

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TOWNE SQUARE LOFTS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TOWNE SQUARE LOFTS is made and entered into this 1st day of July, 2001 by Towne Square Condominiums, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property situated in the City and County of Denver, State of Colorado, which is described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Declarant desires to subject and place upon that certain property described on Exhibit A attached hereto and incorporated herein by this reference ("Community") , certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of the Community and for the purpose of furthering a plan for the improvement, sale and ownership of the Community, to the end that a harmonious and attractive development of the Community may be accomplished and the health, comfort, safety, convenience and general welfare of the Declarant, its successors and assigns in the Community, or any portion thereof, may be promoted and safeguarded.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
GENERAL**

1. Relationship to Declaration of Covenants, Conditions and Restrictions of Gateway Park IV West. The Association and all property subject to this Declaration are subject to the Declaration of Covenants, Conditions and Restrictions of Gateway Park IV West recorded May 8, 1996 at Reception number CO172113 in Book 4743 at Page 0835-0879, (the "Master Declaration") as may be amended from time to time, and any

current Development Guide adopted by the Gateway Park IV Design Review Committee, building codes and regulations, and any other governmental restrictions and requirements, all of which shall be observed. In the event of any conflict between this document and any such codes, regulations, restrictions and requirements, the more restrictive standards shall apply. In certain instances, provisions of the Master Declaration and Development Guides have been or may be waived by Gateway Park IV, LLC in recordable form with respect to the property subject to this Declaration.

ARTICLE II DEFINITIONS

1. "Act" means the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et al., C.R.S. 1973, as amended.

2. "Agencies" collectively means the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Department of Housing and Urban Development (HUD), 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.

3. "Allocated Interests" means the Common Expense Liability allocated to each Loft. The undivided interest in the Common Elements appurtenant to each Unit is set forth on Exhibit B attached hereto and incorporated herein by reference. The formula for establishing the allocation of percentage interest in the Common Elements has been computed for each Unit by dividing the actual square footage of such Unit by the total actual square footage of all Units, but without regard to other Limited Common Elements, and then multiplying the quotient derived thereby by 100 to obtain the percentages contained on Exhibit B.

4. "Architectural Review Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

5. "Association" means Towne Square Lofts Homeowners' Association, Inc., an owners' association organized under section 38-33.3-301 of the Act.

6. "Building" means any building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Lofts are located.

7. "Common Elements" means the totality of the following property owned by the Association:

(a) The real property which is part of the Community other than any real property appurtenant to each Loft; and

(b) The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, flues, hallways, roofs, stairs, stairways, and the mechanical installations of the Building consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, air conditioning, and exterior security lighting, which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Lofts; and

(c) Any amenities and amenity areas, if any, sidewalks, walkways, paths, fences, grass, shrubbery, trees, driveways, parking areas, landscaping, roadways, gates, gate controls, and the entry signage, irrigation systems, and gardens, if any, now or hereafter located in the Community other than appurtenant to each Loft;

(d) All apparatus, installations and equipment of the Building existing for common use of some or all of the Owners; and

(e) In general, all other parts of the Community including, without limitation, the Common Elements depicted on the Condominium Map and any items designated by Declarant as Common Elements under other provisions of this Declaration, including General Common Elements and Limited Common Elements, and all other parts of the Community necessary or convenient to its existence, maintenance or safety, or normally in common use.

8. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit based on its Allocated Interest.

9. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations for reserves, and shall include, without limitation, the following items:

(a) all sums lawfully assessed against the Owners by or on behalf of the Association;

(b) expenses of administration, maintenance, repair, alteration, renovation, reconstruction or replacement of, or for additions to, the Common Elements;

(c) expenses declared Common Expenses by provisions of this Declaration; and

(d) other expenses agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

10. "Community" means the property described on the attached Exhibit A, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Loft, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration.

11. *Intentionally Omitted.*

12. "Declarant" means Towne Square Condominiums, LLC, a Colorado limited liability company, and any other Person or group of Persons acting in concert to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

(a) as part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser; or

(b) reserves or succeeds to any Special Declarant Right.

