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Attest: \_\_\_\_\_  
El Paso County Clerk & Recorder

ENABLING DECLARATION

Condominium Parcel No. 1 Gold Hill Condominiums

THIS ENABLING DECLARATION, made in the County of El Paso, State of Colorado, on this 16<sup>th</sup> day of October, 1983, by MOUNTAIN CREEK DEVELOPMENT CORPORATION, a Colorado corporation, (hereinafter referred to as "Grantor"), pursuant to the provisions of the Condominium Ownership Act of the State of Colorado (hereinafter referred to as the "Act"), as amended, WITNESSETH THAT:

WHEREAS, the Grantor is the fee simple owner of the certain real property (hereinafter referred to as the "Development Area" situated in the County of El Paso, State of Colorado, and more particularly described as follows:

Lot 1, Gold Hill Plaza, Filing No. 1

Lot 1, Gold Hill Plaza, Filing No. 2

WHEREAS, the Grantor intends to construct and establish a condominium regime on each of the remaining Parcels of the Development Area, each of which Parcels and the number of condominium Units to be constructed thereon are listed below:

Parcel 2	25 Units
Parcel 3	32 Units
Parcel 4	36 Units
Parcel 5	34 Units
Parcel 6	31 Units
Parcel 7	31 Units
Parcel 8	28 Units

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*HOA pay for it*

WHEREAS, the Grantor intends to construct two community recreational facilities on two Parcels of the aforesaid Development Area; the first such Parcel is known as Parcel IIIA, which is more particularly described as follows:

A portion of Lot 1, Gold Hill Plaza Filing No. 1 as recorded in Plat Book B-3 at Page 69 of the Records of El Paso County, Colorado more particularly described as follows:

Commencing at the NW Corner of said Lot 1, thence N 90°00'00" E along the North Line of said Lot 1 for 287.83 feet, thence S 00°00'00" W for 217.50 feet to the Point of Beginning, thence continuing S 00°00'00" W for 38.00 feet, thence N 90°00'00" E for 50.00 feet, thence N 00°00'00" E for 38.00 feet, thence S 90°00'00" W for 50.00 feet to the point of beginning, containing 0.04 acres of land more or less;

and the second such Parcel will be known as Parcel VIA.

WHEREAS, the Grantor has constructed a multifamily project on a section of the Development Area known as Parcel Number 1 consisting of 21 units, and it is now the intention and desire of the Grantor to submit and establish Parcel Number 1 of the Development Area as a condominium regime hereinafter referred to and known as "Gold Hill Condominiums, Parcel Number 1".

NOW, THEREFORE, said Grantor, the fee simple owner of a section of the Development Area known as Parcel 1 of Lot 1, Gold Hill Plaza Filing No. 1 as recorded in Plat Book B-3 at Page 69 in the records of El Paso County, Colorado and more particularly described as follows:

Commencing at the N.W. corner of said Lot 1, thence North 90°00'00" E along the North line of said Lot 1 for 162.00 feet to the point of beginning, thence:

- (1) N 90°00'00" E for 282.00 feet,
- (2) S 00°00'00" W for 141.00 feet,
- (3) S 90°00'00" W for 21.00 feet,
- (4) S 00°00'00" W for 65.00 feet,
- (5) S 90°00'00" W for 242.00 feet,
- (6) N 00°00'00" E for 63.00 feet,
- (7) S 90°00'00" W for 19.00 feet,
- (8) N 00°00'00" E for 143.00 feet to the point of beginning.

hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above-described real property and improvements thereon, known as Gold Hill Condominiums, Parcel Number 1, consisting of a 21 unit multifamily project and appurtenances, may be put, hereby specifying the said Declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

A. Said Grantor, in order to establish a condominium regime, hereinafter referred to and known as Gold Hill Condominiums, Parcel Number 1, for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

1. Twenty-one separately designated and legally described freehold estates, each consisting of a condominium unit, as shown on plat for Gold Hill Condominiums, Parcel Number 1 prepared and certified by Olsson Associates, licensed to practice in the State of Colorado, which plat is dated \_\_\_\_\_, 1983, and on the plans for Gold Hill Condominium, Parcel Number 1, prepared by Olsson Associates, dated \_\_\_\_\_, 1983, all of which are recorded among the Records of the Clerk and Recorder of El Paso County, simultaneously herewith, which plat and plans are attached hereto as Exhibit A, and incorporated herein by reference and made a part hereof, and hereinafter are called Exhibit A.
2. A freehold estate consisting of the remaining portion of the real property as described and referred to herein as the common areas and facilities, as shown on Exhibit A.

