The Owner shall have ten (10) days after the delivery of such Notice to commence the maintenance, repair, replacement or removal of such items and to diligently pursue the same to completion. In the event an Owner fails to commence such action within the ten (10) day period or fails to diligently pursue the same, the Association may provide and pay for the maintenance, repair, replacement or removal of the items

specified in the Notice. The Owner shall be liable to the Association for the cost of such maintenance, repair, replacement or removal, together with interest on the amount expended by the Association at the rate of eighteen percent (18%) per annum (or such other rate provided for in the Rules or By-Laws) and the Association may levy an extraordinary assessment against such Owner's Lot to recover the payment thereof. The Association may take any action under this paragraph without prior written notice, if in the opinion of the Board, such action must be done immediately in order to prevent damage to the Lot involved, to any other Lot or to the Common Areas.

11. Party Walls.

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

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

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

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(a) To collect monthly or periodic assessments from the Owners; to execute and record statements of lien for delinquent assessments; to collect delinquent assessments by suit or otherwise; and to collect such other assessments as are authorized herein.

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

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

(d) To grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary for proper operation of the project.

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

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

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

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

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

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

(k) To deposit funds in the hands of the Board which are not necessary for immediate disbursements in insured

savings accounts of National or State Banks or Savings and Loan institutions earning the standard rate of interest.

(l) To file legal protest, formal or informal with authorities against the granting by authorities of zoning ordinances, rezonings, approvals, or variances concerning property within a reasonable proximity of the Property which might affect the value of the Common Areas or a significant portion of the Property.

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

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

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

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

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

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

14. Voting Rights in Association. There shall be two classes of Members of the Association, Class A Members and a Class B Member.

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

(b) Declarant shall be the Class B Member and shall be entitled to 5 votes to be exercised by a designated representative thereof for each Lot owned by Declarant. Declarant shall not be a Class A Member so long as it is a Class B Member, but upon termination of its Class B membership it shall be a Class A Member for each Lot then owned by it. Class B Membership shall terminate upon the earlier to occur of either (i) four (4) months after the sale by Declarant of forty-five (45) Lots or (ii) three (3) years after the first conveyance of a Lot to an Owner by the Declarant; provided, however, that Declarant

may elect to terminate the Class B membership at any earlier time.

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

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

16. Parking Spaces. Parking Spaces located in the Common Area shall be used exclusively for the short-term parking of automobiles belonging to guests of Owners. The Parking Spaces shall not be used for parking vehicles owned or used by Owners, tenants or other residents of the Lots. The Association may from time to time change the number and location of such Parking Spaces. Each Owner shall park automobiles or other motor vehicles owned or used by such Owner exclusively on such Owner's Driveway or in his Garage.

17. Assessments.

(a) General. Each Owner, by acceptance of a deed, agrees to pay to the Association assessments or charges established from time to time as herein provided. Such assessments, together with any late charge as may be determined from time to time by the Board, interest at the rate of 18% per annum (or such other rate provided for in the Rules or the By-Laws), the cost of collection, and attorney's fees shall be charged to the Lots and shall be a continuing lien upon the property against which each assessment is made in the event of delinquency in payment. Such assessment, together with interest, late charge, court costs, and reasonable attorney's fees also shall be the personal obligation of the person who was the Owner, or the persons jointly and severally who were the Owners at the time when the assessment was made. Assessments against each Lot shall commence as of the date of the transfer of title to such Lot by Declarant to a purchaser thereof, provided that until all Lots subject to this Declaration have been sold, Declarant agrees to be responsible to cover any deficit or shortage that may arise during any year of the Project's initial period of operation. In determining whether a deficit or shortage exists, that portion of the assessments that was allocated as a reserve for future replacements or future expenditures shall not be used to pay current expenses (other than those for which the reserve was established) but shall be maintained as a reserve fund.

