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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A COMMON INTEREST COMMUNITY)**

Name of Common Interest Community:

HC TOWNHOMES

Name of Owners Association:

HC TOWNHOMES OWNERS ASSOCIATION, INC.

Declarant:

HUNTER'S COVE, LLC; GIBSON CONTRACTING, INC.; JOHN DENNIS GIBSON; AND CHUCK F. REHMER

Type of Common Interest Community:

PLANNED COMMUNITY

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO
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FOR HC TOWNHOMES 33

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY SUBJECT
TO ANNEXATION 34

EXHIBIT C

LIEN HOLDER'S CONSENT 35

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A Common Interest Community)**

PREAMBLE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made on the date hereinafter set forth by **Hunter's Cove, LLC**; Gibson Contracting, Inc.; John Dennis Gibson; and Chuck F. Rehmer; hereinafter collectively referred to as "Declarant."

WITNESSETH:

Declarant is the owner of that certain real property located in the City of Greeley, County of Weld, State of Colorado, more particularly described on the attached **Exhibit A** (the "Property").

WHEREAS, this Declaration is executed pursuant to and in furtherance of a common and general plan: (a) to protect and enhance the quality, value, desirability, and attractiveness of all property that may be subject to this Declaration; (b) to provide for an Association as a vehicle to perform certain functions for the benefit of Owners of property which may become subject to this Declaration; (c) to define duties, powers, and rights of the Association; and (d) to define certain duties, powers, and rights of Owners of property subject to this Declaration with respect to the Association and with respect to the functions undertaken by the Association; and

WHEREAS, Declarant for itself, its successors and assigns, hereby declares that all property herein or hereafter made subject to this Declaration, in the manner hereinafter provided, and each part thereof shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration for the duration thereof, all of which shall run with the title to such property and be binding upon all parties having any right, title, or interest in said property or any part thereof and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title, or interest in said property or any part thereof; and

WHEREAS, This Declaration is subordinate to the Declaration of Covenants, Conditions and Restrictions for Hunter's Cove Subdivision, Phase Two which was recorded in the Weld County



Clerk and Recorder's Office on November 30, 2001 at Reception Number 2904576 as the same may be amended from time to time as therein provided (the "Hunter's Cove, Phase Two, Declaration").

NOW, THEREFORE, the Declarant with this Declaration states that the real property described on **Exhibit A** is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, and easements hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

Section 1. *Act* shall mean and refer to the Colorado Common Interest Ownership Act found in Title 38 of the Colorado Revised Statutes. Any references in the Association Documents to the Act or a section of the Act shall refer to the Act as presently enacted or subsequently amended.

Section 2. *Agency* shall mean any agency or corporation such as Housing and Urban Development, Veteran's Administration or Federal National Mortgage Association ("FNMA") that purchases or insures commercial mortgages.

Section 3. *Articles* shall mean the Articles of Incorporation for HC Townhomes Owners Association, Inc., a Colorado nonprofit corporation, and any amendments that may be made to those Articles from time to time.

Section 4. *Annual Assessment* shall mean the assessment levied pursuant to an annual budget.

Section 5. *Assessments* shall mean the Annual, Special, and Default Assessments levied pursuant to the terms of this Declaration. Assessments are also referred to as a Common Expense liability as defined under the Act.

Section 6. *Association* shall mean HC Townhomes Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 7. *Association Documents* shall mean this Declaration and any Supplemental Declaration, the Articles of Incorporation, the Bylaws, the Plat and any procedures, rules, regulations, Architectural Design Standards or policies adopted under such documents by the Association and amendments to any of said documents.

Section 8. *Association Maintenance Area* shall mean, unless specifically excluded, all portions of any Lot from and including the exterior surfaces of any Dwelling Unit to the edge of the Lot, but not including any subsurface Improvements other than sprinkler systems (i.e., utility lines from the edge of the Lot to the Dwelling Unit shall not constitute a part of the Association Maintenance Area). The Association Maintenance Area shall specifically include property located within the City of Greeley right-of-way if, as between the City and the Lot Owner, the Lot Owner is responsible for the maintenance of said right-of-way area. Notwithstanding any definitions, descriptions, or other provisions to the contrary herein, the Executive Board's determination of whether any particular area shall constitute a part of the Association Maintenance Area shall be conclusive for all purposes.

Section 9. *Bylaws* shall mean the Bylaws adopted by the Association, as amended from time to time.

Section 10. *Clerk and Recorder* shall mean the office of the Clerk and Recorder in the County of Weld, State of Colorado.

Section 11. *Common Area or Common Elements* shall mean all real and personal property, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners. Common Area or Common Elements shall also mean and refer to any and all personal property and Improvements owned or leased by the Association and shall include, by way of example but without limitation, any exterior signage which identifies the subdivision, exterior lighting, sprinkler systems, and any other personal property owned by the Association. The Common Area is to be devoted to the common use and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated for use by the general public except as indicated on the subdivision Plat and the real estate records of the Clerk and Recorder of Weld County, Colorado. The definition of Common Area shall expressly exclude any public streets or alleys as shown on the subdivision Plat. Common Area shall be owned by the Association. In no event shall the Common Area fail to be transferred to the Association on a date which is not later than sixty (60) days after the completion of the transfer of all Lots from the Declarant or the Declarant's successors and assigns to third party purchasers.

Section 12. *Common Expenses* shall mean: (i) all expenses expressly declared to be common expenses by this Declaration or by the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) insurance premiums for the insurance required or permitted under this Declaration; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board. Common Expenses benefitting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

Section 13. *Declaration* shall mean this Declaration and the Plat and amendments and supplements to the foregoing.

Section 14. *Dwelling Unit* shall mean a place of residence by a single family which may include an individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption, or other legal custodial relationship, or not more than two (2) unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship, or other legal custodial relationship.