B. For the purpose of this Declaration, the ownership of each condominium unit shall include the respective undivided interest in the common areas and facilities specified and established in paragraph "E" hereof.

C. A portion of the common areas and facilities is hereby set aside and allocated for the respective condominium units as is hereinafter designated, and as shown on Exhibit A, attached hereto, and said areas shall be known as restricted common areas and facilities. No other common areas shall thereafter become restricted common areas.

D. The 21 individual condominium units hereby established and which shall be individually conveyed are described as follows:

Unit 1918, Parcel 1, Block 1, Gold Hill Condominiums  
 Unit 1920, Parcel 1, Block 1, Gold Hill Condominiums  
 Unit 1922, Parcel 1, Block 1, Gold Hill Condominiums  
 Unit 1924, Parcel 1, Block 1, Gold Hill Condominiums  
 Unit 1926, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1928, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1930, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1932, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1934, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1936, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1938, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1940, Parcel 1, Block 2, Gold Hill Condominiums  
 Unit 1949, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1951, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1953, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1955, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1957, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1959, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1961, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1963, Parcel 1, Block 3, Gold Hill Condominiums  
 Unit 1965, Parcel 1, Block 3, Gold Hill Condominiums

E. The value of each condominium unit within this phase are approximately equal and each shall have an equal proportional undivided interest in the common areas and facilities hereby

established. The above respective undivided interest established, and to be conveyed with the respective condominium units as indicated above, cannot be changed; and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the common areas and facilities and the fee titles to the respective condominium units conveyed therewith together with the restricted common areas facilities allocated for the restrictive use of the respective condominium units, shall not be separated or separately conveyed; and each said undivided interest and allocated restricted common area and facility shall be deemed to be conveyed or encumbered with its respective condominium unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the condominium unit. Each of the aforesaid percentages of undivided interest shall be equivalent to the percentage which the value of the condominium unit bears to the value of all of the condominium units and all of the common areas and facilities.

P. The proportionate shares of the separate owners of the respective condominium units in the profits and common expenses in the common areas and facilities as well as their proportionate representation for voting purposes in the Association of Owners shall be the percentages established for each unit as provided in paragraph E hereof.

G. Every Owner of a Unit which is subject to assessments shall be a Member of the Gold Hill I Homeowners Association (hereinafter the "Association"). Membership shall be appurtenant and may not be separated from ownership of any Unit which is subject to assessment.

H. The Association shall have two classes of voting Membership:

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

2. Class B The Class B Member(s) shall be the Grantor and shall be entitled to three (3) votes for each Unit owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or

(b) on January 1, 1990; or

(c) if construction of Units is abandoned by Grantor, its successors and assigns, prior to substantial completion of the Units Grantor currently intends to build on said land (for the purposes of this subsection, Grantor shall not be deemed to have abandoned construction unless there has been no

initiation of construction of new units for a continuous period of six months and there is no indication that construction is continuing on the Units previously started and Grantor has no intention to continue such construction).

I. The restricted common areas and facilities allocated for the restricted uses of the respective condominium units are as follows:

Unit 1934 Balcony located adjacent thereto

J. Said Grantor, its successors and assigns, by this Declaration, and all future owners of the units, by their acceptance of their deeds, covenant and agree as follows that:

1. The common area and facilities shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.
2. The condominium units shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.
3. The owners of the respective condominium units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective condominium unit, nor shall said owner be deemed to own pipes, wires, conduits or other public



utility lines running through said respective condominium units which are utilized for, or serve more than one condominium unit, except as tenants in common with the other condominium unit owners as heretofore provided in paragraph E. Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective condominium unit, and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.