The assessments levied by the Association against the Lots (except Extraordinary Assessments) shall be used exclusively for the construction, management, maintenance and care of the Common Areas, maintenance, repair, and replacement of Homes and Lots that the Association is responsible for under the provisions of paragraph 9(b), and for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration, including but not limited to: the provision of services and facilities related to the use and enjoyment of the Common Areas; the provision of gas, electricity, water and sewage disposal to the Common Areas; the furnishing of water to the Homes; the maintenance, repair and replacement of

utilities, paving, lighting, walkways, and other facilities furnished to the Common Area; the maintenance, repair and replacement of the Private Streets and the Driveways; provisions for snow removal, grounds upkeep, sprinkler systems, landscaping, garbage pickup, water and sewer service, administration expenses, working capital, real property taxes and special assessments levied against the Common Areas, rental and acquisition of real or personal property; and such expenses as the Association, in its opinion, shall determine to be necessary and desirable including the establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including but not limited to an adequate reserve fund for the acquisition, construction, maintenance, replacement and repair of those portions of the Common Areas which must be replaced on a periodic basis, to be charged against the Owners as part of their regular assessment.

(b) Annual Assessments. Annual assessments may be made for the purposes of providing funds for the normal operations of the Association, including but not limited to maintenance and repair of the Common Areas and Lots, salaries, costs of operating the Association, cost of acquiring real or personal property, insurance premiums, management fees, office costs, reasonable reserves, amounts necessary to pay deficits or debts, including debts incurred in connection with or for the purpose of financing the acquisition of real or personal property, incurred by the Association, water and sewer rents and fees, gas and electricity furnished to the Common Area, real estate taxes and other special assessments on the Common Areas, and funds for any other purpose or purposes of the Association provided for herein except for capital improvements with a cost in excess of Ten Thousand Dollars (\$10,000.00). The total amount of money required to be raised by annual assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of deficits from prior fiscal years, providing reasonable reserves, and providing a reasonable carry-over reserve for the following fiscal year. To determine the amount required to be raised by annual assessments for any fiscal year, the Board shall prepare an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, the estimated income and other funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by annual assessments to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of such budget to any Owner and, upon request, to any First Mortgagee. Based on such budget, the Board of Directors shall determine the amount of the annual assessments for each Lot for such fiscal period.

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

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

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

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

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

(e) Special Assessment. Special assessments may be made for the purposes of raising funds for capital improvements in excess of Ten Thousand Dollars (\$10,000.00) and for any other Association purpose for which annual assessments may not or have not been made. Whether to make a special assessment and the amount thereof shall be determined by the Board; provided that no special assessment shall be valid unless approved by a majority vote of the members present and voting, in person or by proxy, at any annual meeting of the members of the Association or at any special meeting thereof called for the purpose of considering such special assessment.

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

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

(h) Working Capital Accounts. The Association shall levy and collect from each Owner at the closing when the Owner acquires a Lot, a sum equal to two (2) times the estimated monthly assessment apportioned to the Lot for the year in which the closing occurs. Such sum may be used for working capital, or for any other lawful purpose. Within sixty (60) days after the transfer of title of the first Lot to an Owner by the Declarant, the Declarant shall pay each unsold Lot's share of the working capital fund to the Association. Upon subsequent sales of such Lots by the Declarant, the purchaser shall pay to

Declarant the Lot's share of the working capital assessment and the Declarant shall transfer the reserve account to the purchaser. Similarly on future sales of the Lots by Owners the amount in the reserve account may be transferred by the seller to the buyer but in no event shall the Association be obligated to refund the deposit upon such sales.

18. Lien for Nonpayment of Assessment for Common Expenses. All sums assessed against a Lot (including interest thereon) shall constitute a lien on such Lot superior to all other liens and encumbrances except:

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

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

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

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

Any encumbrancer holding a lien on a Lot may pay any unpaid assessments payable with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrances.