Section 15. *Executive Board* shall mean the governing body of the Association. "Executive Board" shall have the same meaning as "Board of Directors."

Section 16. *First Mortgage* shall mean any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 17. *First Mortgagee* shall mean any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 18. *Hunter's Cove Definitions.* To the extent that definitions set forth in the Declaration for Hunter's Cove Subdivision, Phase Two supplement, contradict, or change the definitions herein contained, the definitions for Hunter's Cove Subdivision, Phase Two shall control.

Section 19. *Improvements* shall mean and refer to all improvements now or hereafter constructed including, without limitation, all exterior lighting, benches, walks, landscaping, sprinkling systems, irrigation ditches, and parking areas within the project.

Section 20. *Lot* shall mean and refer to any numbered area of land designated for separate ownership or occupancy as shown on the recorded Plat. Lot shall not include any Common Area including outlots. Notwithstanding the foregoing, in the instance of any duplex, triplex, fourplex, townhome, condominium, or similar multi-family complex permitted pursuant to the Plat and applicable zoning, each individual Dwelling Unit within such complex together with any land appurtenant to such Dwelling Unit shall be deemed a separate Lot whether or not individually identified and described upon the Plat; however, any such multi-family Parcel shall be treated as a single Lot for all purposes hereunder until a building permit is issued for the first Dwelling Unit upon such Parcel.

Section 21. *Manager* shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

Section 22. *Member* shall mean and refer to every person or entity that holds membership in the Association by virtue of the ownership of a Unit.

Section 23. *Mortgage* shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 24. *Mortgagee* shall mean any person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under such Mortgage.



Section 25. *Notice* shall mean and refer to: (i) written notice hand delivered or sent prepaid by United States mail to the mailing address of a Unit or to any other mailing address designated in writing by the Unit owner or to the last known address of the intended recipient; (ii) notice through an Association publication which is hand delivered or sent by prepaid United States mail to the Units; or (iii) notice delivered by electronic mail or facsimile to any Owner.

Section 26. *Owner* shall mean the owner of record, whether one or more persons or entities, of fee simple title to any Unit.

Section 27. *Parcel* shall mean each platted, numbered, and recorded division of vacant land as depicted on the Plat.

Section 28. *Plat* shall mean that part of this Declaration that is a land survey plat recorded in the real estate records of Weld County, Colorado, depicting any portion of the Property subject to this Declaration and any amendments and supplements thereto.

Section 29. *Project* shall mean the common interest community created by this Declaration and as shown on the Plat.

Section 30. *Property* shall mean the real property described in Exhibit A, together with such additional property as is subsequently subjected to this Declaration in accordance with the provisions set forth herein below.

Section 31. *Successor Declarant* shall mean any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 32. *Supplemental Declaration* shall mean an instrument which amends this Declaration.

Section 33. *Supplemental Plat* shall mean a supplemental plat of the Project which depicts any change in the Project through a Supplemental Declaration. The initial phase recordings are not supplemental and do not require amendment to this document.

Section 34. *Unit* shall mean a physical portion of the common interest community which is designated for separate ownership or occupancy. In the instance of any duplex, triplex, fourplex, townhome, condominium, or similar multi-family complex permitted pursuant to the Plat and applicable zoning, each individual Dwelling Unit within such complex together with any land appurtenant to such Dwelling Unit shall be deemed a separate Unit whether or not individually identified and described upon the Plat.

Section 35. *Undefined Terms.* Each term not otherwise defined in this Declaration, including the Plat, shall have the same meaning specified or used in the Act.

ARTICLE II

NAME, PROPERTY SUBJECT TO THIS DECLARATION AND ALLOCATION

Section 1. *Name.* The name of the Project is HC Townhomes. The Project is a common interest community pursuant to the Act.

Section 2. *Existing Property.* The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Greeley, Weld County, Colorado, and is more particularly described on Exhibit "A" attached hereto.

Section 3. *Expansion Property.* The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration may be expanded only as specifically provided in this Declaration.

Section 4. *Maximum Number of Units.* Declarant reserves the right to create up to a total of seventy-five (75) Units.

Section 5. *Identification of Units.* The identification number of each Unit is shown on the Plat.

Section 6. *Allocation of Interests.* The Common Expense liability is allocated to each Unit as follows:

- a. The percentage of liability for Common Expenses shall be determined by using a formula in which the numerator is one (1) and the denominator is the total number of Units subject to this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION STRUCTURE AND OPERATIONS

Section 1. *The Association.* The name of the Association shall be HC Townhomes Owners Association, Inc. The Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Unit. The Association shall accept title to the Common Area, if any, including any Improvements thereon, and personal property or equipment transferred to the Association by the Declarant.

Section 2. *Transfer of Membership.* An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then



only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right.

Section 3. *Membership.* The Association shall have one class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in the Association Documents, each Member shall be entitled to vote in Association matters as set forth in this Declaration and the Bylaws. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4. *Voting.* The Owner(s) of each Unit shall have one vote per Unit owned.

Section 5. *Declarant Control.* Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in the Association Documents. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove directors and officers are set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that during the period Declarant would otherwise be entitled to appoint and remove directors and officers, specified actions of the Association or the Executive Board as described in the recorded notice be approved by Declarant before they become effective.

Section 6. *Books and Records.* The Association shall make available for inspection, upon request, during normal business hours, or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 7. *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 8. *Cooperation with Other Associations.* The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other homeowner associations and/or any districts to share the costs and/or responsibility for any maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any persons in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other homeowner associations and/or any districts, or to otherwise cooperate with any other homeowner associations and/or any districts in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other homeowner associations and/or any districts, as the Executive Board may determine in its discretion from time to time. Additionally, the

Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other homeowner associations and/or any districts to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 9. *Rights of Action.* The Association on behalf of itself and any aggrieved Owner, shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right, but not the obligation, to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties for all reasonable costs and expenses, including attorney fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 10. *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Nonprofit Corporation Act.