4. The owners of the respective condominium units agree that if any portion of the common areas and facilities encroaches upon the condominium units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of condominium units agree that minor encroachment of parts of the common areas and facilities due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

5. Every wall depicted on Exhibit A as being partly in one condominium unit and partly in an adjacent condominium unit is a party wall, and the owner of each condominium unit shall have the right to use and enjoy the party wall jointly with the owner of the adjacent unit; that each such condominium unit shall have the benefit of, and be burdened with, a perpetual easement to the extent that such party wall shall deviate from the vertical by reason of any shifting of the building, or any part thereof; and that should such party wall be injured or damaged by any cause other than the deliberate or negligent conduct of either such condominium unit owner, it shall be repaired at the joint expense of such adjacent owners.
6. Every condominium unit owner shall have a perpetual easement in, upon, through and over the land of the condominium regime, to keep, maintain, use, operate, repair and replace: (a) his condominium unit, in its original position, and in every subsequent position to which it changes by reason of the gradual forces of nature and of the elements, whether such subsequent position be, in whole or part, adjacent, subjacent, or superjacent to said original position; (b) every chimney, cupola, weathervane, stack, or vent, if originally installed by the Grantor; (c) every threshold,

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screen door, storm window, shutter, hood, awning and all hardware pertaining thereto; (d) every rain gutter, downspout, roof overhang, and exterior wall light, if originally installed by the Grantor.

7. Every condominium unit owner shall have a perpetual easement in the land of the condominium regime for the subterranean installations, maintenance and repair of any pipe, cable, wire, or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat, steam, or other similar service to the unit owned by him, subject, however, to the provision that the work of installation or repair shall be performed by the Association or the agent of the Association and further subject to the provisions set forth in Exhibit B appended to this Enabling Declaration.
8. An easement for ingress and egress is hereby granted to all parties, sheriff, fire protection, ambulances, and other familiar emergency agencies or persons to enter upon all streets, the Common Area, and the units in the performance of their duties.
9. If there are additional condominium regimes located in the aforesaid Development Area, or in the future, the Grantor, for itself, its succes-

sors and assigns, hereby declares that the condominium unit owned in such condominium regimes, shall have a perpetual easement in the land of this condominium regime and the owners of condominium units in this condominium regime shall have a perpetual easement in the land of such other condominium regimes for the following purposes: (a) to maintain, use, repair and replace all existing storm sewerage systems and roadways used by the owners in the condominium regimes as ingress or egress to their property; (b) for the subterranean installation, maintenance and repair of any pipe, cable or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat, or other similar services to the condominium regimes subject, however, to the provision that where the work to be done is not a repair or replacement of any existing facility it shall be done only with the written permission of the Association, which permission shall not be unreasonably withheld.

10. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance for each condominium unit which is subject to assessment hereunder, as follows: trash removal, paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces,

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trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

11. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept or maintained within a unit except that Owners may keep dogs, cats, fish, or other domestic animals which are bona fide household pets so long as such pets are not kept for commercial purpose and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent condominium units, and in compliance with all existing applicable local ordinances.
12. Each unit at all times shall be kept in a clean, sightly, and wholesome condition (if the Association is responsible therefor, the Association need only act to the extent it reasonably can). No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed adjacent to any units so that same are visible from any unit or street, except as necessary during the period of construction.

13. No noxious or offensive activity shall be carried on within any unit nor shall anything be done or placed adjacent to any unit which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.
14. No activities shall be conducted within the condominium regime which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the units and no open fires shall be lighted or permitted adjacent to or within the units except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfires or picnic fires on property, if any, designated for such by the Association.
15. In the event condemnation proceedings are initiated by any government or agency thereof, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereon), as reasonably determined by the Association in excess of \$10,000, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgagees, Members, and

to the Grantor. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings, pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished without giving all First Mortgagees of units, Members and Grantor at least fifteen (15) days' prior written notice thereof. In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be payable to the Association, subject to the rights of all First Mortgagees. If two-thirds (2/3) or more of the Owners approve the repair and restoration of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that two-thirds (2/3) or more of the Owners do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each unit receiving one (1) equal share, provided that the Association shall first pay out

the share of each Owner the amount of any unpaid liens or encumbrances on his unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the units shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to the Mortgage or seller or holder of any Veterans Administration installment contract for the sale of such Owner's unit in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of units or Common Area, or both.