19. Liability for Common Expenses Upon Transfer or Encumbrance of a Lot. Upon the written request of any Owner or any mortgagee or prospective mortgagee or grantee of a Lot, and upon payment of a reasonable fee not to exceed Fifteen Dollars (\$15.00), the Association, by its managing agent or Board, shall issue a written statement setting forth the amount of any unpaid assessment with respect to the subject Lot, the amount of the current monthly assessment and the date such assessment becomes due, and the amount of credit for advanced or for prepaid items which statement shall be conclusive upon the Association in favor of all persons who rely thereupon in good faith. Unless

such request for a statement of indebtedness is complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the interest of the person making such request.

First Mortgagees of Lots which acquire title to the Lot as a result of obtaining a deed in lieu of foreclosure and purchasers of Lots at foreclosure sale foreclosed pursuant to any First Mortgage shall not be liable for any Assessments except those accruing during the period when such mortgagee or purchaser is the Owner of said Lot. The lien for any assessment shall be junior and subordinate to any recorded First Mortgage placed on a Lot in good faith and for value and perfected by recording in the office of the County Clerk and Recorder of the City and County of Denver, Colorado prior to the time a notice of lien is recorded in said office pursuant to paragraph 18 hereof.

20. Insurance.

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

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

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

(iii) Fidelity bonds to protect against dishonest acts on the part of Association officers, directors, trustees and employees, and all others who handle or are responsible for handling Association funds. Such bonds shall (1) name the Association as a named insured; (2) be written in an amount equal to the greater of the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force and the sum of the Association's reserve funds and three (3) months' assessments on all Lots; (3) contain waivers of any defense based upon the exclusion of persons serving without compensation from any definition of "employee" or similar expression; (4) provide that no modification in any substantial manner, or cancellation shall be had without ten (10) days prior written notice to the Association and the holders of the First Mortgages on the Lots.

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

(b) The Board shall obtain and maintain at all times fire insurance and extended coverage insurance policies issued in an amount of the estimated replacement value of the improvements constructed upon the Lots and the Common Areas, including fixtures and building service equipment and common personal property and supplies owned by the Association and any fixtures within the Homes. Such insurance shall cover all such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other townhome projects similar in construction, design and use. The insurance

covering loss or damage to the Homes shall be carried in blanket policy form naming the Association as the insured, shall identify the interest of each Owner and shall contain a standard, noncontributory mortgagee clause in favor of each mortgagee of a Lot. The insurance covering loss or damage to the Common Areas shall name the Association as the insured. The managing agent or Board shall, upon request of any First Mortgagee, furnish a copy of the blanket policy and the separate certificate identifying the interests of the mortgagor and mortgagee and of the policy insuring the improvements to the Common Areas. Each Owner shall be responsible for insurance on the contents of the Owner's Home and personal property therein.

(c) All policies of insurance required to be carried hereunder shall be issued by responsible insurance companies authorized to do business in the State of Colorado, and shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect, and shall further provide that the policy cannot be cancelled, materially altered or allowed to lapse except upon ten days prior written notice to each Owner and First Mortgagee.

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

(e) In the event of substantial damage to, or destruction of, any part of the Common Areas or to one or more Homes, any distribution of insurance proceeds hereunder shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the holder of a First Mortgage on a Lot with respect to any such distribution; provided however, that nothing in this paragraph shall be construed to deny the Association the right to apply any such proceeds to repair or replace damaged portions of the Common Areas or Homes as herein-after set forth. The Association shall notify the appropriate First Mortgagees forthwith whenever damage to any Home exceeds One Thousand Dollars (\$1000.00) or the damage to the Common Areas exceeds Ten Thousand Dollars (\$10,000.00).