ARTICLE IV

POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 1. *Powers.* Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- a. Adopt and amend Bylaws and rules and regulations and Architectural Design Standards;
- b. Adopt and amend budgets or revenues, expenditures and reserves, and collect Assessments;
- c. Hire and terminate managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;

- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements, if any;
- g. Cause additional Improvements to be made as a part of the Common Elements, if any;
- h. Acquire, hold, encumber, and convey in the name of the Association any right, title, or interest to real or personal property, except that Common Elements, if any, may be conveyed or subjected to a security interest only if Members entitled to cast at least eighty percent (80%) of the votes agree to that action and if all Owners of Units to which any limited Common Element is allocated agree to convey that limited Common Element or subject it to a security interest. Notwithstanding the foregoing, the Association may, on vote only of the Executive Board and without the vote of Owners of the Units, convey any outlots to the City of Greeley.
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements, if any;
- j. Annex additional property, pursuant to the terms of this Declaration.
- k. Impose and receive any payments, fees or charges for the use, rental, or operation of the general Common Elements, if any;
- l. Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- m. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- n. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- o. Assign its right to future income, including the right to receive Assessments;
- p. Exercise any other powers conferred by the Declaration or Association Bylaws;

- q. Delegate powers to a master association as provided in CRS § 38-33.3-220. If powers are delegated to a master association, the executive board of the master association must be elected pursuant to CRS § 38-33.3-220.
- r. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- s. Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE V

MECHANICS' LIENS

Section 1. *No Liability.* If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen, and other persons furnishing labor or materials to his Unit.

Section 2. *Indemnification.* If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements, if any, or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses, or damages including, without limitation, reasonable attorney fees resulting therefrom.

Section 3. *Association Action.* Labor performed or materials furnished for the Common Elements, if any, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements, if any. Any such lien shall be limited to the Common Elements, if any, and no lien may be effected against an individual Unit or Units.

ARTICLE VI

EASEMENTS

Section 1. *Recorded Easements.* The Property shall be subject to all easements as shown on any Plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and as otherwise set forth in this Article.

Section 2. *Declarant's Rights Incident to Construction.* Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under, and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units or Improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 3. *Utility Easements.* There is hereby created an easement as denoted on the Plat for ingress and egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephone, cable TV, electricity, drainage, and fences. Said easement includes future utility services not presently available to the Units which reasonably may be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across, and under the roofs and exterior walls of the Improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

Section 4. *Reservation of Easements, Exceptions, and Exclusions.* The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, if any, for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the general Common Elements, if any, and limited Common Elements, if any, appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements, if any, set forth in writing by the Association.

Section 5. *Use of Easement Area.* Within reserved easements, as shown on recorded Plats, or herein reserved, there shall be no structure, tree or shrub planting, or any other material installation which may damage or interfere with the installation or maintenance of utilities such as plumbed gas or water lines, wired electrical, cable television, or telephone utility lines. A Unit Owner shall not alter, inhibit, or change the direction of water flow in drainage channels established in said

easements or in any way that discharges drainage onto adjacent Units. The easement area of each Unit and all Improvements in it, including fences, shall be maintained continuously in good repair by the Owner of said Unit, except for those Improvements for which a public utility shall be responsible. It shall be the responsibility of the Unit Owner to notify with due speed the appropriate public utility of any known flaws, defects, or damage to any utility Improvements on said Owner's Unit. Fencing shall be allowed in easement areas only as approved by the Executive Board.

Section 6. *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

ARTICLE VII

MAINTENANCE OF UNITS, COMMON ELEMENTS AND LANDSCAPING

Section 1. *Maintenance by Owners.* Except for maintenance obligations specifically allocated to the Association, it shall be the duty and obligation of each Unit Owner, at such Unit Owner's expense, to maintain, repair and replace all portions of such Owner's Unit. Each Owner shall, at such Owner's expense, be responsible for all maintenance, replacement, repair, and routine care of all glass on the Unit, all exterior doors, all screens on doors, all window units (including glass and screens), garage doors, HVAC systems, plumbing, fixtures and equipment. Each Owner shall, at such Owner's expense, be responsible for all maintenance, replacement, repair, and routine care of the floor (walking surface) (whether constructed of concrete, wood or other materials) of all patios, decks, courtyards, and balconies and shall be responsible for the removal of snow, leaves, and debris from said areas. Each Unit Owner shall be responsible for any damage to a Unit or Common Elements caused by the Owner, any residents of the Owner's Unit and any invitees or guests of the Owner. Each Unit Owner shall be responsible for any extraordinary maintenance costs resulting from the use of the Owner's Unit. A determination of the cause of any damages and whether any maintenance costs are "extraordinary" shall be made by the Association in its sole discretion.

Section 2. *Owner's Failure to Maintain or Repair.* In the event that a Unit is not properly maintained and repaired, and if the maintenance responsibility for that portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after Notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association shall be reimbursed to the Association by the Owner of the Unit, upon demand. All un-reimbursed costs shall be a lien upon the



Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with this Declaration.

Section 3. *Maintenance by Association.* The Association shall maintain, repair and replace all the Common Elements. The Association shall maintain the exterior surfaces of the Units. Exterior surfaces shall include gutters, down spouts, exterior surfaces of walls and roofs, sidewalks and driveways. The Association shall be responsible for painting the exterior of all doors and window units but shall not otherwise be responsible for the maintenance of the exterior doors and window units. The Association shall provide that all exterior surfaces are adequately painted, finished and maintained so as to present, at all times, a pleasing and attractive appearance. The need for and time of, as well the nature and type of any painting, refinishing or re-roofing, including the color thereof, shall be within the sole discretion of the Association. The Association reserves the right to withhold Association-funded repairs and assess Owners Unit-specific charges for repairs which, at the Association's sole discretion, are determined to be beyond normal wear and tear or caused by Owner negligence. The Association's maintenance responsibility on a Unit shall not commence until the Unit has received a Certificate of Occupancy.

