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1 of 37 R 186.00 D 0.00 JA Suki Tsukamoto

**THE CONDOMINIUM DECLARATION**

**OF**

**THE CLARK-N-HILL, CONDOMINIUMS**

**TABLE OF CONTENTS**

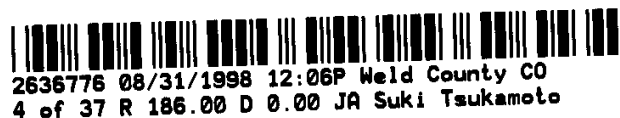
PREAMBLE .....		1
ARTICLE I - DEFINITIONS .....		1
Section 1.01	Agencies .....	1
Section 1.02	Allocated Interests .....	1
Section 1.03	Articles .....	2
Section 1.04	Assessments .....	2
Section 1.05	Assessment Lien .....	2
Section 1.06	Association .....	2
Section 1.07	Board or Executive Board .....	2
Section 1.08	Buildings .....	2
Section 1.09	Bylaws .....	2
Section 1.10	CIOA .....	2
Section 1.11	City .....	2
Section 1.12	Common Elements .....	2
Section 1.13	Common Expense Assessments .....	3
Section 1.14	Common Expense Liability .....	3
Section 1.15	Common Expenses .....	3
Section 1.16	Condominium Apartment or Apartment .....	3
Section 1.17	Condominium Community .....	3
Section 1.18	Condominium Unit or Unit .....	3
Section 1.19	Costs of Enforcement .....	3
Section 1.20	Declarants .....	3
Section 1.21	Declaration .....	3
Section 1.22	Development Rights and Special Declarants Rights .....	3
Section 1.23	Eligible Mortgagee .....	3
Section 1.24	First Mortgagee .....	4
Section 1.25	First Security Interest .....	4
Section 1.26	Guest .....	4
Section 1.27	Limited Common Elements .....	4
Section 1.28	Managing Agent .....	4
Section 1.29	Map .....	4
Section 1.30	Member .....	5
Section 1.31	Notice and Hearing .....	5
Section 1.32	Owner .....	5
Section 1.33	Period of Declarants Control .....	5
Section 1.34	Person .....	5
Section 1.35	Project Documents .....	5
Section 1.36	Rules .....	5
Section 1.37	Security Interest .....	5
Section 1.38	Special Assessment .....	5
Section 1.39	Turnover Date .....	5
Section 1.40	Units That May Be Created .....	5
Section 1.41	VA Approval and/or FHA Approval .....	5
ARTICLE II - STRUCTURE OF CONDOMINIUM COMMUNITY .....		5
Section 2.01	Condominium Community .....	5
Section 2.02	Maximum Number of Units .....	5
Section 2.03	Division into Units/Estates of an Owner .....	6
Section 2.04	Title .....	6
Section 2.05	Description of a Condominium Unit .....	6
Section 2.06	Apartment Boundaries .....	6
Section 2.07	Right to Combine Units .....	7
Section 2.08	Physical Boundaries .....	7




Section 2.09	Inseparability of a Unit .....	7
Section 2.10	No Partition .....	7
Section 2.11	Separate Taxation .....	7
Section 2.12	Limited Common Elements .....	7
Section 2.13	Compliance With Provisions of Declaration, Articles of Incorporation and Bylaws of the Association .....	7
Section 2.14	Liens Against Condominium Apartments .....	8
Section 2.15	Restrictions on Sale of Condominium Unit .....	8
Section 2.16	Restrictions on Mortgaging Units .....	8
ARTICLE III - VARIOUS RIGHTS AND EASEMENTS .....		8
Section 3.01	Owner's Rights in Common Elements .....	8
Section 3.02	Owner's Rights in Limited Common Elements .....	9
Section 3.03	Delegation of Use .....	9
Section 3.04	Owner's Easement for Access, Support and Utilities .....	9
Section 3.05	Easements for Encroachments .....	9
Section 3.06	Easement in Condominium Apartments for Repair, Maintenance and Emergencies .....	9
Section 3.07	Emergency Easements .....	10
Section 3.08	Utility Easements .....	10
Section 3.09	Owner's Easement for Access .....	10
Section 3.10	Easements Deemed Appurtenant .....	10
ARTICLE IV - THE ASSOCIATION .....		10
Section 4.01	Name .....	10
Section 4.02	Purposes and Powers .....	11
Section 4.03	Executive Board .....	11
Section 4.04	Articles of Incorporation and Bylaws .....	11
Section 4.05	Membership .....	11
Section 4.06	Voting Rights .....	11
Section 4.07	Declarants Control of Association .....	11
Section 4.08	Election by Owners .....	12
Section 4.09	Delivery of Documents by Declarants .....	12
Section 4.10	Budget .....	13
Section 4.11	Association Agreements .....	13
Section 4.12	Indemnification .....	13
Section 4.13	Certain Rights and Obligations of Association .....	13
ARTICLE V - ASSESSMENTS .....		14
Section 5.01	Obligation .....	14
Section 5.02	Purpose of Assessments .....	14
Section 5.03	Date of Commencement of Common Expense Assessments .....	14
Section 5.04	Special Assessments .....	14
Section 5.05	Fines .....	15
Section 5.06	Individual Assessments .....	15
Section 5.07	Levy of Assessments .....	15
Section 5.08	Due Date .....	15
Section 5.09	Remedies for Nonpayment of Assessments .....	16
Section 5.10	Assessment Lien .....	16
Section 5.11	Surplus Funds .....	17
Section 5.12	Working Capital Fund .....	17
Section 5.13	Certificate of Assessment Status .....	17
Section 5.14	No Offsets .....	17
ARTICLE VI - RESTRICTIVE COVENANTS .....		17



Section 6.01	Use and Occupancy of Condominium Apartments . . . . .	17
Section 6.02	Use of Common Elements . . . . .	17
Section 6.03	Pets Within Condominium Community . . . . .	17
Section 6.04	Nuisances . . . . .	18
Section 6.05	Vehicular Parking, Storage and Maintenance . . . . .	18
Section 6.06	No Unsightliness . . . . .	18
Section 6.07	Prohibition of Certain Activities . . . . .	19
Section 6.08	Antennas . . . . .	19
Section 6.09	Restrictions on Signs . . . . .	19
Section 6.10	Owner-Caused Damages . . . . .	19
Section 6.11	Lease of Condominium Apartment . . . . .	19
<b>ARTICLE VII - INSURANCE/CONDEMNATION . . . . .</b>		<b>20</b>
Section 7.01	Property Insurance . . . . .	20
Section 7.02	Liability Insurance . . . . .	20
Section 7.03	Owner Policies . . . . .	21
Section 7.04	Worker's Compensation Insurance . . . . .	21
Section 7.05	Directors' and Officer's Liability Insurance . . . . .	21
Section 7.06	Other Insurance . . . . .	21
Section 7.07	Premiums . . . . .	21
Section 7.08	Procedures . . . . .	21
Section 7.09	Damage to Property . . . . .	21
Section 7.10	Certificate of Insurance . . . . .	21
Section 7.11	Condemnation . . . . .	21
<b>ARTICLE VIII - RESTORATION UPON DAMAGE OR DESTRUCTION . . . . .</b>		<b>21</b>
Section 8.01	Duty to Restore . . . . .	21
Section 8.02	Plans/Costs . . . . .	21
Section 8.03	Reconstruction of Less Than Entire Condominium Community . . . . .	22
<b>ARTICLE IX - MAINTENANCE, REPAIR AND RECONSTRUCTION . . . . .</b>		<b>22</b>
Section 9.01	Maintenance, Repair and Reconstruction by the Association . . . . .	22
Section 9.02	Maintenance, Repair and Reconstruction by the Owner . . . . .	22
Section 9.03	Manner of Repair and Replacement . . . . .	23
Section 9.04	Additions, Alterations or Improvements by Unit Owners (Architectural Control) . . . . .	23
<b>ARTICLE X - DEVELOPMENT RIGHTS AND SPECIAL DECLARANTS RIGHTS . . . . .</b>		<b>23</b>
Section 10.01	Reservation . . . . .	23
Section 10.02	Rights Transferable . . . . .	23
Section 10.03	Limitations . . . . .	23
Section 10.04	Interference with Declarants Rights . . . . .	24
Section 10.05	Use by Declarants . . . . .	24
Section 10.06	Models, Sales Offices and Management Offices . . . . .	24
Section 10.07	Declarants' Easements . . . . .	24
Section 10.08	Signs and Marketing . . . . .	24
Section 10.09	Declarants' Personal Property . . . . .	24
<b>ARTICLE XI - FIRST MORTGAGEE PROVISIONS . . . . .</b>		<b>24</b>
Section 11.01	Notices of Action . . . . .	24
Section 11.02	Amendment to Documents/Special Approvals . . . . .	25
Section 11.03	Special FHLMC Provisions . . . . .	26
Section 11.04	Implied Approval . . . . .	26
Section 11.05	Books and Records . . . . .	26



ARTICLE XII - DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION .....	26
Section 12.01      Duration .....	26
Section 12.02      Amendment by Owners .....	27
Section 12.03      FHA/VA Approval .....	27
Section 12.04      Consent of Eligible Mortgagees .....	27
Section 12.05      Amendments by Declarants .....	27
Section 12.06      Consent of Declarants Required .....	27
Section 12.07      Expenses .....	28
Section 12.08      Termination .....	28
ARTICLE XIII - GENERAL PROVISIONS .....	28
Section 13.01      Right of Action .....	28
Section 13.02      Successors and Assigns .....	28
Section 13.03      Severability .....	28
Section 13.04      No Waiver .....	28
Section 13.05      Registration by Owner of Mailing Address .....	28
Section 13.06      Conflict .....	28
Section 13.07      Attorney's Fees and Costs .....	28
Section 13.08      Certificate of Completion .....	29
Section 13.09      Captions .....	29
Section 13.10      Numbers and Genders .....	29

  
2636776 08/31/1998 12:06P Weld County CO  
5 of 37 R 186.00 D 0.00 JA Suki Tsukamoto

**THE CONDOMINIUM DECLARATION**  
**OF**  
**THE CLARK-N-HILL, CONDOMINIUMS**

**PREAMBLE**

THIS DECLARATION is made this 31 day of August, 1998, by STEVEN M. WHITE and MARK PURDY, hereinafter referred to as "Declarants".