21. Appointment of Attorney-in-Fact. Each Owner by his acceptance of the deed or other conveyance vesting in him an interest in a Lot does irrevocably constitute and appoint the

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

22. Damage and Destruction.

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

(b) If destruction or damage is sustained to more than sixty percent (60%) of the replacement value of a Building, (exclusive of foundation) and if the Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the total number of Homes then subject to this Declaration, the Declarant (provided Declarant's consent shall only be necessary within five (5) years after this Declaration is first recorded) and the First Mortgagees of all Homes in such Building determine not to rebuild the Building, the Lots on which such Homes are located shall be sold by the Association, as attorney-in-fact for the Owners of such Building, subject to the provisions contained in this Declaration, the Plat, the Articles of Incorporation and the By-Laws, and the improvements shall be razed and the land restored to an attractive condition as ap-

proved by the Board. Any future improvements constructed on such Lots shall be substantially similar in design to that of the original Building or improvements or such other design as is approved in writing by the Board and the First Mortgagees of at least seventy-five percent (75%) of the Lots then subject to this Declaration. The insurance settlement proceeds shall be divided by the Association according to each Lot Owner's interest in the Building (as such interests appear on the policy or policies), and such divided proceeds shall be paid into a separate account in the name of the Association, and shall be further identified by the number of the Lot and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such funds, without contribution from one account to another, toward the partial or full payment of the lien for the benefit of any First Mortgagee against the Lot represented by such separate account. There shall be added to each such account the Owner's share of the proceeds derived from the sale of the Building apportioned on an equal basis. The total funds of each account shall be used and disbursed (without contribution from one account to another) by the Association as attorney-in-fact in the following order:

(i) For payment of taxes and special assessment liens in favor of any assessing entity;

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

(iii) for payment of unpaid Assessments;

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

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

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

23. Condemnation. If all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof the following provisions shall apply:

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

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

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

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

24. Mortgagee's Rights.

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

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

(ii) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners; provided, however, the holders of First Mortgages on fifty-one percent (51%) of the Lots subject to this Declaration shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available;

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

(iv) Notice of any proposed action that requires the consent of a specified percentage of the First Mortgagees;

(v) Notice of substantial damage to or destruction of any Lot, or any part of the Common Areas;

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

(vii) Notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of a Lot on which such First Mortgagee holds a First Mortgage.

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

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

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

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

(d) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

25. Revocation or Amendment to Declaration, Articles and Bylaws. Except as provided in paragraph 34, this Declaration shall not be revoked nor shall any of the provisions herein be amended unless Owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the Lots,

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seventy-five percent (75%) or more of the First Mortgagees (based upon one vote for each such mortgage so held) and the Declarant (provided that Declarant's consent shall only be required prior to termination of its Class B Membership) consent and agree to such revocation or amendment by instrument(s) duly recorded except that the specific voting provisions in paragraph 22 shall be applicable in the event of damage or destruction. No material amendments shall be made to the Articles of Incorporation or the Bylaws of the Association unless agreed to by Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more of the Lots, fifty-one percent (51%) or more of the First Mortgagees (based upon one vote for each such mortgage so held) and the Declarant (provided that Declarant's consent shall only be required prior to the termination of its Class B Membership). For purposes of the foregoing provision a change to any of the following is considered as material: (a) voting rights; (b) assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance repair and replacement of Common Area; (d) responsibility for maintenance and repairs; (e) reallocation of interest in the general or limited Common Areas or rights to their use; (f) boundaries of any unit; (g) convertibility of unit into Common Area or vice versa; (h) expansion or contraction of the Project, or the addition or annexation or withdrawal of property to or from the Project; (i) insurance or fidelity bonds; (j) leasing of units; (k) imposition of any restriction on an Owner's right to sell or transfer a Lot; (l) a decision by the Association to establish self-management when professional management had been required previously by an eligible First Mortgagee; (m) restoration or repair of the Project (after a hazard, damage or partial condemnation) in a manner other than specified in the documents; (n) any actions to terminate the legal status of the Project after substantial destruction or condemnation occurs; or (o) any provisions that expressly benefit First Mortgagees or the insureds or guarantors of First Mortgages. Any amendment to the Articles or Bylaws which is not a material change, such as correction of a technical error or clarification of a statement, shall require the same approval as required for material changes, but the approval of a First Mortgagee shall be deemed given if it fails to submit a response to any written proposal for a non-material amendment within thirty (30) days after notice of the amendment is given to it.