Section 4. *Snow Removal by Association.* The Association shall remove snow as reasonably necessary from public sidewalks in the Project, the driveway and the walk leading from the front door of the Unit to the adjacent street and/or driveway located on each developed Lot within the project. This duty shall not extend to any patio, deck, or porch area adjacent to any Unit.

Section 5. *Installation and Maintenance of Landscaping.* Installation and maintenance of landscaping within the Project shall be subject to the following:

- a. As soon as reasonably possible after the construction of a building, the Owner who constructed the building shall submit to the Association a landscape plan for the Lot. All landscaping requiring regular watering must include a sprinkler system. All specifications for the sprinkler system shall be designated by the Association. The Association may require the sprinkler system be designed to operate off a Common Water Line for all such systems within the Project.
- b. The Owner who constructed the building shall, at the Owner's cost, be responsible for installation of the landscaping and a sprinkler system according to a plan approved by the Association. The Owner shall contract with the Association's designated contractor, if any, for installation of a sprinkler system and shall contract with approved landscape and other contractors, if any, for the installation of all other Improvements. No landscaping or sprinkler system shall be installed without the prior written approval of the plans by the Association. All landscaping and sprinkler systems shall be installed as soon as reasonably possible after the construction of the building.



- c. Upon proper installation of the landscaping and sprinkler system, the Association shall be responsible for routine maintenance and repair of the Association Maintenance Area including the sprinkler system. Each Unit Owner shall be responsible for the cost of the water and sewer services used on the Owner's Unit.
- d. The Association reserves the right to grant the maintenance responsibility of certain areas on each Unit to the Unit Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and non-discriminatory manner. The Association may also enter into an agreement with an Owner whereby the Owner accepts the maintenance responsibility of certain areas on the Owner's Unit. Said agreement may be terminated by the Association at any time.
- e. Each Unit Owner shall be responsible for the replacement of dead or diseased plant material. The need for and timing of replacement of said material shall be determined by the Association.
- f. In the event an Owner shall fail to timely and properly install the landscaping and sprinkler system or replace dead or diseased material, then the Association, after Notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required. All costs incurred by the Association shall be reimbursed to the Association by the Owner of the Unit, upon demand. All un-reimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with this Declaration.
- g. Declarant shall be exempt from obtaining Association approval of the landscaping and sprinkler system plans on any lots owned by Declarant.

Section 6. Association Maintenance as Common Expense. The cost of maintenance and repair by the Association shall be a Common Expense of all Owners, to be shared by each Unit Owner according to the allocated interest for each Unit. Notwithstanding the foregoing, maintenance of the Association Maintenance Area may be allocated on a square footage basis rather than the allocated interest for each Unit and the Association may create a separate assessment for such maintenance. Expenses benefiting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

Section 7. Easement for Maintenance. The Association is hereby granted an easement on, over, and across all driveways, sidewalks and Association Maintenance Areas for the purposes of carrying out the Association's repair and maintenance obligation.

ARTICLE VIII

PARTY WALLS

Section 1. *Provisions Applicable to Party Walls.* The following provisions apply to Party Walls ("Party Walls"):

- a. Each Unit within the project is adjacent to one or more other Units. Along and over the common boundaries between the Units lie Party Walls which, in conjunction with the footings underlying and the portion of the roof thereover, form a structural part of and physically join the Improvements on the adjoining Units.
- b. The Owners of adjacent Units shall each be deemed to own the necessary easement for the perpetual lateral and subjacent support, maintenance, repair, and inspection of the respective Party Wall with equal rights of joint use. The Association shall have the same necessary easements with respect to all Party Walls.
- c. No Owner of a Unit shall have the right to destroy, remove, or make any structural changes in a Party Wall which would jeopardize the structural integrity of either of the Units sharing such Party Wall without the prior written consent of the Association, the adjacent Unit Owner, and any first mortgagee with respect to such adjacent Property; nor shall any Unit Owner subject a Party Wall to the insertion or placement of timbers, beams or other materials in such a way as to affect adversely the Party Wall's structural integrity. No Unit Owner shall subject a Party Wall to any use which in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by an adjoining Unit Owner.
- d. Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of either adjacent Unit Owner (the "Responsible Unit Owner") or the Responsible Unit Owner's agent, contractor, employee, tenant, family member, licensee, guest, or invitee, the Responsible Unit Owner shall promptly rebuild and/or repair the Party Wall at the Responsible Unit Owner's cost. If the Responsible Unit Owner does not promptly rebuild or repair the Party Wall, the adjacent Unit Owner or the Association may rebuild or repair the Party Wall. If the adjacent Unit Owner rebuilds or repairs the Party Wall, said Owner shall be entitled to recover from the Responsible Unit Owner the full cost of the rebuilding or repairing of the Party Wall. If the Association rebuilds or repairs the Party Wall, the cost of such repairs shall be a Common Expense apportioned to the Responsible Unit Owner.

- e. Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of either adjacent Unit Owner (or their agents, contractors, employees, tenants, family members, licensees, guests, or invitees), the damaged or destroyed Party Wall shall be repaired or rebuilt by the Unit Owners who make use of the Party Wall. If the Unit Owners do not promptly rebuild or repair the Party Wall, the Association may rebuild or repair the Party Wall. The cost of such repair shall be a Common Expense apportioned to the Unit Owners who make use of the wall. Each Owner shall be responsible for fifty percent (50%) of the cost of rebuilding or repairing the Party Wall.
- f. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.
- g. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- h. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- i. To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning Party Walls shall be applicable hereto.