WHEREAS, the Declarants are the owner of certain real property situate in the City of Kersey, State of Colorado, as more particularly described in "Exhibit A" attached hereto and incorporated herein by reference; and

WHEREAS, the Declarants have constructed a condominium community on said real property, together with other improvements thereon; and

WHEREAS, the Declarants will convey said real property, subject to the protective covenants, restrictions, reservations and obligations as hereinafter set forth.

NOW, THEREFORE, the Declarants hereby submits the real property described on "Exhibit A" attached hereto, together with all easements, rights and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act (CIOA), C.R.S. §38-33.3-101, *et. seq.*, as it may be amended from time to time. If CIOA is repealed, CIOA, as it exists on the date this Declaration is recorded, shall remain applicable.

Declarants hereby declares that all of the real property described in "Exhibit A" shall be held or sold and conveyed subject to the following easements, restrictions, covenants, conditions and obligations which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the sale real property or any party thereof, their heirs, personal representatives, successors and assigns and shall accrue to the benefit of each Owner thereof.

**ARTICLE I**

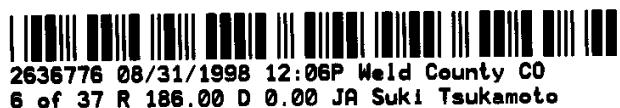
**DEFINITIONS**

The terms hereinafter set forth, unless the context otherwise requires, shall have the following meanings:

Section 1.01. "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.02. "Allocated Interests" shall mean the interest in the Common Elements, the Common Expense Liability and the votes in the Association which are allocated to each of the Units in the Condominium Community. The formulas used to establish the Allocated Interests are as follows:

(a) Interest in the Common Elements. The undivided ownership interest in the Common Elements appurtenant to a particular Condominium Apartment has been determined on the basis of the proportion which the approximate square footage finished area of each Apartment bears to the total approximate square footage finished area of all Apartments in the Condominium Community as set forth in "Exhibit B" attached hereto.



(b) Common Expense Liability. All Common Expenses shall be assessed against Units on the basis set forth in "Exhibit B" attached hereto.

(c) Votes. Each Unit in the Condominium Community has one (1) vote.

Section 1.03. "Articles" shall mean the Articles of Incorporation of the Association.

Section 1.04. "Assessments" shall mean the (a) Common Expense Assessment, (b) Special Assessment, (c) Individual Assessment and (d) Fines levied pursuant to this Declaration.

Section 1.05. "Assessment Lien" shall mean the statutory lien on a Unit for any Assessment levied against that Unit, together with all Costs of Enforcement as defined herein. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

The recording of this Declaration constitutes a record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.

Section 1.06. "Association" shall mean THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, a Colorado corporation, its successors and assigns. The Articles of Incorporation and Bylaws, as herein defined, together with this Declaration, shall govern the administration of the Condominium Community, the Members of which shall be all of the Owners of the Units within the Condominium Community.

Section 1.07. "Board" or "Executive Board" shall mean the Executive Board of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarants as therein provided. The Executive Board is the governing body of the Association and shall act on behalf of the Association.

Section 1.08. "Buildings" shall mean the multiple unit buildings comprising part of the Condominium Community.

Section 1.09. "Bylaws" shall mean the Bylaws which are adopted by the Executive Board of the Association for the regulation and management of the Association as they may be amended from time to time.

Section 1.10. "CIOA" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et. seq., as it may be amended from time to time.

Section 1.11. "City" shall mean the City of Kersey Colorado.

Section 1.12. "Common Elements" shall mean all of the Condominium Community, as hereinafter defined, except the portions thereof which constitute Condominium Apartments, and shall also mean all parts of the Buildings or any facilities, improvements and fixtures which may be within a Condominium Apartment which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the Buildings or any party thereof or any other Condominium Apartment therein and includes those Common Elements which are assigned to the exclusive use of one or more, but not all, of the Condominium Apartment Owners, i.e., "Limited Common Elements".

Without limiting the generality of the foregoing, the following shall constitute Common Elements:

(a) all of the land, landscaping, driveways, parking spaces and easements which are a part of the Condominium Community;

(b) all foundations, columns, girders, beams and supports of the Building;

(c) all exterior walls of the Buildings, the main or bearing walls within the Buildings, the main or bearing subflooring and the roofs of the Buildings;

(d) all stairs, stairways and walkways not within a Condominium Apartment;

(e) all utility, service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating or similar utility, service or maintenance purposes, including furnaces, apparatus, installations and facilities, all of which serve more than one Apartment and are not located within an Apartment;

(f) in general, all other parts of the Condominium Community necessary in common use or convenient to its existence, maintenance and safety.

Any conveyance, encumbrances, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which the interest is allocated is also transferred.

Section 1.13. "Common Expense Assessments" shall mean those assessments defined in Article V, Section 5.02 hereof.

Section 1.14. "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Unit which is determined in accordance with that Unit's Allocated Interests as set forth in Article I, Section 1.02 hereof.

Section 1.15. "Common Expenses" shall mean expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

Section 1.16. "Condominium Apartment" or "Apartment" shall mean the individual air space of such Condominium Apartment which is contained in an enclosed room(s) occupying all or part of a floor(s) in the Buildings as hereinafter defined, not including, however, any of the Common Elements located within such air space. Each Condominium Apartment is shown on the Map as hereinafter defined and is identified thereon with a number.

Section 1.17. "Condominium Community" shall mean such real property and improvements located thereon as more fully described in "Exhibit A" attached hereto.

Section 1.18. "Condominium Unit" or "Unit" shall mean the fee simple interest and title to a Condominium Apartment, together with an undivided interest in the Common Elements appurtenant to such Condominium Unit and all other rights and burdens created by this Declaration.

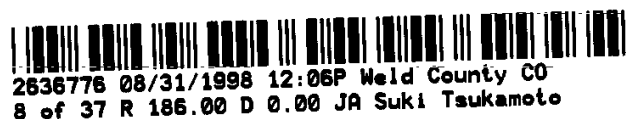
Section 1.19. "Costs of Enforcement" shall mean all fees, late charges, interest, expenses, including receiver's fees and reasonable attorney's fees and costs incurred by the Association (a) in connection with the collection of the Assessment and Fines or (b) in connection with the enforcement of the terms, conditions and obligations of this Declaration.

Section 1.20. "Declarants" shall mean STEVEN M. WHITE and MARK PURDY, or their successors and assigns.

Section 1.21. "Declaration" shall mean THE CLARK-N-HILL CONDOMINIUM ASSOCIATION.

Section 1.22. "Development Rights" and "Special Declarants Rights" shall mean the rights as defined by C.R.S. §38-33.3-103(14) and 38-33.3-103(29) reserved by the Declarants under Article X hereof.

Section 1.23. "Eligible Mortgagee" shall mean a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address and the legal description of the Unit requesting that the Association notify them on any proposed





action requiring the consent of the specified percentage of Eligible Mortgagees.

Section 1.24. "First Mortgagee" shall mean any person or entity who owns, holds, insures or is a governmental guarantor of a Security Interest as herein defined which is a First Security Interest encumbering a Unit within the Condominium Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the seller, whether such contract is recorded or not.

Section 1.25. "First Security Interest" shall mean a Security Interest (as hereinafter defined) which has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.26. "Guest" shall mean (a) any person who resides with an Owner within the Condominium Community, (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Unit within the Condominium Community and any members of his/her household, invitee or cohabitant of any such person or (d) a contract purchaser.

Section 1.27. "Limited Common Elements" shall mean those Common Elements which are reserved for the use of certain Owners to the exclusion of others, i.e, decks, patios or fenced yards.

Section 1.28. "Managing Agent" shall mean any one or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

Section 1.29. "Map" shall mean THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, which, in addition to the requirements set forth in C.R.S. §38-33.3-209, shall also depict the following:

- (a) The legal description of the exterior boundary of the Condominium Community;
- (b) The linear measurements and location with reference to the exterior boundaries of the Condominium Community of the Buildings and all improvements built within the Condominium Community;
- (c) The floor plans and elevation plans of the Buildings within the Condominium Community showing the location, designation, linear dimensions and identification number of each Condominium Apartment, the designation of all of the Common Elements and Limited Common Elements;
- (d) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plan and the linear measurements showing the thickness of the exterior or perimeter walls of the Apartments and of the Buildings.