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

27. Personal Property For Common Use. Prior to the first conveyance of any Lot, Declarant shall execute and deliver a bill of sale to the Association, transferring all items of personal property located on the Property furnished by the

Declarant, which property is intended for the common use and enjoyment of all Owners. The Association shall hold title to such property for the use and enjoyment of the Owners. No Owner shall have any other interest and right thereto and all such right and interest shall absolutely terminate upon the Owner's termination of possession or ownership of his Lot.

28. Mailing of Notices. All notices, demands or other correspondence intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of such Owner at the Lot number of such Owner, or at such other address as an Owner notifies the Association of in writing from time to time. All notices, demands or other correspondence intended to be served upon the managing agent or the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to The Highline Club Owners Association, 9200 Cherry Creek S. Drive, Denver, Colorado 80231, or such other address as may be given from time to time. All notices, demands or other correspondence shall be deemed given upon deposit in the United States mails, as hereinabove specified.

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

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

31. Acceptance of Provisions of All Documents. The conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration and the Articles of Incorporation, the By-Laws and Rules and Regulations of the Association, and shall be binding upon each grantee or encumbrancer, its successors and assigns without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

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32. Sales and Construction Facilities. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain for a period of seven (7) years after the recording of this Declaration or such earlier date when sixty (60) Homes have been completed and sold and all improvements have been constructed on the Common Area, upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of the Lots, including without limitation, a business office, storage area, construction yards, signs, model Homes, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the Common Areas and the Lots as in Declarant's discretion may be necessary to complete the construction of improvements to the Property. Nothing contained in this Declaration shall obligate Declarant to construct Homes or any other improvements on all sixty (60) lots.

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

34. Special Amendments. Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration and/or the Articles of Incorporation and/or By-Laws of the Association at any time and from time to time which amends this Declaration and/or the Articles of Incorporation and/or By-Laws of the Association:

(a) To comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities; and/or

(b) To induce any such agencies or entities to make, purchase, sell, insure or guarantee First Mortgages covering the Lots.

25834

10094

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, deed of trust, other evidence of obligation or other instrument affecting a Lot and acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declarant to make, execute and record Special Amendments. No Special Amendment made by Declarant shall affect or impair a First Mortgage upon a Lot or any warranties made by an Owner or holder of a First Mortgage in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the First Mortgage on such Owner's Lot.

35. General.

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

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

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date set forth above.

Signatures on attached pages.

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 6 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

[Signature]
Signature of Owner[Print Name]
Print Name of Owner[Signature]
Signature of Additional Owner (if any)[Print Name]
Print Name of Additional Owner (if any)[Signature]
Name of Holder of First MortgageBy _____
Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me on this 24 day of December, 1984 by Paul J. [Signature]
[Signature]

[Signature]
Notary Public

My Commission Expires My Commission expires March 28, 1987
Address: 3773 Cherry Creek Drive North
Suite 600 Denver, CO 80209

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____
as _____ of _____

Notary Public

My Commission Expires: _____
Address: _____

27134

10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 10 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

C. Alan Peppers
Signature of Owner

C. Alan Peppers
Print Name of Owner

Signature of Additional
Owner (if any)

Print Name of Additional Owner
(if any)

Municipal Credit Union of Denver
Name of Holder of
First Mortgage

By Carla Hedrick Assistant Manager
Signature Title
Carla Hedrick

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me
this 7th day of December, 1984 by
C. Alan Peppers

Charles R. Kell
Notary Public

My Commission Expires: _____
Address: 1075 Acoma Street
Denver, Colorado 80204

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF Colorado)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me
this 7th day of December, 1984 by Carla Hedrick
as Assistant Manager of Municipal Credit Union of Denver