ARTICLE IX

INSURANCE

Section 1. General Insurance Provisions. The Association shall acquire and pay for, out of the Assessments levied in accordance with this Declaration, any insurance policies required by the Colorado Common Interest Owners Act and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements, if any. Such insurance required by this Article or the Colorado Common Interest Owners Act shall conform to the requirements set forth in C.R.S. § 38-33.3-313(4)(a)-(d) which are as follows:

- a. Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association.

- b. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.
- c. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- d. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 2. *Property and Commercial General Liability Insurance.* Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

- a. **Insurance on Common Elements.** Property insurance on the Common Elements and also on property that must become Common Elements for broad form covered causes of loss, except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
- b. **Commercial General Liability Insurance.** Commercial general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) or otherwise larger amount deemed sufficient in the judgment of the Executive Board against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, insuring the Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and, in cooperatives, also of all Units. The insurance shall cover claims of one or more insured parties against other insured parties.

Section 3. *Repair Costs.* The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed

to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's allocated interest for Common Expenses.

Section 4. Insurance Proceeds. Any loss covered by the property insurance policy must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions set forth above, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the common interest community created by this Declaration is terminated.

Section 5. Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors, employees, and on the part of all others including any Manager hired by the Association who handles or is responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager and its officers, employees, and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such fidelity bonds shall be a minimum of an amount equal to two (2) months Assessments plus reserves.

Section 6. Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 7. Notice. If any insurance required by this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

Section 8. Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9. Other. An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit.

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ARTICLE X

ASSESSMENTS AND TRANSFER FEE

Section 1. *Common Expense Assessment for Hunter's Cove Subdivision.* Assessments made by Hunter's Cove Subdivision, Phase Two Owners Association, a Colorado nonprofit corporation, shall be in addition to and separate from the Common Expense Assessment of the Association.

Section 2. *Obligation.* Each Owner, is obligated to pay to the Association: (i) the Annual Assessments; (ii) Special Assessments; (iii) Default Assessments; and (iv) when applicable, a transfer fee. No transfer fee shall be due upon the sale of a Unit that does not have a certificate of occupancy or upon the first sale of a Unit after a certificate of occupancy has been granted. Upon each subsequent sale of a Unit, the Association shall be paid a transfer fee equal to two-twelfths (2/12) of the estimated Annual Assessments for Common Expenses for each Unit.

Section 3. *Commencement of Assessments.* Declarant shall maintain all Common Elements and pay all Common Expenses until the first monthly installment of the first annual assessment shall be due; thereafter, all Common Elements and all Common Expenses shall become the sole responsibility of the Association. Declarant shall determine the date on which the first such installment shall commence, but such date shall be the first of the month.

Section 4. *Accounting Year; Assessment Period.* The Association shall operate on a calendar accounting year, i.e. January through December, and the Assessment period shall likewise be the calendar year. The first Assessment period shall be from the first of the month in which the first monthly installment shall be due through December 31 of that year.

Section 5. *Budget.* Within ninety (90) days after the adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

Section 6. *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not

be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements and Association Maintenance Area, routine repairs, replacements, and renovations within any of the Common Elements, wages, common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of Improvements within the Common Elements, as needed.

Annual Assessments shall be payable in installments as determined by the Executive Board. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 7. *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Units on the basis of the allocated interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to limited Common Elements and certain insurance premiums) to the Owners of those affected Units only.

Section 8. *Units Added Mid-Assessment Period.* Only Units that have received a Certificate of Occupancy shall be subject to assessments; therefore, only those Units shall be used in the formula to determine the allocation of interests. If, during any Assessment period, the number of Units subject to assessments increases because of one or more Units being granted Certificates of Occupancy, then each such additional Unit shall be subject to a pro rata share of the annual assessment commencing on the first day of the month following the month in which the Unit is granted a Certificate of Occupancy.

Section 9. *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, or replacement of Improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their allocated interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special



Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such Notice shall have been given.

Section 10. *Default Assessments.* All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 11. *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- a. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- b. Assess an interest charge from the due date at the yearly rate of eighteen percent (18%), or such other lawful rate as the Executive Board may establish;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Suspend the rights of the Owner, and the Owner's family, guests, lessees, and invitees, to use Common Element facilities during any period of delinquency;
- e. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- f. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- g. Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and



hold, lease, mortgage, and convey the same. Liens for Assessments and their priority shall be as provided in § C.R.S. 38-33.3-316.

Section 12. *Personal Obligation.* Each Assessment against a Unit is the personal obligation of the person who owned the Unit at the time the Assessment became due. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements, if any. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 13. *Payment by Mortgagee.* Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 14. *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board, the Association shall furnish to a Unit Owner or such Unit Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent or Manager, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and every Unit Owner. If no statement is furnished to the Unit Owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 15. *Maintenance of Accounts; Accounting.* If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer, or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must: (i) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager; and (ii) provide to the Association an annual accounting and financial statement of Association funds prepared by the Manager, a public accountant, or a certified public accountant.

ARTICLE XI

CONDEMNATION

Section 1. *Rights of Owners.* Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to Notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 2. *Partial Condemnation.* The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which Improvements have been constructed, then, unless within sixty (60) days after such taking, Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such Common Elements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such Common Elements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Units, first to the Mortgagees and then to the Owners, as their interests appear.

Section 3. *Complete Condemnation.* If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that the approval is first obtained of fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided above regarding disbursement of funds for partial condemnation.

ARTICLE XII

ASSOCIATION AS ATTORNEY-IN-FACT

Section 1. Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to this Declaration, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any Improvements covered by insurance written in the name of the Association upon their damage or destruction, or a complete or partial taking as provided above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XIII

RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 1. General Provisions. Declarant shall have the following Rights ("Special Declarant Rights") with respect to all of the property:

- a. **Reservation of Development Rights.** Declarant reserves the right to exercise all "Development Rights" as defined from time to time in the Act including, without limitation, the right or combination of rights hereby reserved by Declarant, as follows:
 - (i) The right to add real estate to the common interest community;
 - (ii) The right to create Units, Common Elements or limited Common Elements within the common interest community;
 - (iii) The right to subdivide Units or convert Units into Common Elements; or
 - (iv) The right to withdraw real estate from the common interest community.