The Map, and any supplements thereto, shall contain a certificate by a registered land surveyor certifying that the Map (a) contains all of the information required by C.R.S. §38-33.3-209 and (b) was prepared subsequent to substantial completion of the improvements.

In interpreting the Map, the existing physical boundaries of each separate Apartment, as constructed, shall be conclusively presume to be its boundaries.

The Declarants hereby reserves unto itself the right, from time to time, without the consent of any Owner or First Mortgagee being required, to amend the Map.

The Declarants hereby reserves unto the Executive Board of the Association the right, from time to time, without consent of any Owner or First Mortgagee being required, to amend the Map to (a) insure the language and all particulars used on the Map and contained in the Declaration are identical, (b) establish, vacate and relocate outside the Buildings' utility easements and access easements, (c) establish certain Common Elements as Limited Common Elements and (d) satisfy any requirements of CIOA.



The Map and any supplements thereto are hereby incorporated herein by reference as if set forth in full herein.

Section 1.30. "Member" shall mean each Owner as hereinafter defined.

Section 1.31. "Notice and Hearing" shall mean a written notice and an opportunity for a hearing in the manner determined by the Executive Board.

Section 1.32. "Owner" shall mean the owner of record of fee simple title to any Unit which is subject to this Declaration, whether one or more persons or entities, including the Declarants, so long as any Unit remains unsold; excluding, however, those having an interest merely as security for the performance of any obligation.

Section 1.33. "Period of Declarants Control" shall mean that period of time defined in Article IV, Section 4.07 hereof.

Section 1.34. "Person" shall mean a natural person, corporation, partnership, association, trustee, limited liability company, joint venture or any other entity recognized as being capable of owning real property under Colorado law.

Section 1.35. "Project Documents" shall mean this Declaration and the Map or supplements recorded and filed pursuant to the provisions of CIOA, the Articles of Incorporation and Bylaws of the Association and the Rules and Regulations, if any, as they may be amended from time to time.

Section 1.36. "Rules" shall mean the Rules and Regulations adopted by the Executive Board for the regulation and management of the Condominium Community as amended from time to time.

Section 1.37. "Security Interest" shall mean an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.38. "Special Assessment" shall mean those Assessments defined in Article V, Section 5.04 hereof.

Section 1.39. "Turnover Date" shall mean the date the Period of Declarants Control terminates as more fully set forth in Article IV, Section 4.07 hereof.

Section 1.40. "Units That May Be Created" shall mean 5 Units which shall be the maximum number of Units that may be subject to this Declaration.

Section 1.41. "VA Approval" and/or "FHA Approval" shall mean the Condominium Community has been approved by the Veterans Administration and/or the Federal Housing Administration so such agencies will insure or guarantee loans made upon the Units within the Condominium Community.

## ARTICLE II

### STRUCTURE OF CONDOMINIUM COMMUNITY

Section 2.01 - Condominium Community. The name of the Condominium Community shall be THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, which is a Condominium Community.

Section 2.02 - Maximum Number of Units. The number of Units within the Condominium Community is five (5).

Section 2.03 - Division into Units/Estates of an Owner. The Condominium Community is hereby divided into five (5) Units, each consisting of a separate fee simple estate in a particular Condominium Apartment and an appurtenant undivided fee simple interest in the Common Elements.

The undivided interest in the Common Elements appurtenant to a particular Condominium Unit is determined in accordance with that Unit's Allocated Interest as set forth in Article I, Section 1.02 hereof and is set forth on "Exhibit B" attached hereto.

Section 2.04 - Title. A Unit may be held and owned by more than one person as joint tenants or as tenants-in-common or in any real property tenancy relationship recognized under the laws of the State of Colorado.

Section 2.05 - Description of a Condominium Unit. Every contract for the sale of a Unit written prior to the filing for record of the Map and this Declaration may legally describe a Unit by its identifying Unit number designation followed by the words "THE CLARK-N-HILL CONDOMINIUM ASSOCIATION" with further reference to the Map thereof to be filed for record and the Declaration to be recorded. Upon recording of the Map and the Declaration in the records of the Clerk and Recorder of Weld County, Colorado, such description shall be conclusively presumed to relate to the therein described Units.

Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Unit by its identifying number followed by the words " THE CLARK-N-HILL CONDOMINIUM ASSOCIATION".

A sufficient description of a Condominium Unit shall be as follows:

CONDOMINIUM UNIT NO. \_\_\_\_, BUILDING NO. \_\_\_\_, THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, ACCORDING TO THE CONDOMINIUM MAP OF THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, RECORDED IN BOOK \_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_ AND AS DEFINED BY THE CONDOMINIUM DECLARATION OF THE CLARK-N-HILL CONDOMINIUM ASSOCIATION, RECORDED IN BOOK \_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_ IN THE REAL ESTATE RECORDS OF THE CLERK AND RECORDER OF WELD COUNTY, COLORADO.

Every description shall be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Apartment but also the Common Elements and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include (a) a nonexclusive easement for appropriate ingress and egress throughout the Condominium Community and for the use of appropriate exclusive use of the Limited Common Elements and (b) all other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

The reference to the Map and Declaration in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Map or Declaration without specific reference thereto.

Section 2.06 - Apartment Boundaries. The interior unfinished surfaces of the perimeter walls, lowermost floors uppermost ceilings shall mark the perimeter boundaries of a Condominium Apartment as shown on the Condominium Map, and all furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Condominium Apartments and all other portions of the walls, floors or ceilings are part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any fixture lies partially within and partially without the designated boundaries of a Condominium Apartment, any portion thereof serving only that Apartment is a Limited Common Element allocated solely to that Apartment and any portion thereof serving more than one Apartment or any portion of the Common Elements is a part of the Common Elements.



Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, patios and all exterior doors and windows or other fixtures designed to serve a single Condominium Apartment but located outside the Apartment's boundaries as well as fenced areas adjacent to the Condominium Apartment are Limited Common Elements allocated exclusively to that Apartment.

Subject to the above, all spaces, interior partitions and other fixtures and improvements located within the boundaries of a Condominium Apartment are a part of the Apartment.

Section 2.07 - Right to Combine Units. An Owner may physically combine the area and space of one Unit with the area and space of one or more adjoining Units subject to (a) the review and written approval of the Executive Board, (b) compliance with §38-33.3-211 and 212 of CIOA and (c) the receipt of all requisite approvals from the City of Kersey. In the event any such physical combining of Units to create a combined Unit occurs, such combined Unit shall also include the combining of the fixtures and improvements and of the undivided interest in the Common Elements appurtenant to such Units.

The Executive Board reserves the right to designate and convey to said Owner of such combined Units additional Limited Common Elements appurtenant to such Unit, any walls, floors or other structural separation for the combination of such Units; provided, however, that such walls, floor or other structural separations for such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the future.

The Executive Board shall have the authority to grant easements through the Common Elements to accomplish the combining of the Units. The Assessment Liability of each Unit, although combined, shall remain the same as will the voting rights for such Units.

Section 2.08 - Physical Boundaries. The existing physical boundaries of any Condominium Apartment or Common Elements shall be conclusively presumed to be the boundaries.

Section 2.09 - Inseparability of a Unit. An Owner's undivided interest in the Common Elements shall not be separated from the Condominium apartment to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Condominium Apartment even though the interest is not expressly mentioned or described in a deed or other instrument.

Section 2.10 - No Partition. Except as provided in Section 2.07 hereof, the Common Elements shall remain undivided and no owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for the physical partition or subdivision of a Condominium apartment or a Unit between or among the Owners thereof.

Section 2.11 - Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Buildings, the Condominium Community nor any of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 2.12 - Limited Common Elements. The Limited Common Elements shall be identified on the Map. Any door, window, entryway, deck and patio or fenced yard which are accessible from, associated with and which adjoins a Condominium Apartment identified as Limited Common Elements on the Map shall without further reference thereto be used in connection with such Condominium Apartment to the exclusion of the use thereof by other Owners.

Section 2.13 - Compliance with Provisions of Declaration, Articles of Incorporation and Bylaws of the Association. Each Owner shall comply strictly with and shall cause each of the Owners' Guests to comply strictly with all of the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the decisions, rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for



damages and injunctive relief or both, along with costs of suit and reasonable attorney's fees, maintainable by the Executive Board in the name of the Association on behalf of the Owners or, in a proper case, by any aggrieved Owner.

Section 2.14 - Liens Against Condominium Apartments. Upon the completion of the Condominium Community by the Declarants and payment of all of the costs thereof, no lien shall arise or be effective against the Condominium Community. Liens or encumbrances shall only arise or be created against each Condominium Apartment and the percentage of undivided interest in the Common Elements appurtenant to the Condominium Apartment in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel or real property subject to individual ownership; provided, however, that no labor performed or materials furnished with the consent or at the request of an Owner or his/her agent shall be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same.

Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in the course of work performed on such Owner's Unit. At the written request of any Owner, the Executive Board shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorney's fees by an Individual Assessment against such Owner in accordance with Article V, Sections 5.05 and 5.06 hereof.

Section 2.15 - Restrictions on Sale of Condominium Unit. The right of an Owner to sell, transfer or otherwise convey his/her Unit shall not be subject to any right of first refusal or similar restriction, and such Unit may be sold free of any such restrictions.

Section 2.16 - Restrictions on Mortgaging Units. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his/her Unit. There is no requirement for the use of a specific lending institution or particular type lender.