16. An owner of a condominium unit shall automatically, upon becoming the owner of a condominium unit or units, be a member of the Association, and shall remain a member of said Association until such time as his ownership ceases for any reason at which time his membership in said Association shall automatically cease.
17. The owners of condominium units covenant and agree that the administration of the condominium regime shall be in accordance with the provisions of this Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit B, and shall be subject to the terms of a Regulatory Agreement executed by the Association and the



Secretary of Housing and Urban Development, which Agreement is made a part hereof and is attached as Exhibit C.

- \* 18. Each owner, tenant or occupant of a condominium unit shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
19. This Declaration shall not be revoked or any of the provisions herein amended during the first twenty years after the date hereof unless ninety percent (90%) of both the owners and the mortgagees of all of the mortgages covering the condominium units agree to such revocation or amendment by duly recorded instruments, thereafter, revocation or amendment may be affected by the agreement of seventy-five percent (75%) of both such Owners and mortgagees documented by duly recorded instruments; provided, however, that any amendment or revocation must comply with the statutes of Colorado and the ordinances of any governmental entity having jurisdiction over the units, in existence at the time such amendment

- becomes effective. The manner in which common expenses are assessed shall not be altered, except with the express written consent of all the members and all first mortgagees as well as written consent of the Veterans Administration or the Federal Housing Administration.
20. No owner of a condominium unit may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his condominium unit.
21. Each owner and Mortgagee shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner or Mortgagee shall be sent by either registered or certified mail, postage prepaid, address in the name of the Owner or Mortgagee (whichever is appropriate) at such registered mailing address. No failure of the Association to deliver any such notice because of mere clerical error or the failure of any party to provide a proper address to the Association shall invalidate the notices given. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid,

to 1940 Giltershire, Colorado Springs, Colorado, until such address is changed by a notice of change of address mailed to each Owner by the Association.

K. The assessments levied by the Association shall be used exclusively to fulfill the functions and duties of the Association and to promote the recreation, health, safety and welfare of the residents of the units.

All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any condominium unit shall constitute a lien on such condominium unit prior to all other liens except only (1) tax liens on the condominium unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by suit by the Manager or Board of Directors of the Association, acting on behalf of the owners of the Association in like manner as a mortgage of real property. If any such sum assessed is not paid within 30 days of the assessment, the Board shall assess a late fee of \$20.00 and such fee assessment shall bear interest (to accrue on a daily basis) at the rate of 18% per annum from the date of the delinquency until fully paid. In any such foreclosure the condominium unit owner shall be required to pay a reasonable rental for the condominium unit, if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same, and its costs and expenses of collection, including, without limitation, its attorneys' fees. The manager

or Board of Directors, acting on behalf of the owners of the condominium units, shall have the power to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same, and the costs and expenses of maintaining such action, including, without limitation, attorneys' fees, shall be collectable in such suit.

L. Where the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such condominium unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the condominium unit owners, including such acquirer, his successors and assigns.

M. Both annual and special assessments must be fixed at a uniform rate for all units sufficient to meet the expected needs of the Association; provided that the rate set for the units owned by Grantor which are unoccupied or under construction shall be fixed at one-quarter (1/4) of the assessment rate for the other units; and further provided, however, that in the event the assessed fees due the Association fail to meet its needs because of such partial Grantor assessment, then Grantor shall, upon

written notice from the Association, pay a sufficient amount, up to the amount of full parity on such assessment, to the Association to meet any such shortfall so long as such notice is given within one year after the end of each annual assessment period, and any such right or privilege to assess Grantor is waived if not made in such timely manner (such final one year period to terminate one year from the date of sale of the last unit owned by Grantor).

N. The respective condominium units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the condominium unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective condominium units shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.

O. In the event the property subject to this Enabling Declaration is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the property shall be as provided by an Agreement approved by two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Association may desire to maintain, the Association shall obtain and maintain at all times, to the extent obtainable at a reasonable cost, policies involving standard premium rates, established by the Colorado Insurance Commissioner, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating AAA or better, covering the risks set forth below. The Association shall not obtain any policy where: (i) Under the terms of the insurance company's charter, by-laws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (ii) by the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the Association's Board of Directors policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows:

1. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the

name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

2. In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, will obtain (if obtainable) and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the residences, including the structural portions and fixtures thereof, owned by such Owners. The insurance coverage with respect to residences shall be written in the name of, and the proceeds thereof shall be payable to, the Association as Trustee for the Owners.