13. "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Towne Square Lofts and any other recorded instruments, however denominated, that create this Community, including any amendments to those instruments and also including, but not limited to, the Condominium Map and any other maps and Condominium Maps.

14. "Development Rights" means any right or combination of rights reserved by a Declarant in this Declaration to:

(a) add real estate to this Community and create Lofts or Common Elements within this Community in connection with the addition of such real estate; and/or

(b) withdraw real estate from this Community.

15. "Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

16. "First Security Interest" means a Security Interest (as hereinafter defined) that 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).

17. "General Common Elements" means all of the Common Elements except the Limited Common Elements.

18. "Improvements" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, Building, mailboxes, outbuilding, patios, satellite dishes, hot tubs, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, irrigation systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, light fixtures, poles, signs, tanks, and air conditioning, cooling, heating and water softening equipment.

19. "Limited Common Elements" shall mean and refer to those parts of the Common Elements which are limited to and reserved for the exclusive use of one or more, but fewer than all, of the Condominium Units as designated on the Condominium Map, in this Declaration or in the deed from Declarant to the first third-party purchaser of a Unit. Without limiting the foregoing, the Limited Common Elements shall include any balcony, patio, yard area or fireplace located outside the Unit boundaries but designed to serve a single Unit, and the air conditioning, heating equipment and utilities associated with or providing exclusive service to a Condominium Unit, as well as any parking space which may be assigned by the Declarant or the Association for the exclusive use of the Owners of particular Condominium Units. Limited Common Elements shall also include elevators serving more than one but fewer than all of the Units and those portions of the Project designated in Sections 202(1)(b) and 202(1)(d) of the Act.

20. "Member" means each owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Loft.

21. "Owner(s)" means the Declarant or other Person who owns a Loft, but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by the Declaration until that Unit is conveyed to another Person who may or may not be a Declarant under this Article.

22. "Period of Declarant Control" means a length of time expiring seven (7) years after initial recording of this Declaration in the City and County of Denver, Colorado; provided, that the Period of Declarant Control shall terminate no later than

either sixty days after conveyance of seventy-five percent (75%) of the Lofts that May Be Created to Owners other than a Declarant, or two years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lofts to the Declaration was last exercised, whichever is later.

23. "Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or any combination thereof.

24. "Condominium Map" currently means the Condominium Map of the Community and Improvements thereon that are subject to this Declaration, recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado at Book 29, pages 57-63 at Reception #2001067476. More than one Condominium Map or supplement thereto may be recorded, and, if so, then the term "Condominium Map" collectively means all of such Condominium Maps and supplements thereto. The Condominium Map shall depict all or a portion of the Community in two dimensions, shall be executed by a Person who is authorized by the Act to execute a declaration relating to this Community and shall otherwise comply with all requirements of the Act for a "Condominium Map".

25. "Security Interest" means an interest in the Community, or any portion thereof, 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 lease 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. For purposes of Article V, Section 10 hereof and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VII, Section 2 hereof, "Security Interest" shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the City and County of Denver, Colorado, show the administrator as having the record title to the Loft.

26. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Article V, Section 10 hereof and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VII, Section 2 hereof, the administrator of Veterans Affairs, an officer of the United States of America, and his assigns under any executory land sales contract wherein the said administrator is identified as the seller, whether such contract is recorded or not, and whether such

contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the City and County of Denver, Colorado, show the said administrator as having the record title to the Loft), or any successor to the interest of any such Person under such Security Interest.

27. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: To complete Improvements indicated on Condominium Maps and maps filed with the Declaration; to exercise any Development Rights; to maintain sales offices, construction offices, management offices, signs advertising the Community, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Board member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically upon the expiration of the Period of Declarant Control, except that such rights shall not terminate automatically with respect to the appointment of officers and directors, which may only be exercised in accordance with Article IV hereof.