### ARTICLE III

#### VARIOUS RIGHTS AND EASEMENTS

Section 3.01 - Owner's Rights in Common Elements. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Elements, to include the Limited Common Elements, which shall be appurtenant to and shall pass with the title of the Unit to such Owner, subject to the Development Rights and Special Declarants Rights of the Declarants reserved herein and the following rights of the Executive Board:

(a) To borrow money to improve the Common Elements and to mortgage said Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a security interest unless such is approved by Owners to which at least Eighty percent (80%) of the votes in the Association are allocated, including Eighty percent (80%) of the votes allocated to Units not owned by the Declarants as more fully set forth in §38-33.3-312 of CIOA.

(b) To convey or dedicate all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners entitled to cast at least Eighty percent (80%) of the votes in the Association, including Eighty percent (80%) of the votes allocated to Units not owned by the Declarants as more fully set forth in §38-33.3-312 of CIOA.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this paragraph as more fully set forth in §38-33.3-312 of CIOA

(c) To adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Member for any period during which any Assessment remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration, Bylaws or Rules and Regulations.

(e) To take such actions as are reasonably necessary to protect the Common Elements against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way for the use of Common Elements by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the Common Elements temporarily while maintaining, repairing and making replacements in the Common Elements or permanently if approved by the Members to which at least Eighty percent (80%) of the votes in the Association are allocated, including Eighty percent (80%) of the votes allocated to Units not owned by the Declarants as more fully set forth in §38-33.3-312 of CIOA.

(h) To make such use of the Common Elements as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Executive Board in Article IV, Section 4.13 hereof.

Section 3.02 - Owner's Rights in Limited Common Elements. Each Owner and his/her Guests shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on the Map as appurtenant to the Unit owned by such Owner.

Section 3.03 - Delegation of Use. Any Owner may delegate his/her right of enjoyment to the Common Elements and facilities to their Guests.

Section 3.04 - Owner's Easement for Access, Support and Utilities. Each Owner shall have a nonexclusive easement for access between his/her Condominium Apartment and the roads and streets adjacent to the Condominium Community. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Apartment. Each Owner shall have a nonexclusive easement in and over the Common Elements within the Condominium Project, including the Common Elements within the Condominium Project of another Owner, for horizontal and lateral support of the Condominium Apartment which is a part of his/her Unit and for utility services to the Condominium Apartment, including water, sewer, gas, electricity, telephone and television services.

Section 3.05 - Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Condominium Apartment, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Condominium Apartment encroaches or shall hereafter encroach upon the Common Elements or upon another Condominium Apartment, the Owner of that Condominium Apartment shall and does have an easement for such encroachment and for the maintenance of same. The easement shall extend for whatever period the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Apartment. Encroachments referred to herein included but are not limited to encroachments caused by error in the original construction of the Buildings, by error in the Map, by settling, rising or shifting of the earth or by changes in position caused by repair or reconstruction of the Condominium Community or any part thereof or by any other movement of any portion of the improvements located upon the Condominium Community.

Section 3.06 - Easement in Condominium Apartments for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Condominium

Apartment. All Owners shall permit a right of entry to the Executive Board or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Condominium Apartment to all Common Elements from time to time as authorized by the Executive Board as may be necessary for the routine maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Condominium Apartment.

For routine maintenance and non emergency repairs, entry shall be made only on a regular business day during regular business hours after service of at least one (1) day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

The Executive Board or its agents is granted the authority to use such reasonable force as is necessary to gain entry into the Apartment in the event of an emergency if no other means of entry are available in view of the circumstances. The Association shall bear the full responsibility and expense of all damages incurred to the Apartment and/or Common Elements due to such forcible entry.

All damage to the interior or any part of the Condominium Apartment resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements at the instance of the Association shall be paid for as a part of the Common Expense Assessment by all of the Owners. No diminution or abatement for Common Expense Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of such repairing such damage. In the event the Owner fails, within a reasonable time upon proper notice, to pay the cost of the damages incurred, the Executive Board may pay for said damages and charge the Owner responsible as an Individual Assessment in accordance with Article V, Section 5.06 hereof.

Section 3.07 - Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter servicing the Condominium Community to enter upon all parking areas located within the Condominium Community in the performance of their duties.

Section 3.08 - Utility Easements. The Executive Board has the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Community.

Section 3.09 - Owner's Easement for Access. Each Owner shall have a nonexclusive easement for access between his/her Unit and the streets within and adjacent to the Condominium Community. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Unit. Such easement shall extend for whatever period of time the need for access shall exist.

Section 3.10 - Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be perpetual and appurtenant to the Units owned by such Owner. All conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and rights as provided for herein, as though set forth in said document in full, even though no specific reference to such easements, uses or rights appear in such conveyance.

## ARTICLE IV

### THE ASSOCIATION

Section 4.01 - Name. The name of the Association shall be THE CLARK-N-HILL CONDOMINIUM ASSOCIATION.

Section 4.02 - Purposes and Powers. The Association, through its Executive Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Elements and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and the residents of the Condominium Community. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes. The Executive Board shall have all of the powers, authority and duties permitted pursuant to CIOA necessary and proper to manage the business and affairs of the Association.

Section 4.03 - Executive Board. The affairs of the Association shall be managed by an Executive Board which may, by resolution, delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Executive Board of final responsibility.

Section 4.04 - Articles of Incorporation and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be subject to the provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles of Incorporation or Bylaws conflict with this Declaration, the Declaration shall control.

Section 4.05 - Membership. Members of the Association shall be every record owner of a Unit subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds interest in any Unit, all such persons shall be Members.

Section 4.06 - Voting Rights. The Association shall have one (1) class of voting membership. Owners shall be entitled to one (1) vote for each Unit owned.

The Association may suspend any Unit Owner's voting rights in the Association during any period(s) that such Owner fails to comply with the Rules and Regulations of the Association as adopted by the Executive Board or with any other obligation of the Member under the Bylaws or this Declaration. No Owner shall have the right to vote until (a) the Secretary of the Association has received from either the Member or a title company licensed to do business in the State of Colorado a certified copy of the recorded deed or other recorded instrument establishing record title to the Unit and (b) if the Owner shall be more than one person, a partnership, a limited liability company or a corporation, a written notice subscribed to by all such persons, partnership, limited liability company or corporation (as the case may be) designating one (1) of such persons or an officer or manager of such entity as the person entitled to cast the vote with respect to such Unit.

The total number of votes which may be cast in connection with any matter shall be equal to the total number of Units then existing within the Condominium Community.

Section 4.07 - Declarants Control of Association. Subject to Section 4.08 hereof, there shall be a "Period of Declarants Control" during which the Declarants may appoint and remove the officers and members of the Executive Board. The Period of Declarants Control shall terminate no later than the earlier of the following:

- (a) Sixty (60) days after conveyance of Seventy-five percent (75%) of the Units That May be Created to Owners other than the Declarants;
- (b) Two (2) years after the last conveyance of a Unit by the Declarants in the ordinary course of business to Owners other than the Declarants;
- (c) Two (2) years after any right to add new Units was last exercised; or
- (d) Ten (10) years from the date of the recording of this Declaration.

The Declarants may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarants Control. In that





event, the Declarants may require, for the duration of the Period of Declarants Control, that specific actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarants, be approved by the Declarants before they become effective.

Section 4.08 - Election by Owners. Not later than sixty (60) days after conveyance of Twenty-five percent (25%) of the Units That May be Created to Owners other than the Declarants, at least one (1) member and not less than Twenty-five percent (25%) of the members of the Executive Board must be elected by Owners other than the Declarants.

Not later than sixty (60) days after conveyance of Fifty percent (50%) of the Units That May Be Created to Owners other than the Declarants, not less than Thirty-three and one-third percent (33-1/3%) of the members of the Executive Board must be elected by Owners other than the Declarants.

The Period of Declarants Control of the Association shall terminate no later than the earlier of: (i) Sixty (60) days after conveyance of Seventy-five percent (75%) of the Condominium Units that may be created to Owners other than the Declarants; (ii) Two (2) years after the Declarants have last conveyed a Condominium Unit in the ordinary course of business.

After termination of any Period of Declarants Control, the Owners shall elect an Executive Board of at least five (5) members, all of whom shall be Owners. The Owners elected to the Executive Board shall take office upon election.

Section 4.09 - Delivery of Documents by Declarants. Within sixty (60) days after the Owners other than the Declarants elect a majority of the members of the Executive Board, the Declarants shall deliver, without expense to the Executive Board, all property of the Owners and of the Association held or controlled by the Declarants, including without limitation, the following items:

- (a) The original or a certified copy of the recorded Declaration, as amended; the Association's Articles of Incorporation, together with a certificate of good standing from the Colorado Secretary of State; the corporate Bylaws, minute books and any other books and records; and any Rules and Regulations which may have been adopted;
- (b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarants Control terminates in accordance with §38-33.3-303(9)(b) of CIOA;
- (c) The Association funds or control thereof;
- (d) All of the tangible personal property represented by the Declarants to be the property of the Association which has been used exclusively in the operation and enjoyment of the Common Elements, copies of any plans and specifications used in the construction of improvements in the Condominium Community and inventories of these properties;
- (e) All insurance policies then in force in which the Owners, the Association or its directors and officers are named as insured persons;
- (f) Any other permits issued by governmental bodies applicable to the Condominium Community and which are currently in force or which were issued within one (1) year prior to the date on which the Owners other than the Declarants took control of the Association;
- (g) Written warranties of the contractor, subcontractors, suppliers and manufacturers which are still effective;
- (h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarants' records;
- (i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

Section 4.10 - Budget. The Executive Board shall cause to be prepared, at least sixty (60) days prior to the commencement of each calendar year, a budget for such calendar year. Within thirty (30) days after the adoption of any budget by the Executive Board, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than sixty (60) days after mailing or other delivery of the summary.