In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same, to the extent insurance proceeds are available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other annual or special assessments made against such Owner.

3. Public liability and property damage insurance in such limits as the Board of Directors of the Association may from time to time determine, but not in an amount less than

\$500,000.00 per injury, per person, per occurrence, and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the project. Said policy shall also contain a "severability of interest endorsement".

4. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

5. The Association shall purchase, in an amount not less than 150 percent of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

6. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate.

7. All policies of insurance, to the extent obtainable at reasonable cost, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of any Owner and shall provide that such policies may not be cancelled or modified without at least 10 days' prior written



notice to all of the insured, including Mortgagees. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Mortgagees at least 10 days prior to expiration of the then current policies.

8. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

9. Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal, and other items of personal or other property belonging to an Owner and public liability coverage within each unit shall be the sole and direct responsibility of the Owner thereof, and the Association shall have no responsibility therefor, but may carry insurance on the same at the discretion of the Association.

10. All insurance policies maintained by the Association shall be reviewed at least annually by the Association's Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

5. Insurance premiums for any blanket insurance coverage and the other insurance coverages, shall be a common expense to be paid by monthly assessments levied by the Association; and

such payments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

T. Additional residential property and Common Area may be annexed to the condominium regime by a two-thirds (2/3rds) vote of the membership. However, additional land within the Development Area annexed by the Grantor without the consent of members within five (5) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

U. Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other rights assigned to the Association, the members of such Association and their successors in interest, as their interest may appear, by reason of the establishment of the condominium regime.

V. With respect to the Association and its facilities, said Grantor, by this Declaration and all owners of the condominium units, by their acceptance of their deeds, covenant and agree as follows that:

1. As used in this paragraph V:

- (a) "Unit" or "Condominium Unit" shall mean a condominium unit in a condominium regime approved by the Secretary of Housing and Urban Development which is located in the Development Area;

- (b) "Grantor" shall mean any owner or owners of a Part of the Development Area;
- (c) "Part of the Development Area" shall mean any part of the Development Area on which a condominium regime approved by the Secretary of Housing and Urban Development has not been established.
- (d) "Secretary of Housing and Urban Development" shall mean the Secretary or his duly appointed representative.
2. All condominium unit owners shall automatically be members of the Association and shall enjoy the privileges and be bound by the obligations contained in the Association's Articles and By-Laws.
3. Each condominium owner for each condominium unit owned shall pay to the Association an annual assessment equal to a pro rata share of the total sum necessary to provide for the insurance, reserve fund for replacements and maintenance arising out of normal wear and tear, and operation of the common area and its facilities, provided that if any restricted common area is damaged to an extent beyond what would be considered normal wear and tear, then the owner of such unit to which the damaged restricted common area is appurtenant shall be responsible for and shall bear the expense of such repair or replacement. The decision of the Board as to whether such repair or replacement is required due to damage that is greater than normal wear and tear

shall be conclusive, final and binding on all unit owners, including the owners of the affected unit. For so long as less than all the condominium units are built on the Development Area, the balance of said total sum not covered by the assessment against the condominium unit owners shall be assessed by the Association against, and be payable by, the Grantor to the Association.

4. The amount of the assessment against each unit owner and, if any, against the Grantor, as provided for in subparagraph 3 shall be assessed by the Association as a lien at the beginning of each annual assessment period. Each assessment shall be due and payable within thirty (30) days of assessment, and upon default of payment within such period of time, the Board shall assess a late fee of \$20.00 and all amounts, including such late fee and such assessment shall bear interest (to accrue on a daily basis) at the rate of 13% per annum from the date of the delinquency until fully paid and all amounts including accrued but unpaid interest shall be a lien against each condominium unit owned by the defaulting owner and against the Part of the Development Area, if any, owned by the defaulting Grantor, and the Association shall be entitled to enforce the payment of said lien according to the laws of the State of Colorado and to take any other actions for collection from the defaulting parties. Any such

lien against a condominium unit or against the Part of the Development Area, if any, owned by the Grantor shall be subordinate to any recorded first mortgage or first Deed of Trust covering such condominium unit, or, as the case may be, covering the Part of Development Area, if any, owned by the Grantor, or to any executory land sales contract used for such purpose wherein the Administration of Veteran Affairs (Veterans Administration) is seller, whether such contract is recorded or not.