28. "Loft" or "Unit" means the individual air space contained within an enclosed room or rooms occupying part of a floor or floors in the Building and bounded by the interior surfaces of the perimeter walls (or the adjoining walls, if two or more Units adjoin each other), unfinished interior surfaces of floors, unfinished interior surfaces of ceilings, windows and window frames, doors and door frames of the Building, separately identified on the Condominium Map, together with all fixtures and Improvements therein contained as shown on the attached Exhibit B.

29. "Lofts that May Be Created" means one hundred thirty (130) Lofts, which shall be the maximum number of Lofts that may be subject to this Declaration, including those Lofts which may be included if the property provided for in Article XV, Section 5 hereof is annexed to this Declaration. However, the aforesaid number of Lofts that May be Created is not a representation or a guarantee as to the actual number of Lofts that will ultimately be included in or constructed as part of the Community.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

1. Membership. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former

Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Loft.

2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Unit owned, except that no votes allocated to a Unit owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lofts then existing within the Association. For the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Board which have been appointed by such Declarant. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE IV BOARD MEMBERS AND OFFICERS

1. Authority of Board. Except as provided in this Declaration or the Association Bylaws, the Board may act in all instances on behalf of the Association.

2. Election of Part of Board During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lofts that May Be Created to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lofts that May Be Created to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than a Declarant.

3. Authority of Declarant During Period of Declarant Control. Except as otherwise provided in this Article, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Board appointed by it.

4. Termination of Period of Declarant Control. Not later than termination of the Period of Declarant Control, the Owners shall elect a Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon election.

5. Delivery of Property by Declarant. After the Owners other than the Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property of the owners and of the Association held by or controlled by the Declarant, if and to the extent required by the Act.

6. Budget. Within thirty (30) days after adoption of any proposed budget for the Community, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by the vote or agreement of Owners of Lofts to which at least eighty percent (80%) of the votes in the Association are allocated, then the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, including Declarant, 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: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The annual and special assessments, and other charges, fees and fines, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Unit during their ownership of such Loft. Each assessment, charge, fee, and all other amounts under this Declaration, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Unit for assessments and other amounts 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 lien.

2. Purpose of Assessments. The assessments levied by the Association shall be used for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to promote the recreation, health, safety and welfare of the residents of the Lofts, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

3. Initial Annual Assessment. Until the effective date of an Association budget ratified by the owners with a different amount for the annual assessment, as provided above, the amount of the annual assessment against each Unit shall be computed at a rate not in excess of \$_____ per Unit per month.

4. Rate of Assessment. Annual and special assessments shall be fixed at a uniform rate for all Lofts sufficient to meet the expected needs of the Association. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. All assessments shall be assessed against all the Lofts in accordance with the Allocated Interests set forth in this Declaration, except as specifically elsewhere provided in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

5. Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Board may determine in its discretion, the Declarant shall pay all Common Expenses. After any annual assessment has been made by the Association, annual assessments shall initially not be greater than the amount set forth in Section 3 of this Article, and thereafter shall be based on a budget adopted by the Association as provided above. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board may determine in its discretion from time to time; provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

6. Special Assessments. In addition to the annual assessments authorized

in this Article, the Board may levy, in any fiscal year, with the approval of fifty-one (51) percent of the Association votes cast by the Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Common Elements or any property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 7 of this Article V. Notwithstanding the foregoing, special assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

7. Notice and Quorum for Any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 of this Article shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

8. Charges for Services to Less than All of the Lofts. The Association may, at any time from time to time, provide services to less than all of the Lofts, and the Owners of such Lofts shall pay the Association for such services as, when and in such manner as may be determined by the Board in its discretion from time to time, which amounts shall be in addition to the annual and special assessments. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lofts for which such service(s) are to be provided, with such agreement to include a statement of the costs, fees and expenses reasonably expected to initially be incurred by the Association in providing such service(s), including overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section include, without limitation: (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to or for such Loft(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by

such Owners; and (e) the procurement of insurance for Owners.