Unless at that meeting Owners of Units to which at least Sixty-seven percent (67%) of the votes in the Association are allocated reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event the budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget by the Executive Board.

Section 4.11 - Association Agreements. Any agreement for professional management of the Condominium Community or any contract providing for services of the Declarants may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice; provided, however, the Association shall not be bound, either directly or indirectly, to contracts or leases (including management contracts) entered into during the Period of Declarants Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such transfer from Declarants Control upon not more than thirty (30) days' notice to the other party thereto.

Section 4.12 - Indemnification. Each officer, directors and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in any proceeding to which he/she may be a party or in which he/she may become involved by reason of him/her being or having been an officer, director or committee member of the Association or any settlements thereof, whether or not he/she is an officer, director or committee member of the Association at the time such expenses are incurred to the full extent permitted by Colorado law.

Section 4.13 - Certain Rights and Obligations of Association.

(a) Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Condominium Community upon its damage, destruction, condemnation and obsolescence.

The Executive Board is hereby irrevocably appointed as Attorney-in-Fact for the Owners and each of them to manage, control and deal with the interest of such Owners in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder to deal with the Condominium Community upon its destruction, condemnation or obsolescence as hereinafter provided.

The acceptance by any person of any interest in any Unit shall constitute an appointment of the Executive Board as Attorney-in-Fact as provided above and hereinafter. The Executive Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Condominium Community and to perform all of the duties required of it.

(b) Contracts, Easements and Other Agreements. The Executive Board shall have the right to enter into, grant, perform, enforce, cancel and vacate all contracts, easements, licenses, leases, agreements and/or rights-of-way for the use by Owners, their Guests and other persons concerning the Common Elements.

Any such contract, license, lease, agreement, easement and/or right-of-way shall be upon such terms and conditions as may be agreed to from time to time by the Executive

Board without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

## ARTICLE V

### ASSESSMENTS

Section 5.01 - Obligation. Each Owner, including the Declarants, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines and Individual Assessments and (d) Cost of Enforcement, which shall be a continuing lien upon the Unit against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is a personal debt with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Unit shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Unit.

The personal obligation for delinquent assessment shall not pass to such Owner's successors-in-title unless expressly assumed by the successor-in-title.

Section 5.02 - Purpose of Assessments. The Common Expense Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Condominium Community and the Members of the Association. Such purposes shall include by way of example but not limitation the improvement, repair, maintenance, reconstruction and insuring of the Common Elements, payment of the Owners' water and sewer bills to the City, trash removal, exterior lawn maintenance, payment for professional services provided to the Association and any other purposes reasonable, necessary or incidental to such purposes.

Such Assessments shall include the establishment and maintenance of a reserve fund for the improvement, maintenance, reconstruction and repair of the Common Elements on a periodic basis. No assessments levied during the Period of Declarants Control may be used for the purpose of constructing capital improvements.

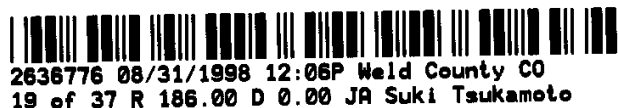
Section 5.03 - Date of Commencement of Common Expense Assessments. The Common Expense Assessment shall commence as to all Units no later than thirty (30) days after the first Unit is conveyed to an Owner other than the Declarants.

Until the commencement of the collection of Assessments, the Declarants shall pay all of the expenses incurred and paid for by the Association, not to include any allocation to the reserve fund.

Section 5.04 - Special Assessments. In addition to the other Assessments authorized herein, the Executive Board, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense, by way of example but not limitation, the cost of any construction, reconstruction, improvement, repair or replacement of an improvement upon the Common Elements, including fixtures and personal property relating thereto or for the funding of any operating deficit incurred by the Association; provided, however, that any such assessment shall have the approval of Owners to whom at least Sixty-seven percent (67%) of the votes in the Association are allocated who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Unit in accordance with that Unit's Common Expense Liability determined in accordance with Article I, Section 1.02 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarants Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least



Twenty percent (20%) of the votes in the Association are allocated shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

If the Condominium Community has been or is to be approved by the Federal Housing Administration and/or Veterans Administration, then until the termination of the Period of Declarants Control in accordance with Article IV, Section 4.07 hereof, all Special Assessments for capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

Section 5.05 - Fines. The Executive Board shall have the right to levy a Fine against an Owner for each violation of this Declaration, the Bylaws, the Articles of Incorporation and the Rules and Regulations of the Association. No such Fine shall be levied until the Owner(s) to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the Executive Board in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement.

Section 5.06 - Individual Assessments. The Executive Board shall have the right to individually levy any Owner amounts as provided for by this Declaration to include but not be limited to charges levied under Article II, Section 2.14, Article III, Section 3.06, Article VI, Sections 6.03, 6.05 and 6.10 and Article IX, Section 9.02 hereof. Individual Assessments shall be collected as part of the Costs of Enforcement.

Section 5.07 - Levy of Assessments. Common Expense Assessments shall be levied on all Units based upon a budget of the Association's cash requirements to accomplish the purposes set forth in Section 5.02 hereof. The Common Expense Liability shall be prorated among the Units in accordance with that Unit's Common Expense Liability as set forth in Article I, Section 1.02 hereof.

The omission or failure of the Executive Board to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Special Assessments shall be levied in accordance with Section 5.04 hereof.

Fines and Individual Assessments may be levied at any time as required. Both assessments are exempt from any voting requirements by the membership required for other assessments called for under this Declaration.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Elements or the abandonment of his/her Unit.

Section 5.08 - Due Date. Fines and Individual Assessments shall be due and payable as established by the Executive Board.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments; provided, however, the first Assessment levied shall be adjusted to reflect the time remaining in the Association's first fiscal year. Any Owner purchasing a Unit between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Executive Board but may be payable on an installment basis as determined by the Executive Board.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

Section 5.09 - Remedies for Nonpayment of Assessments. If any Assessments (to include Costs of Enforcement) are not paid within ten (10) days after the same become due and payable, then:

- (a) Interest shall accrue at the default rate set by the Executive Board on any amount of the Assessment in default accruing from the due date until the date of payment;
- (b) The Executive Board may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due during the fiscal year during which such default occurred;
- (c) The Executive Board may bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and
- (d) The Executive Board may proceed to foreclose its lien against the Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

Section 5.10 - Assessment Lien. The Association is hereby granted an Assessment Lien against each Unit for any Assessment levied by the Executive Board and for Costs of Enforcement when the Unit Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

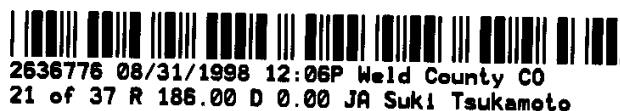
- (a) Real property ad valorem taxes and special assessment liens duly imposed by as Colorado governmental or political subdivision or special taxing district or any other liens made superior by statute; and
- (b) The lien of any First Mortgagee except to the extent CIOA grants priority for Assessments to the Association.

CIOA does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Declaration is required. However, the Executive Board may prepare and record in the county in which the Unit is located a written notice setting forth the amount of unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. If a lien is filed, the costs thereof shall be considered Costs of Enforcement.

Sale or transfer of any Unit shall not affect the lien for said Assessments except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgagee or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture shall extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessment thereafter becoming due nor from the lien thereof.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against that Unit which have accrued prior to the time such First Mortgagee acquires title to the Unit except to the extent CIOA grants lien priority for Assessments of the Association.



The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Unit; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Unit for Assessments and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Section 5.11 - Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited to the Owners in proportion to their Allocated Interests or credited to them to reduce their future Assessments.

Section 5.12 - Certificate of Assessment Status. Upon written request delivered personally or by certified mail first class postage prepaid return receipt requested to the Association's Registered Agent, the Association shall furnish to an Owner or such Owner's First Mortgagee a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit.

The statement shall be furnished within fourteen (14) days after receipt of the request and is binding upon the Association, the Executive Board and every Owner. If no statement is furnished delivered personally or by certified mail first class postage prepaid return receipt requested to the inquiry party, the Association shall have no right to assert a priority lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 5.13 - No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason, including without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration. The Declarants is exempt from the requirements of this Section 5.13.

## ARTICLE VI

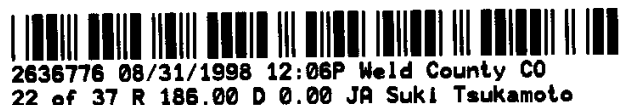
### RESTRICTIVE COVENANTS

Section 6.01 - Use and Occupancy of Condominium Apartments. Each Owner shall be entitled to the exclusive ownership and possession of his/her Condominium Apartment. Subject to the Development and Special Declarants Rights reserved by the Declarants in Article X hereof, no Condominium Apartment within the Condominium Community shall be used for any purpose other than single-family residential purposes as generally defined by the zoning ordinances of the City of Kersey Colorado.