- b. **Limitation on Development Rights.** The Development Rights reserved in this section are limited as follows:
- (i) The Development Rights may be exercised at any time but not more than twenty (20) years after the recording of the initial Declaration in the real estate records of Weld County, Colorado;
 - (ii) All Units and Common Elements created pursuant to the Development Rights will be restricted to the same uses and to the same extent as the Units created under this Declaration as initially recorded.
- c. **Phasing of Development Rights.** No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be developed. The exercise of Development Rights as to some portions of the property will not obligate Declarant to exercise them as to other portions.
- d. **Special Declarant Rights.** Declarant reserves the right to exercise all Special Declarant Rights as defined from time to time in the Act including, without limitation, the right or combination of rights, as follows:
- (i) To complete any Improvements indicated on the Plat;
 - (ii) To maintain sales offices, management offices, signs advertising the common interest community, and model homes;
 - (iii) To use easements through the Common Elements and Units for the purpose of making Improvements within the common interest community.
- e. **Models, Sales Offices, and Management Office.** Declarant, its duly authorized agents, representatives, and employees may maintain any Unit owned by Declarant or any portion of the Common Elements as a model Unit, sales office, or management office and may post and maintain signs and displays in order to promote sales of Units. Declarant may assign the rights reserved hereunder to any individuals or entities including, but not limited to, contractors, builders, and real estate agents for such periods of time and under such conditions as determined by Declarant. In addition, during periods of construction, Declarant may maintain a construction trailer on the Common Elements.
- f. **Construction: Declarant's Easement.** Declarant reserves the right to perform warranty work, repairs and construction in Units and Common Elements, to store materials in secure areas, and to control and have the right

of access to work and make repairs until completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to a governmental entity.

- g. **Declarant's Property.** Declarant reserves the right to remove and retain all its property used in the sales, management, construction and maintenance of the Property, whether or not they have become fixtures.
- h. **Limitations on Special Declarant Rights.** Unless terminated earlier by a document executed by Declarant and recorded in the real estate records of Weld County, Colorado, any Reserved Development Rights and Special Declarant Right may be exercised by Declarant, as long as Declarant: (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Units or Common Elements; (c) owns any Unit; (d) owns any security interest in any Unit; or (e) twenty (20) years have elapsed after recording of this Declaration in the real estate records of Weld County, Colorado. Earlier termination of certain rights may occur by statute.
- i. **Interference With Special Declarant Rights.** Neither the Association or any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.
- j. **Rights Transferable.** Any Special Declarant rights or other Declarant rights created or reserved under this Declaration may be transferred by an instrument evidencing the transfer recorded in Weld County, Colorado. Such instrument shall be executed by the transferor, Declarant, and the transferee.

ARTICLE XIV

USE RESTRICTIONS

Section 1. Association Power. The Association shall have the right and power to prohibit any activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area, by promulgating Rules and Regulations which restrict or prohibit such activities.

Section 2. Restrictions on Use. The use and enjoyment of each Unit shall be subject to the restrictions set forth in this Declaration and the Declaration of Covenants, Conditions and Restrictions for Hunter's Cove Subdivision, Phase Two which were recorded in the Office of the



Weld County Clerk and Recorder on November 30, 2001, at Reception No. 2904576 as the same may be amended from time to time (the "Hunter's Cove, Phase Two, Declaration"). Whenever this Declaration requires the approval or consent of the Association or its Executive Board, said approval or consent is in addition to and not in substitution of any approvals or consents which may be required by the Hunter's Cove Subdivision, Phase Two, Declaration. The restrictions set forth in the Hunter's Cove, Phase Two, Declaration are incorporated by reference into this Declaration and may be enforced by the Association.

Section 3. *Owner Repair and Maintenance.* No Improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, Dwelling Unit, Common Area or the Improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration, shall be made or done without the express written consent of the Executive Board. This section shall not apply to the Declarant or its agents.

Section 4. *Fences and Dog Runs.* No Owner may enclose the Unit's yard or build any type of dog run. No fence or privacy screening of any kind shall be constructed without the express written consent of the Executive Board.

Section 5. *Pets.* No animals of any kind may be kept on any portion of the Project; except that cats, small dogs and other household pets may be allowed in a Unit so long as they are kept in such number and in such manner so as not to create a nuisance or inconvenience to any residents of the Project as determined by the Executive Board in the Executive Board's sole and subjective discretion. Each Owner shall be responsible for promptly cleaning up any litter, waste, mess, or damage created by their pets whether on the Unit or on the Common Elements. No pet shall be allowed outside of a building without being under the direct supervision of the Owner or some other individual. The Executive Board may, at any time, after giving the Owner notice and an opportunity for a hearing, prohibit the keeping of any animal that the Executive Board determines is a nuisance or inconvenience to residents. If the Executive Board prohibits the keeping of any animal on the Project, the Owner shall, within five days after receiving notice from the Executive Board, remove the animal from the Project. The notice may be in writing or if there was a hearing, may be given verbally at the conclusion of the hearing.

ARTICLE XV

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws, and Rules and Regulations of the Association.

Section 1. *Distribution of Insurance or Condemnation Proceeds.* In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to,



or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 2. *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 3. *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee.

Section 4. *Notice of Action.* Any First Mortgagee and any Agency which holds, insures, or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written Notice of:

- a. Any proposed termination of the common interest community;
- b. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Agency;
- c. Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;
- d. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

Section 5. *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee is given proper Notice of the proposal (or such longer time as may be set forth in the Notice), such Mortgagee shall be deemed to have approved such proposal provided that the Notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XVI

DURATION OF COVENANTS AND AMENDMENT

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 2. Amendment. Except in cases of amendments that may be executed by the Declarant or the Association under the Act, this Declaration, or any provision of it, may be amended only by Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration.