Charles R. Kell
Notary Public

My Commission Expires: _____
Address: 1075 Acoma Street
Denver, Colorado 80204

28/34

10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 12 Highline Club Subdivision hereby consent to and adopt the foregoing first Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

James P. Crager
Signature of Owner

JAMES P. CRAGER
Print Name of Owner

James P. Crager
Signature of Additional Owner (if any)

JAMES P. CRAGER
Print Name of Additional Owner (if any)

Highline Club Mortgage Corp
Name of Holder of First Mortgage

By _____
Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 14th day of December, 1984 by James P. Crager

James P. Crager
Notary Public

My Commission Expires: 11/12/87
Address: 1735 E. Harvard Ave. #202
Denver, CO

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____ as _____ of _____.

Notary Public

My Commission Expires: _____
Address: _____

32734
01105

The undersigned Declarant hereby consents to and adopts the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

List of Lots owned by Declarant:

Lots 1 through 5, 7, 8, 9, 11, 14, 15, 17 and 19 through 60.

THE THOMAS GROUP, INC.,
a Michigan corporation,

By [Signature]
President

ATTEST:
[Signature]
Secretary

STATE OF Colorado)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 24th day of August, 1985 by Michael E. Thomas, as President and Debra Thomas, as Secretary of The Thomas Group, Inc., a Michigan corporation.

[Signature]
Notary Public

My Commission Expires: _____
Address: _____
My Commission expires March 28, 1987
3773 Cherry Creek Drive North
Suite 800 Denver, CO 80209

02-20-85

3/1/34

10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 12 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

Terence D Seals
Signature of Owner

Terence D Seals
Print Name of Owner

Rebecca J Seals
Signature of Additional Owner (if any)

Rebecca J Seals
Print Name of Additional Owner (if any)

Name of Holder of First Mortgage

By _____
Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 5th day of December, 1984 by Terence D Seals
Rebecca J Seals

James H. Beckwith
Notary Public

My Commission Expires: My Commission expires March 28, 1987
Address: 3773 Cherry Creek Drive North
Suite 800 Denver, CO 80209

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____
as _____ of _____

Notary Public

My Commission Expires: _____
Address: _____

346734
10105

The undersigned First Mortgagee hereby consents to and adopts the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

List of Lots on which First Mortgagee holds a First Mortgage:

Lots 1 through 5, 7, 8, 9, 11, 14, 15, 17 and 19 through 60.

AMERICAN FEDERAL SAVINGS
AND LOAN ASSOCIATION OF
COLORADO, a federal savings
and loan association

By David L. Chaney

David L. Chaney, Vice President

STATE OF COLORADO)

COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 30th day of January, 1985 by David L. Chaney, as Vice President of American Federal Savings and Loan Association of Colorado, a federal savings and loan association.

David L. Chaney
Notary Public

My Commission Expires: 7-7-86

Address: 740 E. Citadel Drive
Colorado Springs, Co 80909

24/34

10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 13 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

Colleen C. Moser
Signature of Owner

LEOGAN A. MOSER
Print Name of Owner

Leogana A. Moser
Signature of Additional Owner (if any)

Leogana A. Moser
Print Name of Additional Owner (if any)

MLTRCREDIT SERVICE MORTGAGE CORP
Name of Holder of First Mortgage

By _____
Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF San Juan) ss.

The foregoing instrument was acknowledged before me this 24th day of September, 1984 by Colleen C. Moser