Section 6.02 - Use of Common Elements. Each Owner and his/her Guests may use the appurtenant Common Elements in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Owners. The Executive Board may adopt Rules and Regulations governing the use of the Common Elements. Each Owner, by the acceptance of his/her deed, and such Owner's Guests occupying the Condominium Apartment agree to be bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements without the prior written consent of the Executive Board. Nothing shall be altered, constructed on or removed from the Common Elements except upon the prior written consent of the Executive Board.

Section 6.03 - Pets Within Condominium Community. No animals, livestock, birds, poultry,



reptiles or insects of any kind shall be raised, bred, kept or boarded in or on any portion of the Condominium Community except that no more than two dogs or cats or any combination thereof may be allowed in the Condominium Apartments occupied by Owners (not renters) so long as they are not raised, bred or maintained for any commercial purpose and are not kept in such a manner as to create a nuisance or inconvenience to any residents of the Condominium Community.

The Executive Board shall have the right and authority to determine in its sole discretion whether dogs and cats are being kept for commercial purposes or are being kept in such a number or in such a manner as to be unreasonable or to create a nuisance or that an Owner is otherwise in violation of the provisions of this Section 6.03. The Executive Board may take such action(s) as it deems reasonably necessary to correct the violation to include directing permanent removal of the pet(s) from the Condominium Community.

Household pets shall not be allowed to run at large within the Condominium Community, but shall at all times be under the control of such pet's Owner, and such pets shall not be allowed to litter the Common Elements. It shall be the responsibility of each owner to remove any animal excrement discharge by any animal upon any portion of the common area within a reasonable time after the animals discharge.

Reimbursement for damages caused by such pets or costs incurred by the Association, including attorney's fees and costs, in the removal of a pet(s) from the Condominium Community or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Individual Assessment in accordance with Article V, Section 5.06 hereof.

Section 6.04 - Nuisances. No noxious or offensive activity shall be carried on within the Condominium Community nor shall anything be done or maintained thereof which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance. Decks and patios shall not be used for storage. No activity shall be conducted on any part of the Condominium Community which is or might be unsafe or hazardous to any person. All rubbish, trash or garbage shall be regularly removed from the Condominium Community and shall not be allowed to accumulate thereon.

Section 6.05 - Vehicular Parking, Storage and Maintenance. No house trailer, camping trailer, horse trailer, camper, detached camper shell, boat trailer, hauling trailer, boat or boat accessories, truck larger than one ton, recreational vehicle or equipment, mobile home or commercial vehicle may be parked or stored anywhere within the Condominium Community so they are visible from neighboring Units or from the street except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles". No emergency or temporary parking or storage shall continue for more than forty-eight (48) hours.

No abandoned, unlicensed, wrecked or inoperable vehicle of any kind shall be stored or parked within the Condominium Community except in emergencies. An "abandoned" or "inoperable" vehicle shall be defined as any vehicle as listed above or any other kind of passenger vehicle which has not been driven under its own power for a period of one (1) week or longer or which does not have installed within it an operable engine system. The Executive Board shall have the right to remove and store a vehicle in violation of this Section 6.05 after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment in accordance with Article V, Section 5.06 hereof.

Section 6.06 - No Unsightliness. No activity shall be conducted on any part of the Condominium Community which is or might be unsafe, unsightly, unhealthy or hazardous to any person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Elements, including areas which are Limited Common Elements, and nothing shall be placed on or in windows or doors of Condominium Apartments which would or might create an unsightly appearance. No Owner shall modify, alter, repair, decorate, redecorate or improve the exterior of any Condominium Apartment or any of the Common Elements without the express written approval of the Executive Board in accordance with Article IX, Section 9.04 hereof.

Section 6.07 - Prohibition of Certain Activities. Nothing shall be done or kept in any Condominium Apartment or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Condominium Community or increase the rate of the insurance on the Condominium Community over what the Association, but for such activity, would pay without the prior written consent of the Executive Board.

Nothing shall be done or kept in any Condominium Apartment or in the Common Elements which would be in violation of any statute, ordinance, regulation or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Condominium Apartment or in the Common Elements, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of the Condominium Community which is unreasonably loud or annoying.

Section 6.08 - Antennas. Exterior television receiving or transmitting devices of any type including receiving or transmission equipment for microwave transmissions and any radio receiving or transmitting devices of any type are expressly prohibited unless approved in writing by the Executive Board. The provisions of this Section 6.08 shall not apply to any microwave equipment for the receiving of microwave transmission in the event such equipment is subject to rules and regulations issued by the Federal Communications Commission which preempts the ability of the Executive Board to control the placement of such equipment. To the fullest extent possible the Executive Board shall have the ability to designate the location of any antenna or receiving equipment which is approved for use by a Unit Owner within the project.

Section 6.09 - Restrictions on Signs. No signs or advertising of any nature shall be erected or maintained on any part of the Condominium Community without the prior consent of the Executive Board.

Section 6.10 - Owner-Caused Damages. If, due to the act or negligence of an Owner of such Owner's Guests, loss or damage shall be caused to any person or property within the Condominium Community, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorney's fees and costs, if necessary, may be collected by the Executive Board from such Owner as an Individual Assessment against such Owner in accordance with Article V, Section 5.06 hereof.

Section 6.11 - Lease of Condominium Apartment. Any Owner shall have the right to lease his/her Condominium Apartment upon such terms and conditions as the Owner may deem advisable subject to the following:

- (a) No Owner may lease less than his/her entire Condominium Apartment for transient or hotel purposes or for a term of less than four (4) months;
- (b) Any such lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws, the Articles of Incorporation and the Rules and Regulations of the Association;
- (c) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association shall constitute a default, and such default shall be enforceable by either the Executive Board or the lessor or by both of them; and
- (d) Any Owner who leases his/her Condominium Apartment shall, within seven (7) days after the execution of such lease, forward a copy of same to the Executive Board.
- (e) The Executive Board may require an Owner to evict any tenant who has violated any provisions of this Declaration, the Articles of Incorporation, Bylaws of the Association or any provision of the Colorado Revised Statutes which applies to landlord tenant relationships.

The Association, acting through its Executive Board, shall have the standing and power to





enforce all of the above Restrictive Covenants.

## ARTICLE VII

### INSURANCE/CONDEMNATION

Section 7.01 - Property Insurance. To the extent reasonably available, the Association shall obtain, maintain and pay the premiums upon as a Common Expense a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements, including fixtures to the extent they are part of the Common Elements and other common personal property belonging to the Association. All references herein to a "master" or "blanket" type policy of property insurance are intended to describe "single entity" condominium insurance coverage.

The policy shall be in an amount equal to 100% of the current replacement cost.

The loss payable shall be in favor of the Association as a trustee for each Owner and each such Owner's Mortgagee. The Association shall hold any proceeds of insurance in trust for the Owners and for their Mortgagees as their interests may appear. Certificates of Insurance shall be issued to each Owner and Mortgagee upon request.

Such policy shall contain the standard mortgage clause or equivalent endorsement (without contribution). Such policies shall also provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder of a First Mortgage in the policies. In addition, the policies must provide the following:

- (a) A waiver of the right of subrogation against the Owner individually;
- (b) The insurance is not prejudiced by any act or neglect of any individual Owners which is not in control of such Owners collectively; and
- (c) The policy is primary in the event the Owner has other insurance covering the same loss.

The insurance policy shall include protection against the following:

- (a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; or
- (b) All other perils which are customarily covered with respect to condominiums similar in construction and use, including all perils normally covered by the standard all-risk endorsement where such is available.

The following endorsements are required if they are available and are commonly required by prudent institutional mortgage investors: Agreed Amount Endorsement, Inflation Guard Endorsement, Construction Code Endorsement, Demolition Cost Endorsement, Contingent Liability from Operation of Building Laws Endorsement, Increased Cost of Construction Endorsement and Guaranteed Replacement Cost Endorsement.

Section 7.02 - Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Elements owned by the Association and public ways within the Condominium Community. Coverage shall be for at least \$1,000,000 for bodily injury including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements. Such policies must provide they may not be canceled or substantially modified by any party without at least ten (10) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a first mortgage in the insurance policy.

Section 7.03 - Owner Policies. An insurance policy issued to the Association does not preclude Owners from obtaining insurance for their own benefit.

Section 7.04 - Worker's Compensation Insurance. The Executive Board may obtain and maintain Worker's Compensation Insurance if required to meet the requirements of the laws of the State of Colorado.

Section 7.05 - Directors' and Officers' Liability Insurance. The Executive Board may obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors and officers of the Association. This insurance will have limits determined by the Executive Board.

Section 7.06 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association.

Section 7.07 - Premiums. Insurance premiums for insurance carried by the Association shall be paid for by the Association as a Common Expense.

Section 7.08 - Procedures. The Executive Board may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration of all deductibles paid by the Association. If more than one Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a prorata share of any deductible paid by the Association.

Section 7.9 - Damage to Property. Any portion of the Condominium Community for which insurance is required under §38-33.3-313 of CIOA or for which insurance carried by the Association is in effect which is damaged or destroyed shall be repaired or reconstructed by the Association in accordance with Article VIII hereof.