Section 3. Execution of Amendments. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Plat to the fullest extent permitted under the Act and this Declaration.

Section 4. Revocation. This Declaration shall not be revoked nor shall the common interest community created hereby be terminated (except as provided above regarding total destruction and/or total condemnation), without the consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder of the County of Weld, Colorado.

Section 5. Declarant Rights. Provisions in this Declaration reserving or creating Declarant Rights may not be amended without the consent of Declarant.

ARTICLE XVII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation. Property may be annexed subject to the following:

- a. Additional property may be annexed to this Declaration with the consent of the Owners to which at least two thirds (2/3) of the Association votes are allocated. Notwithstanding the foregoing, Declarant may annex to this Declaration additional property within the lands described on the attached Exhibit "B," until that date which is ten (10) years after the date of recording of this Declaration in the County of Weld, Colorado, without consent of any other Owners, security interest holders, or any other person; provided, however, that if Declarant desires to attempt to obtain Veterans'

Administration or Housing and Urban Development approval of the property being annexed, then such annexation shall be subject to a determination by Veterans' Administration or Housing and Urban Development that the annexation is in accord with the general plan approved by it and the structures to be located thereon will be of comparable style, quality, size, and cost to the existing Improvements. Each annexation by Declarant shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording, in the Office of the Clerk and Recorder of Weld County, Colorado, one of the following: (i) a deed from Declarant that provides for conveyance of a portion of the property described on the attached **Exhibit "B"** to any person other than Declarant, in which case each such lot in the property so conveyed shall constitute a Lot and the allocated interests shall thereupon automatically be reallocated to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the community upon recording of such deed, and any other portion(s) of such property so annexed shall constitute Common Elements; or (ii) an annexation of additional land, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land, shall state that Declarant (or other person) is the Owner of the Lots thereby included, shall assign an identifying number to each new Lot, shall describe any Common Elements within the property being annexed, shall reallocate the allocated interests among all Lots, and may include such other provisions as Declarant deems appropriate (including, without limitation, covenants, restrictions, or other provisions which will be applicable to such annexed property and which are in addition to or more restrictive than the provisions of this Declaration). All provisions of this Declaration, including, but not limited to those provisions regarding obligations to pay Assessments to the Association and any right to cast votes, shall apply to annexed property immediately upon recording of a deed or an annexation of additional land with respect thereto, as aforesaid. In addition to the foregoing, Declarant may amend this Declaration at any time during the ten (10) year period noted hereinabove, in order to add additional real estate to the community from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the community pursuant to this sentence is not described in the attached **Exhibit "B"** and does not exceed ten percent (10%) of the total area described in the attached **Exhibits "A" and "B."**

- b. Declarant reserves the right at any time to record one or more documents in order to clarify the effect of any annexations which occur by deed, as permitted in subsection (a) above. Such documents, if any such documents are recorded by Declarant in its discretion, may state the legal descriptions of any property which has been annexed by deed, may state the reallocated

allocated interests after such annexations, and may include other provisions which Declarant may determine to be appropriate in order to clarify any matters having to do with annexation of such property to this Declaration.

- c. Each portion of the community which is annexed to this Declaration by an annexation of additional land, as provided in the preceding subsection (a), shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, Declarant's right to withdraw each such portion of the community shall expire and terminate, as to each portion of the community which has been annexed to this Declaration, upon the first conveyance of any Lot in such annexed portion of the community to any person other than Declarant.
- d. Declarant may exercise its development rights in all or any portion of the real property described in the attached **Exhibit "B"** over which such rights have not already been exercised, and no assurances are made to the boundaries or order of exercise of any such development rights.

Section 2. Acquisition of Common Elements. Declarant may convey to the Association additional real estate, improved or unimproved, located within the common interest community or adjacent thereto, which upon conveyance or dedication to the Association shall be accepted by the Executive Board on behalf of the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

ARTICLE XVIII

GENERAL PROVISIONS

Section 1. Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 2. Enforcement. Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant, or by any Owner to enforce any restriction, condition, covenant, reservation, lien, or charge now or hereafter imposed by the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

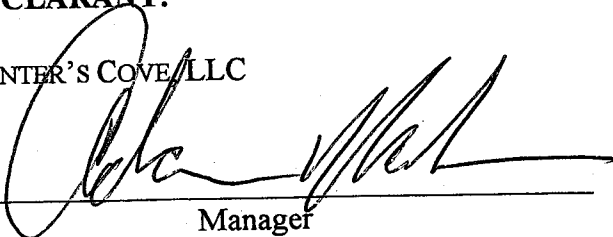


Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

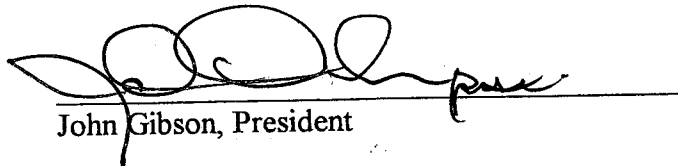
DECLARANT:

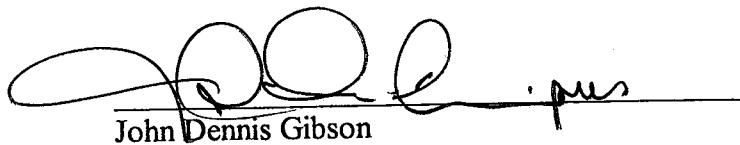
HUNTER'S COVE/LLC

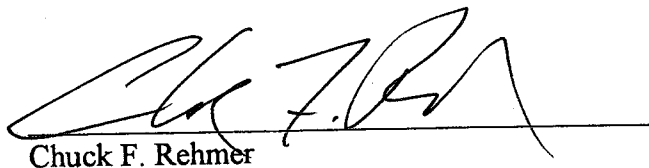


Manager

GIBSON CONTRACTING, INC.