9. Lien for Assessments.

(a) The Association has a statutory lien on a Unit for any assessment levied against that Unit or for fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board or managing agent of the Association may prepare, and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Loft, and a description of the Loft. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

(d) Unless the Declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

10. Priority of Association Lien.

(a) A lien under this Article is prior to all other liens and encumbrances on a Unit except:

(1) Liens and encumbrances recorded before the recordation of the Declaration;

(2) A First Security Interest on the Loft, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(3) Liens for real estate taxes and other governmental or quasi-governmental assessments or charges against the Loft.

(b) A lien under this Section is also prior to the First Security Interests described in the preceding subsection (a) (2) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(c) This Section does not affect the priority of mechanics, or materialmen's liens or the priority of liens for other assessments made by the Association.

11. Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's assessments.

12. Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Loft. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

13. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board, and the Board may assess thereon a late charge not in excess of Twenty-five and No/100 Dollars (\$25.00) per month. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against such Owner's Loft. If a judgment or decree is obtained, including without limitation in a foreclosure action, such

judgment or decree shall include a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

14. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

15. Working Capital Fund. The Association or Declarant shall require the first Owner of any Unit who purchases that Unit from Declarant to make a non-refundable contribution to the Association in an amount equal to three (3) times the monthly installment of the annual assessment at the time of closing (regardless of whether or not assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall, until use, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services; provided, however, that the working capital fund shall not be used to defray any of the assessments, or any of the reserve contributions, which are payable by the Declarant to the Association, or to pay for construction costs, or to make up any budget deficits, during the Period of Declarant Control. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of such Owner's Loft, an owner shall be entitled to a credit from such Owner's transferee (but not from the Association) for the aforesaid contribution to working capital fund.

16. Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such Owner and such Owner's Loft.

ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE

1. Composition of Committee. The Architectural Review Committee shall consist of three (3) or more persons appointed by the Board; provided, however, that until all of the Lofts have been conveyed to the first Owner thereof (other than Declarant), Declarant shall appoint the Architectural Review Committee. The power to

"appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor.

2. Review by Committee. Other than as to the Declarant, no Improvements shall be constructed, placed, planted, applied or installed on any General Common Elements, nor shall any structural alteration be made to any Unit or any Common Elements. Subject to the foregoing, no Improvements shall be constructed, erected, placed, planted, applied or installed on any Limited Common Elements unless complete plans and specifications therefor, including without limitation such information and materials as may be required by the Architectural Review Committee in its discretion from time to time, shall have been first submitted to and approved in writing by the Architectural Review Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's development of, construction on, or sales of any Loft. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures, and do not affect the structural integrity of any Unit or other Improvement. In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the assessments against the Unit for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for assessments and subject to all rights of the Association for the collection of assessments, as more fully provided in this Declaration.

3. Procedures. The Architectural Review Committee shall decide all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to approve or disapprove any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall be deemed a denial. Approval by the Architectural Review Committee shall not constitute approval by the Gateway Park IV Design Review Committee.

4. Vote and Appeal. A majority vote of the Architectural Review Committee is required to decide a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of

such representative shall control. In the event a representative acting on behalf of the Architectural Review Committee decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative.

5. Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

6. Liability. The Architectural Review Committee and the members thereof shall not be liable in damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

7. Variance. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article X hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to any other property or Improvements in the Community and shall not militate against the general intent and purpose hereof. No variance shall grant a waiver of any requirement of the Master Declaration or any current Development Guide adopted by the Gateway Park IV Design Review Committee, without prior Gateway Park IV Design Review Committee Approval.

8. Waivers. The approval or consent of the Architectural Review Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee on any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

9. Committee Guidelines or Rules. The Architectural Review Committee has issued Guidelines or Rules, and may issue additional guidelines or rules, relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to property, such as, but not limited to, design guidelines or restrictions. Such Guidelines or Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration, but no such guidelines or rules shall be inconsistent with any provisions of Colorado law, of this Declaration, or the Bylaws of the Association.

ARTICLE VII

INSURANCE

1. Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of Security Interests.

(a) Property insurance for broad form covered causes of loss, including Lofts (but not the finished interior surfaces of the walls, floors and ceilings of the Lofts); except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations, and other matters normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, insuring the Board, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an owner and member of the Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lofts, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may

require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate from time to time, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, and coverage on fixtures, equipment and other personal property inside Lofts.