Section 7.10 - Certificate of Insurance. Any insurer who has issued an insurance policy for the insurance described in this Article shall issue certificates of insurance to the Association and, upon request, to any Owner or First Mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association and each Owner and First Mortgagee to whom a certificate of insurance has been issued at their last known address.

Section 7.11 - Condemnation. If all or part of the Condominium Community is taken by any power have the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain as set forth in CIOA.

## ARTICLE VIII

### RESTORATION UPON DAMAGE OR DESTRUCTION

Section 8.01 - Duty to Restore. Any portion of the Condominium Community for which insurance is required under CIOA or for which insurance carried by the Association is in effect which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Condominium Community is terminated; or
- (b) Eighty percent (80%) of the Owners, including every Owner of a Unit or appurtenant Limited Common Element which will not be rebuilt, vote not to rebuild.

In the event the Condominium Community is not repaired or reconstructed in accordance with the above, the Condominium Community shall be sold, and the proceeds distributed pursuant to the procedures provided for in CIOA for termination of condominium projects.

Section 8.02 - Plans/Costs. The property must be repaired and restored in accordance with

either the original plans and specifications or other plans and specifications which have been approved by the Executive Board and Fifty-one percent (51%) of the Owners. The costs of repair or reconstruction in excess of insurance proceeds and reserves shall be a Common Expense.

Section 8.03 - Reconstruction of Less Than Entire Condominium Community. If the entire Condominium Community is not repaired or reconstructed, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium Community and:

(a) The insurance proceeds attributable to a Unit and Limited Common Elements which are not reconstructed must be distributed to the Owner of the Unit, the Owner of the Unit to which the Limited Common Elements were appurtenant to and to the holders of Security Interests as their interest may appear;

(b) The remainder of the proceeds must be distributed to each Owner and holders of Security Interests as their interests may appear in proportion to such Owner's interest in the Common Elements as set forth in Article I, Section 1.02 hereof; and

(c) If the Owners vote not to rebuild a Unit, all of the Allocated Interests of that Unit shall be reallocated as if the Unit has been condemned, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations.

## ARTICLE IX

### MAINTENANCE, REPAIR AND RECONSTRUCTION

Section 9.01 - Maintenance, Repair and Reconstruction by the Association. The Association shall be responsible for the maintenance, repair and reconstruction of all of the Common Elements, whether located inside or outside the Condominium Apartments in accordance with this Article IX.

Section 9.02 - Maintenance, Repair and Reconstruction by the Owner.

(a) Each Owner shall keep his/her Condominium Apartment and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition and shall do all redecorating and painting which may at any time be necessary to maintain the interior appearance and condition of his/her Condominium Apartment.

In addition, each Owner shall be responsible for all damage to any other Condominium Apartments or to the Common Elements resulting from his/her failure or negligence to make any of the repairs required by this Section 9.02. Each Owner shall perform his/her responsibilities in such a manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Executive Board any defect or need for repairs for which the Association is responsible.

(b) The Owner of any Unit to which a Limited Common Element is appurtenant shall keep it in a clean and sanitary condition and shall be responsible for its repair, maintenance and improvements.

In the event any Owner shall fail to maintain or keep in good repair his/her Limited Common Elements in a manner satisfactory to the Executive Board, the Executive Board, shall have the right to maintain, repair and/or reconstruct said Limited Common Elements. The cost of such maintenance, repair and/or reconstruction shall be chargeable to such Owner by Individual Assessment as provided for in Article V, Section 5.06 hereof.

Each Limited Common Element is subject to an easement in favor of the Executive Board (including its agents, employees and contractors) for providing the maintenance, repair and/or reconstruction in accordance with the above.

Section 9.03 - Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction.

Section 9.04 - Additions, Alterations or Improvements by Unit Owners (Architectural Control). No Owner shall make any structural addition, alteration or improvement in or to his/her Unit without the prior written consent of the Executive Board. No Owner shall paint or alter the exterior of his/her Unit, including the doors and windows, nor shall any Owner paint or alter the exterior of any Building without the prior written consent of the Executive Board.

The Executive Board shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute approval by the Executive Board of such proposed structural addition, alteration or improvement.

If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any Unit requires execution by the Association and provided consent has been given by the Executive Board, then the application shall be executed on behalf of the Association by an authorized officer only without, however, incurring any liability on the part of the Executive Board or the Association or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having claim for injury to person or damage to property arising therefrom.

## ARTICLE X

### DEVELOPMENT RIGHTS AND SPECIAL DECLARANTS RIGHTS

Section 10.01 - Reservation. The Declarants reserves the following Development Rights and Special Declarants Rights ("Declarants Rights") which may be exercised, where applicable, anywhere within the Condominium Community:

- (a) To complete the improvements indicated on the Map;
- (b) To exercise any Declarants Rights reserved herein;
- (c) To use and maintain parking spaces and storage areas;
- (d) To use and to permit others to use easements through the Common Elements as may be reasonably necessary for construction within the Condominium Community and for the purpose of discharging Declarants' obligations under CIOA and this Declaration;
- (e) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarants Control subject to the provisions of Article IV, Section 4.07 of this Declaration;
- (f) To merge or consolidate the Condominium Community with another Condominium Community;
- (g) To amend the Declaration and/or Map in connection with the exercise of any Declarants Rights;
- (h) To exercise any other Declarants Rights created by any other provisions of this Declaration.

Section 10.02 - Rights Transferable. Any Declarants Rights created or reserved under this Article X for the benefit of the Declarants may be transferred to any person by an instrument describing the Declarants Rights transferred and recorded in Weld County, Colorado. Such instrument shall be executed by the transferor Declarants and the transferee Declarants.

Section 10.03 - Limitations. The Declarants Rights shall terminate at the option of the



Declarants by its written notice to the Secretary of the Association, but in any event, such Declarants Rights shall terminate without further act or deed ten (10) years after the date of the recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 10.04 - Interference with Declarants Rights. Neither the Association nor any Owner may take any action or adopt any rule which will interfere with or diminish any Declarants Rights without the prior written consent of the Declarants.

Section 10.05 - Use by Declarants. The exercise of any Declarants Right by the Declarants shall not unreasonably interfere with the access, enjoyment or use of any Unit by any Owner nor the access, enjoyment or use of the Common Elements; nor shall any activity be conducted which might be unsafe, unhealthy or hazardous to any person.

Section 10.06 - Models, Sales Offices and Management Offices. Subject to the limitations set forth in Section 10.03 hereof, the Declarants or its duly authorized agents, representatives and employees may maintain any Condominium Apartment owned by the Declarants or any portion of the Common Elements as a model Condominium Apartment, sales, leasing and/or management office.

Section 10.07 - Declarants' Easements. The Declarants reserve the right to perform warranty work, repairs and construction work on Units and Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. All work may be performed by the Declarants without the consent or approval of the Executive Board.

The Declarants has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarants' obligations or exercising the Declarants Rights, whether arising under CIOA or reserved in this Article X.

Section 10.08 - Signs and Marketing. The Declarants reserve the right for Declarants to post signs and advertising in the Common Elements in order to promote sales of Units. The Declarants also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

Section 10.09 - Declarants' Personal Property. The Declarants reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Elements which have not been represented as property of the Association. The Declarants reserve the right to remove from the Condominium Community (promptly after the sale of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

## ARTICLE XI

### FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers or guarantors of holders of first mortgages recorded against Units within the Condominium Community who qualify as Eligible Mortgagees as defined by Article I, Section 1.23 hereof. To the extent applicable, necessary or proper, the provisions of this Article XI apply to this Declaration, the Articles of Incorporation and the Bylaws of the Association.

Section 11.01 - Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

- (a) Any material condemnation loss or any casualty loss which affects a material portion of the Condominium Community or any Unit in which there is a first mortgage held, insured or guaranteed by such Eligible Mortgagee;
- (b) Any delinquency in the payment of Common Expense Assessments owed by an Owner which remains uncured for a period of sixty (60) days and whose Unit is subject to a mortgage held, insured or guaranteed by an Eligible Mortgagee;



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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees; and

(e) Any material judgment rendered against the Association.

Section 11.02 - Amendment to Documents/Special Approvals.

(a) The consent of Owners to which at least Sixty-seven percent (67%) of the votes in the Association are allocated and the consent of Eligible Mortgagees who represent at least Fifty-one percent (51%) of the votes of Units which are subject to mortgages held by Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association. A change to any of the following would be considered material:

(i) Voting rights;

(ii) Increase in assessments which raise the assessment by more than Twenty-five percent (25%) over the previously levied assessment, assessment liens or the priority of assessment liens;

(iii) Reduction in the reserves for maintenance, repair and/or replacement of the Common Elements;

(iv) Responsibility for maintenance and repairs;

(v) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;

(vi) Redefinition of any Unit boundaries;

(vii) Convertibility of Units into Common Elements or vice versa;

(viii) Hazard or fidelity insurance requirements;

(ix) Imposition of any restrictions on the lease of Units;

(x) Imposition of any restrictions on a Unit Owner's right to sell or transfer his/her Unit;

(xi) Restoration or repair of the Condominium Community (after damage or partial condemnation) in a manner other than that specified in the project documents; and

(xii) Any provision which expressly benefits mortgage holders, insurers or guarantors.