John Gibson, President

John Dennis Gibson

Chuck F. Rehmer



2979413 08/19/2002 04:30P Weld County, CO
40 of 45 R 225.00 D 0.00 J.A. "Suki" Tsukamoto

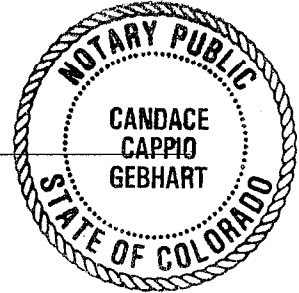
STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on August 12th 2002, by Adam Mack, as Manager of Hunter's Cove LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 23 may 2006

Candace Cappio Gebhart
Notary Public



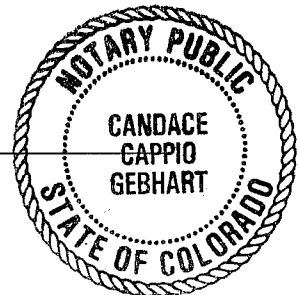
STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on August 12th 2002, by John Gibson as President of Gibson Contracting, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 23 may 2006

Candace Cappio Gebhart
Notary Public





2979413 08/19/2002 04:30P Weld County, CO
41 of 45 R 225.00 D 0.00 J.A. "Suki" Tsukamoto

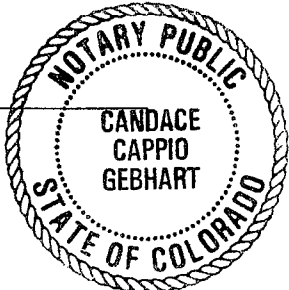
STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on August 12th 2002, by John Dennis Gibson.

WITNESS my hand and official seal.

My commission expires: 23 MAY 2006


Notary Public



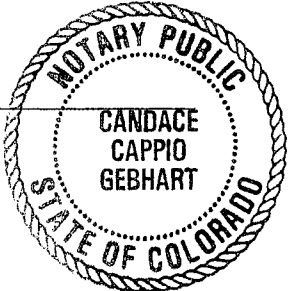
STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on August 15th 2002, by Chuck F. Rehmer.

WITNESS my hand and official seal.

My commission expires: 23 MAY 2006


Notary Public



2979413 08/19/2002 04:30P Weld County, CO
42 of 45 R 225.00 D 0.00 J.A. "Suki" Tsukamoto

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A Common Interest Community)

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THIS DECLARATION

Lots 1, 2, 3, 4, Block 5

Lots 1, 2, 3, 4, Block 6

Lot 1, Block 7

Hunters Cove 2nd Replat, a subdivision of the City of Greeley,
County of Weld,

State of Colorado, in accordance with the 2nd Replat thereof, recorded March 6, 2001, at
Reception No. 2830435 in the office of the Clerk and Recorder of Weld County, Colorado

2979413 08/19/2002 04:30P Weld County, CO
43 of 45 R 225.00 D 0.00 J.A. "Suki" Tsukamoto

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A Common Interest Community)

PROPERTY SUBJECT TO ANNEXATION

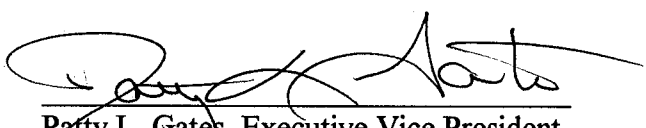
Lot 1, Block 3
Hunters Cove 2nd Replat, a subdivision of the City of Greeley,
County of Weld,
State of Colorado, in accordance with the 2nd Replat thereof, recorded March 6, 2001, at
Reception No. 2830435 in the office of the Clerk and Recorder of Weld County, Colorado

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A Common Interest Community)

LIEN HOLDER'S CONSENT

A lien holder of record, New Frontier Bank, states that it has reviewed the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for HC Townhomes and the Plat of the Property and expressly consents to said Declaration.

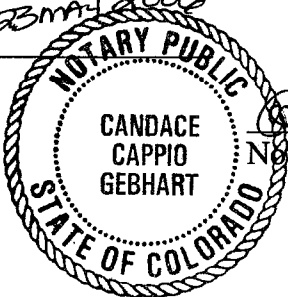
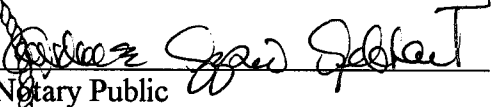
NEW FRONTIER BANK

By: 
Patty L. Gates, Executive Vice President

State of Colorado)
) ss
County of Weld)

The foregoing instrument was acknowledged before me this 13th day of August, 2002, by Patty L. Gates, Executive Vice President of New Frontier Bank.

Witness my hand and official seal.

My commission expires: 23 May 2006


Notary Public



2979413 08/19/2002 04:30P Weld County, CO
45 of 45 R 225.00 D 0.00 J.A. "Suki" Tsukamoto

EXHIBIT D
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HC TOWNHOMES
(A Common Interest Community)

LIEN HOLDER'S CONSENT

A lien holder of record, Centennial Bank of the West, states that it has reviewed the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for HC Townhomes and the Plat of the Property and expressly consents to said Declaration.

CENTENNIAL BANK OF THE WEST

By: *Brett Brunner*
Brett Brunner, Senior Vice President

State of Colorado)
) ss
County of Weld)

The foregoing instrument was acknowledged before me this 15th day of August, 2002, by Brett Brunner, Senior Vice President of Centennial Bank of the West.

Witness my hand and official seal.

My commission expires: Jan. 29, 2006

Joan Sathe
Notary Public