5. In addition to the annual assessments authorized above, the Association may levy in any assessment year special assessments for the purpose of defraying, in whole or in part, (a) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or (b) the expense of any other contingencies; provided that any such assessments shall have the assent of two-thirds (2/3rds) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose if such assessment shall exceed 5% of the total annual assessment. Special assessments for capital improvements so long as the Grantor controls the condominium complex, in addition to the two-thirds (2/3rds) majority previously

stated within also require the written request of the Veterans Administration or Federal Housing Authority Administration.

6. Each member for each condominium unit owned shall pay to the Association a special assessment equal to a pro rata share of the total sum approved by the Association to meet the costs and expenses as provided in subparagraph 5 hereof. For so long as less than all the condominium units are not built on the Development Area, the balance of any such total sum not covered by the special assessment against the condominium unit owners shall be assessed by the Association against, and be payable by, the Grantor to the Association. The Association also has the right to charge reasonable fees for the use of the Common Area (in addition to the regular assessment) and to establish and enforce reasonable rules governing the use thereof.
7. The amount of the special assessment provided for in subparagraphs 5 and 6 shall be assessed as a lien by the Association. Each such assessment shall be due and payable within thirty (30) days of assessment, and upon default of payment within such period of time the Board shall assess a late fee of \$20.00 and all amounts, including such late fee and such the assessment shall bear interest (to accrue on a daily basis) at the rate of 18% per annum, from the date of the delinquency until paid in full and all amounts, including accrued

but unpaid interest, shall be a lien against such condominium unit owned by the defaulting owner and against that Part of the Development Area, if any, owned by the defaulting Grantor, and the Association shall be entitled to enforce the payment of said lien according to the laws of the State of Colorado and to take any other actions for collection from the defaulting parties. Any such lien against a condominium unit or against the Part of the Development Area, if any, owned by the Grantor shall be subordinate to any recorded first mortgage or first Deed of Trust covering such condominium unit, or, as the case may be, covering the Part of the Development Area, if any, owned by the Grantor.

8. Both annual and special assessments may be collected on a monthly basis.
9. Grantor shall give written notice to the assessor of the County of El Paso, Colorado, of the submission of the real property described herein and the improvements situated therein to condominium ownership, which notice shall set forth descriptions of all of the condominium units, as it provided by law, so that each Unit and the undivided interest in the common area appurtenant thereto shall be deemed a separate parcel for purposes of separate assessment and taxation; and the Grantor upon the request of any first mortgagee, shall furnish

proof that all taxes, real estate assessments, and charges shall relate only to the individual condominium Unit and not the condominium project as a whole.

10. Any recorded lien for nonpayment for the common expenses may be released by recording a Release of lien executed by an officer of the Association.

W. No additional liens, other than mechanics' liens, assessment liens, or tax liens may be obtained against the common areas, except the lien of any mortgage or deed of trust granted by the Association, to the extent as is or may be permitted by the Declaration, to secure borrowings by the Association.

X. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof as may be determined by a court of competent jurisdiction shall not affect the validity or enforceability of any provisions hereof.

FOUNTAIN CREEK DEVELOPMENT  
CORPORATION  
A Colorado Corporation

By: M. Ray P. [Signature]  
President

ATTEST:

By: [Signature]  
Secretary

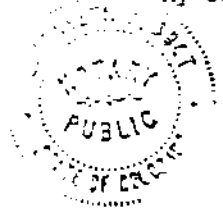


STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing document was acknowledged before me this 15<sup>th</sup>  
day of November, 1983 by W Ray Painter as President and  
by Robert E. Lyons as Secretary of Fountain Creek Development  
Corporation, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 9/10/87



Elizabeth V. Scott  
Notary Public  
2754 Compass Dr  
Grand Junction Co 81501