(b) The Association may not take any of the following actions without the consent of the Owners to which at least Sixty-seven percent (67%) of the votes in the Association are allocated and the approval of at least Fifty-one percent (51%) of the Eligible Mortgagees:

(i) Reconstruct or repair the Condominium Community after damage due to an insurance hazard or a partial condemnation in a manner other than specified in the project documents;

(ii) Merge the Condominium Community with any other condominium community;

(iii) Assign the future income of the Association, including its right to receive Common Expense Assessments;

(iv) Not repair or reconstruct (in the event of substantial destruction) any part of the Common Elements; and

(c) Any action to terminate the legal status of the Condominium Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least Sixty-seven percent (67%) of the votes in the Association are allocated and by First Mortgagees or represent at least Fifty-one percent (51%) of the votes of the Units which are subject to mortgages held by First Mortgagees.

(d) Any action to terminate the legal status of the Condominium Community for reasons other than substantial destruction or condemnation must be agreed to by First Mortgagees which represent at least Sixty-seven percent (67%) of the votes of the Units which are subject to mortgages held by First Mortgagees.

Section 11.03 - Special FHLMC Provisions. The following requirements apply in addition to and not in lieu of the foregoing unless at least Sixty-seven percent (67%) of the Eligible Mortgagees (based on one vote for each first mortgage owned) or Owners (other than the Declarants) have given their prior written approval. In that event, the Association is not entitled to take any of the following actions:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements owned directly or indirectly by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Association is not a transfer in the meaning of this Section 11.03(a);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of the Units or the maintenance of the Common Elements;

(d) Fail to maintain fire and/or extended coverage on the Common Elements on a current replacement cost basis in an amount at least 100% of the insurable value (based on current replacement cost); and

(e) Use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement and/or reconstruction of such Common Elements.

Section 11.04 - Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after said Eligible Mortgagee receives written notice of the proposal provided the notice was delivered by certified or registered mail with return receipt requested.

Section 11.05 - Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association during normal business hours of the Association and upon seven (7) days' advance written notice to the Association.

## ARTICLE XII

### DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

Section 12.01 - Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Article

XII, Section 12.08 hereof.

Section 12.02 - Amendment by Owners. Except in cases of amendments that may be executed by the Executive Board pursuant to Article I, Section 1.29 and Article VIII, Section 8.03, and the Declarants, pursuant to Article I, Section 1.29 and Article XII, Section 12.05, subject, however, to the restrictions as set forth in Article XI, Sections 11.02 and 11.03, this Declaration, including the Map, may be amended by written agreement by Owners of Units to which at least Sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, an amendment may not: (a) create or increase Development and/or Special Declarants Rights; (b) change the uses to which a Unit is restricted; or (c) change the Allocated Interests of a Unit except by unanimous consent of the Owners.

Any such amendment shall be effective upon the recording of the amendment, together with a notarized Certificate from an officer of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The officer shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in accordance with §38-33.3-217(3) of CIOA.

Where a Unit is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner. Signatures need not be notarized.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one (1) year from the effective date of said amendment unless fraud or willful negligence is asserted and proven.

Section 12.03 - FHA/VA Approval. If the Condominium Community has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarants Control in accordance with Article IV, Section 4.07 hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: (a) amendment of this Declaration, and (b) the assessment of a Special Assessment.

Section 12.04 - Consent of Eligible Mortgagees. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in Article XI hereof.

Section 12.05 - Amendments by Declarants. The Declarants reserve the right to amend, without the consent of the Owners or First Mortgagees, this Declaration, the Map, the Association's Articles of Incorporation and the Bylaws any time within the limitations set forth in Article X, Section 10.03 hereof as follows:

- (a) To make nonmaterial changes such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee first mortgages;
- (c) To comply with any requirements of CIOA.

Section 12.06 - Consent of Declarants Required. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless the Declarants has given its written consent to such amendment, which consent shall be evidenced by the execution by the Declarants of any certificate of amendment.

The foregoing requirement of consent of the Declarants to any amendment shall terminate at



the option of the Declarants by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Article X, Section 10.03 hereof.

Section 12.07 - Expenses. All expenses associated with preparing and recording an amendment shall be allocated in accordance with §38-33.3-217(6) of CIOA.

Section 12.08 - Termination. Except in the case of a taking of all of the Units by condemnation, the Condominium Community may be terminated only by agreement of the Owners of Units to which at least Sixty-seven percent (67%) of the votes in the Association are allocated and the approval of at least Sixty-seven percent (67%) of the Eligible Mortgagees.

The proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for the Owners and holders of lien upon the Units as their interests may appear as more fully set forth in §38-33.3-218 of CIOA.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 13.01 - Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, the Bylaws, the Articles of Incorporation and the Rules and Regulations of the Association or with the decisions of the Executive Board which are made pursuant thereto. Owners shall have a similar right of action against the Association.

Section 13.02 - Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarants, the Association and each Owner and each of their heirs, personal representatives, successors and assigns.

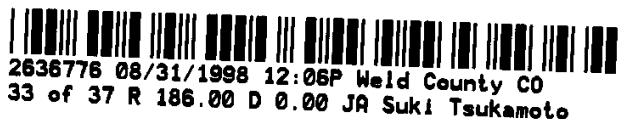
Section 13.03 - Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provision of this Declaration shall continue in full force and effect as if such invalid provision were not included herein.

Section 13.04 - No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.05 - Registration by Owner of Mailing Address. Each Owner shall register his/her mailing address with the Association, and except for monthly statements and other routine notices which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Executive Board or the Association shall be sent by certified mail, postage prepaid to the Registered Agent for the Association as that person is indicated in records of the Secretary of State of Colorado.

Section 13.06 - Conflict. The Project Documents are intended to comply with the requirements of CIOA and the Colorado Nonprofit Corporation Act. If there is any conflict between the Project Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other document, this Declaration shall control.

Section 13.07 - Attorney's Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation or construction of any of the within covenants, conditions and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.



Section 13.08 - Certificate of Completion. The Certificate of Completion required by C.R.S. §38-33.3-201(2) is attached hereto as "Exhibit C".

Section 13.09 - Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

Section 13.10 - Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

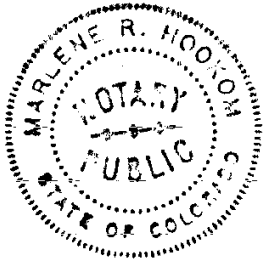
IN WITNESS WHEREOF, the Declarants have caused this Declaration to be executed this 25 day of August, 1998.

By: *Steven M. White*  
STEVEN M. WHITE

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of August, 1998, by STEVEN M. WHITE.

WITNESS my hand and official seal.



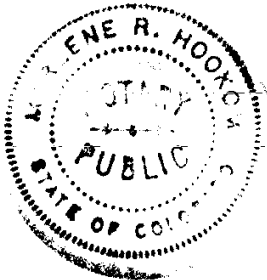
*Marlene R. Hookom*  
Notary Public  
My Commission Expires:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

By: *Mark Purdy*  
MARK PURDY

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of August, 1998, by MARK PURDY.

WITNESS my hand and official seal.



*Marlene R. Hookom*  
Notary Public  
My Commission Expires:

**EXHIBIT A  
TO THE CONDOMINIUM DECLARATION  
OF  
THE CLARK-N-HILL, CONDOMINIUMS**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO THE CONDOMINIUM DECLARATION  
OF  
THE CLARK-N-HILL, CONDOMINIUMS**

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Lots 50 through 54, Block 15, Clark-N-Hill Subdivision Second Addition to the City of Kersey, Weld County, Colorado.

  
2636776 08/31/1998 12:06P Weld County CO  
35 of 37 R 186.00 D 0.00 JA Suki Tsukamoto

**EXHIBIT B  
TO THE CONDOMINIUM DECLARATION  
OF  
THE CLARK-N-HILL, CONDOMINIUMS**

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**TABLE OF INTERESTS**

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Each Unit in the Condominium Community shall have one (1) vote and each Unit is hereby vested with an undivided percentage ownership interest in and to the Common Elements and is subject to a Common Expense Assessment Liability as set forth below.

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<b>UNIT NO.</b>	<b>FINISHED SQ. FT.</b>	<b>PERCENTAGE SHARE OF INCLUDED COMMON ELEMENTS</b>
Unit 1	1,060	20.46%
Unit 2	1,000	19.31%
Unit 3	1,060	20.46%
Unit 4	1,000	19.31%
Unit 5	1,060	20.46%

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Total Finished Square Footage = 5,180  
Total Percentage Share = 100.0%

  
2636776 08/31/1998 12:06P Weld County CO  
36 of 37 R 186.00 D 0.00 JA Suki Tsukamoto

**EXHIBIT C  
TO THE CONDOMINIUM DECLARATION  
OF  
THE CLARK-N-HILL, CONDOMINIUMS**

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**CERTIFICATION**

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I, ROBERT A. SHORT, hereby certify the following:

1. I am a surveyor licensed by the State of Colorado.
2. I certify that all structural components of the buildings containing or compromising the condominium units described herein have been substantially completed prior to the date of the recording of this Declaration.

\_\_\_\_\_  
Surveyor



STATE OF COLORADO    )  
  ) ss.  
COUNTY OF WELD        )

I, Carla J. Harwood, a Notary Public in and for said County and State, do hereby certify that on the 28 day of August, 1998, personally appeared before me, Robert A. Short, who, being by me first duly sworn, declared under oath that the certifications recited above were true and accurate to the best of his knowledge, information, and belief.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Address: 1227 8th Ave Greeley  
My Commission Expires: 5/2/99