Leogana A. Moser
Notary Public

My Commission Expires: 4/30/87
Address: 1000 1/2 Ave. N. Durango, CO 81301

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____ as _____ of _____

Notary Public

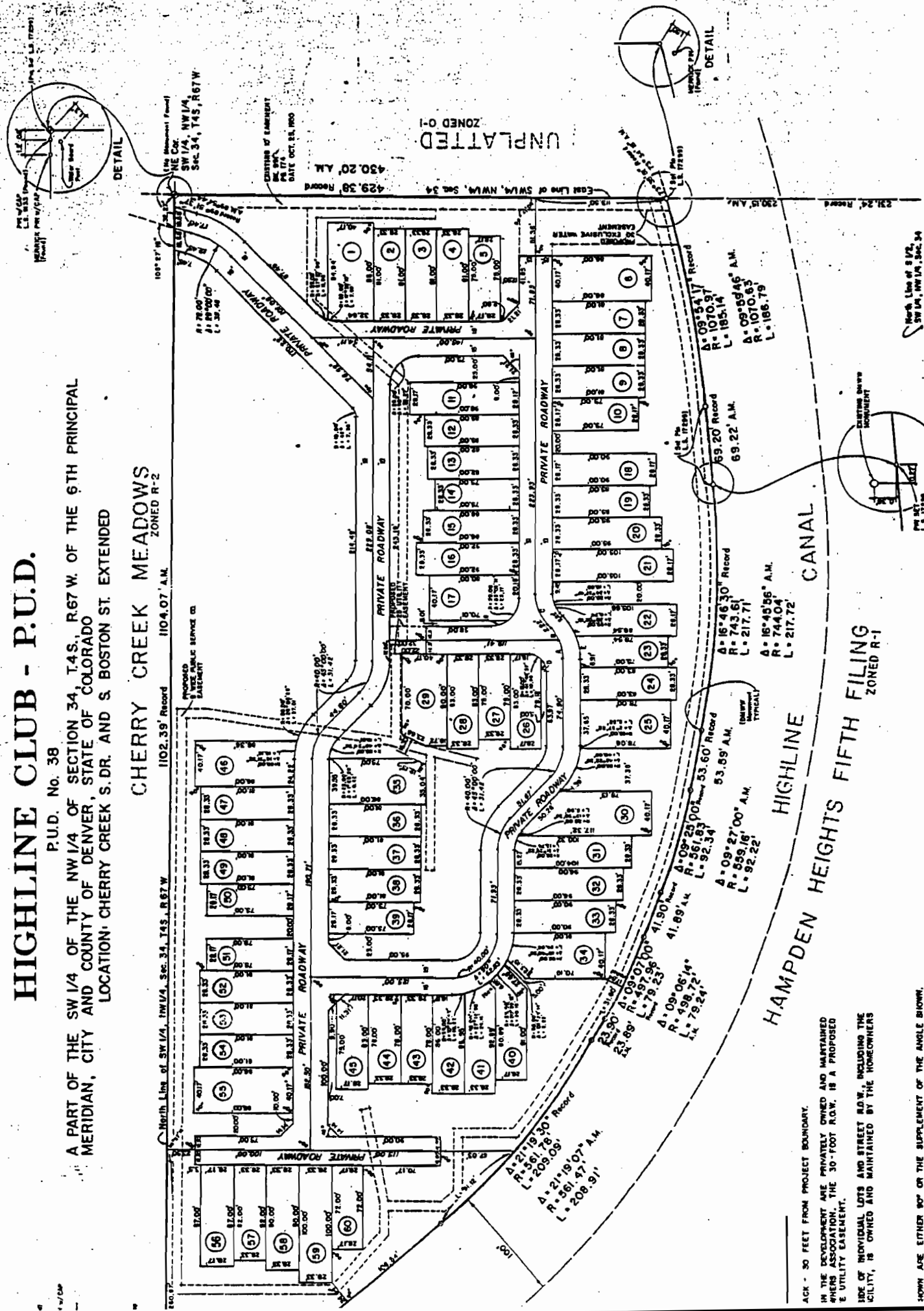
My Commission Expires: _____
Address: _____

HIGHLINE CLUB - P.U.D.

P.U.D. No. 38

A PART OF THE SW 1/4 OF THE NW 1/4 OF SECTION 34, T.4S., R.67 W. OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO
LOCATION: CHERRY CREEK S.D.R. AND S. BOSTON ST. EXTENDED

CHERRY CREEK MEADOWS
ZONED R-2



ACK - 50 FEET FROM PROJECT BOUNDARY.

IN THE DEVELOPMENT ARE PRIVATELY OWNED AND MAINTAINED OWNERS ASSOCIATION. THE 30-FOOT R.O.W. IS A PROPOSED E UTILITY EASEMENT.

SIDE OF INDIVIDUAL LOTS AND STREET R.O.W., INCLUDING THE FACILITY, IS OWNED AND MAINTAINED BY THE HOMEOWNERS

WOMEN AGE EITHER NOW OR THE SUPPLEMENT OF THE ANGEL BROWN.

330/34

10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 118 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

Signature of Owner

Print Name of Owner

Signature of Additional Owner (if any)

Print Name of Additional Owner (if any)

Name of Holder of First Mortgage

By Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 1984 by _____

Notary Public

My Commission Expires: _____
Address: _____

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 20 day of Dec., 1984 by _____ as _____ of _____
Notary Public

My Commission Expires: _____
Address: _____

-----Original Message-----

From: Barbara Coffey [mailto:bcoffey121@comcast.net]

Sent: Thursday, April 22, 2004 2:01 PM

To: PHILIP FAULKNER; Richard Carson; 37-Lucente; Rebecca 03-Gregg; 07-Bain; 09-Larson

Subject: Re: Unit #10 Short term parking

Hi Phil:

I agree with you. A temporary guest parking permit seems appropriate in this situation for Unit # 10.

I am sure that Tony thinks that something is unfair when he looks down the street and sees Michael Schaefer parallel parked in front of his driveway everyday, and all night long. If we enforce the parking rules, the same rules have to apply to everyone. It is hard to justify that one resident has special privileges. I know, I was at the meeting where Michael Schaefer had a temper tantrum.

There are several inconsistencies with the "rules". Unit # 43 still has the American flag draped across the railing of the upper front balcony. It looks terrible. Unit #11 has concrete barricades on top of their privacy fence, which is a real eyesore as you drive in to the Highline Club. It looks tacky! Westwind seems to have zeroed in on parking violations, but ignores the other things that are out of compliance with our architectural codes. Does it take a formal complaint from a resident to have Westwind notify the homeowner that he is violating the rules and regs? We do need an Architectural Control Committee to keep fairness and consistency in the equation for all.

Barb

----- Original Message -----

From: PHILIP FAULKNER

To: Richard Carson ; 22-Coffey ; 37-Lucente ; Rebecca 03-Gregg ; 07-Bain ; 09-Larson

Sent: Wednesday, April 21, 2004 7:40 PM

Subject: Unit #10 Short term parking

BNoard,

I received the following from Richard as well as another request this evening from Diana regarding this parking situation.

I am of the opinion that a short term parking permit (for a parking space limited to a period of three weeks per the Rules and Regs) is acceptable at this time and in this case.

Please give me your thoughts (vote?).

Thanks,

Phil

Richard Carson <Richard@westwindmanagement.com> wrote (to Diana Stevens):

38 of 34
10104

The undersigned Owner and/or holder of a first mortgage or deed of trust on Lot 16 Highline Club Subdivision hereby consent to and adopt the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Highline Club.

OWNER

Patricia L. Payne
Signature of Owner

Patricia L. Payne
Print Name of Owner

Signature of Additional Owner (if any)

Patricia L. Payne
Print Name of Additional Owner (if any)

Name of Holder of First Mortgage

By _____
Signature Title

ACKNOWLEDGEMENT FOR OWNER

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 17 day of October, 1984 by Patricia L. Payne

James H. [Signature]
Notary Public

My Commission Expires: My Commission expires March 28 1987
Address: 3773 Cherry Creek Drive North
Suite 850 Denver CO

ACKNOWLEDGEMENT FOR FIRST MORTGAGEE

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1984 by _____ as _____ of _____

Notary Public

My Commission Expires: _____
Address: _____