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days, prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

(a) To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(b) Any loss to any Unit or to any Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the

event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

4. Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 1 of Article VIII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any owner from collecting insurance proceeds.

7. Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Loft, shall be the responsibility of the Owner of such Loft.

8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

9. Notice of Cancellation. If the insurance described in Section 1 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE VIII DAMAGE OR DESTRUCTION

1. Damage or Destruction.

(a) Any portion of the Community which is covered by a policy of insurance carried by the Association and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (1) The Community is terminated;
- (2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (3) Eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild; or
- (4) Prior to the conveyance of any Unit to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement of any portion of the Common Elements in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the

damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lofts that are not rebuilt must be distributed to the Owners of those Lofts or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Lofts. If the Owners vote not to rebuild any Loft, that Loft's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned as provided in Article XV, Section 10, hereof, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

2. Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency, but without approval of the Owners, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Lofts. The assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any assessment provided for in this Declaration.

3. Destruction of Lofts. If due to casualty, or for any other reason, a Unit shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, commence and diligently pursue repair and reconstruction of the Loft, using any available personal insurance proceeds and personal funds of such Owner.

ARTICLE IX MAINTENANCE

1. Management and Maintenance Duties. Subject to the rights of Owners as set forth in this Declaration:

(a) The Association shall be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements (including the Limited Common Elements except as hereinafter provided), and of any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. However, each Owner shall be responsible for exclusive

maintenance, repair and replacement of all fixtures, equipment and utilities installed or located within such Owner's Loft, any windows, window screens and doors to the Unit (except painting or staining of exterior doors), and all other equipment providing exclusive service thereto or therefor and any service lines from such equipment to the Loft, including, without limitation, all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances (excluding any landscaping irrigation system), regardless of whether such fixtures, equipment and utilities are owned by said Owner or are Common Elements. Each Owner shall also keep the Limited Common Elements, or portions thereof, designated for use solely in connection with such Owner's Loft, in a good, clean, sanitary and attractive condition, order and repair.

(b) Further, the Association shall be responsible for maintenance, repair and replacement of any drainage structure or facilities, or other public Improvements required by the local governmental or quasi-governmental entity as a condition of development of the Community or any part thereof, and of any other property or Improvements that the Board may elect on behalf of the Association, unless such Improvements have been dedicated to and accepted by a local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law and agreed to be performed by a special district or other municipal or quasi-municipal entity.

(c) Finally, the Association shall collect as assessments, and expend, funds for the costs of the maintenance, repair and replacement to be performed by the Association under this Section, subject to Section 4 of this Article.

(d) Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and improvement of the Common Elements or Improvements thereon shall give rise to any interest of the Association in any Unit or the quality of any Improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any member thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such Improvements or the construction thereof.

(e) Except as otherwise provided in this Declaration, the Owner of each Unit shall be solely responsible for maintaining, repairing and replacing such Owner's Unit and the Improvements therein or appurtenant thereto.

2. Association's Right to Repair, Maintain and Replace. In the event any Owner shall fail to perform such Owner's maintenance, repair and replacement obligations in a manner satisfactory to the Board, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to

perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article V hereof, including, without limitation, interest, late charges and lien rights.

3. Easement for Maintenance Access and Entry. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Loft, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Loft, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

4. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, a Loft, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article V of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

ARTICLE X RESTRICTIONS

1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lofts, all in

order to enhance the value, desirability, and attractiveness of the Lofts and subserve and promote the sale thereof.

2. Restrictions Imposed. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Lofts shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

3. Residential Use. Subject to Section 4 of this Article, Lofts shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use such Owner's Unit for professional or home occupations so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Lofts is created thereby.

4. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Community such facilities, as Declarant deems reasonably necessary or incidental to the construction and sale of Lofts, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model Lofts and sales offices, in such numbers, of such sizes, and at such locations as the Gateway Park IV Design Review Committee may determine from time to time in advance in writing in its sole discretion. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Lofts in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, such Owner's family members, guests or invitees, of and to such Owner's Unit and to a public right-of-way.

5. Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements except as provided in this Declaration with respect to Limited Common Elements. Other than those Improvements erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed in or removed from the Common Elements except as provided in this Declaration with respect to Limited Common Elements.

6. Exterior Changes. Except for those Improvements erected, constructed or

installed by Declarant in its completion of the Community, no exterior additions to, alterations or decoration of the building or Lofts shall be commenced, erected, placed or maintained, except as provided in this Declaration with respect to Limited Common Elements.

7. Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lofts; provided, however, that the Owners of each Unit may keep up to one (1) dog, cats, or other domestic animals which are bona fide household pets, so long as the collective weight of such pets does not total more than twenty-five (25) pounds, are not kept for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance to any resident of the Lofts. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article V hereof.

8. Signs. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit other than a Name of the occupant and a Unit number. "For Sale," "Open House" or "For Rent" signs may be allowed in locations and sizes approved by the Gateway Park IV Design Review Committee. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale or rental of Lofts, or otherwise in connection with development of or construction in the Community, shall be permissible so long as permitted by the Gateway Park IV Design Review Committee, provided that such use shall not interfere with the Owners' use and enjoyment of their Loft.

9. Vehicular Parking, Storage and Repairs.

(a) Parking is provided as designated parking areas. No long term parking (more than 72 consecutive hours) is permitted in the designated visitor parking areas.

(b) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 1 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, nor any commercial vehicle, may be parked or stored in the Community unless such parking or storage fits within the garage in the designated space of any Unit or is in any area(s), if any, designated from

time to time by the Board, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or for the maintenance of the Lofts, Common Elements, other property, or any Improvements.

(c) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which does not have a current license Condominium Map thereon; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

(d) In the event the Association shall determine that a vehicle is parked or stored in violation of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted within the Community. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

10. Nuisances. No nuisance shall be permitted on any Unit nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs, the resident of any Unit or which interferes with the peaceful enjoyment or possession and proper use of any Loft, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities on, the Lofts; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Owner's use and enjoyment of such Owner's Loft, or with any Owner's ingress and egress to or from such Owner's Unit and a public way. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done or placed on any Unit which is or may become a nuisance or cause

embarrassment, disturbance or annoyance to others, and no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Unit as to be visible from a street or from any other Loft. Further, no offensive or unlawful use shall be permitted or made of any Unit or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lofts, or any portion thereof, shall be observed.

11. No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted on any Unit or within Improvements constructed on any Unit 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 Unit and no open fires shall be lighted or permitted on any Unit except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

12. No Annoying Light, Sounds or Odors. No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be permitted from any Unit which is noxious or offensive to others.

13. Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, animal or plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

14. Rules and Regulations. Rules and regulations concerning and governing the Lofts, Common Elements, and/or this Community are in place and may be may be adopted, amended or repealed from time to time by the Board, and the Board may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations.

15. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Loft, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease such Owner's Loft, but all leases shall be in writing and all leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of

Incorporation, Bylaws and rules and regulations of the Association.

16. Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days, prior written notice. Notwithstanding the foregoing, however, any such management agreements entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantees on one or more First Security Interests, and shall terminate absolutely, in any event, no later than thirty (30) days after termination of the Period of Declarant Control.

17. Use of Elements. An easement is hereby granted to the Declarant through the Common Elements and that portion of the Limited Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights. Subject to the immediately preceding sentence:

(a) No use shall be made of the Common Elements or Limited Common Elements which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction.

(b) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any owner place any structure whatsoever upon the Common Elements.

(c) The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Board.

(d) No use shall ever be made of the Common Elements which will deny ingress and egress to those Owners having access to their Lofts only over Common Elements, and the right of ingress and egress to said Lofts is hereby expressly granted.

18. Easement for Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists.

19. Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns, to enter upon, across, over, in

and under that portion of the Limited Common Elements as necessary for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Community so as to improve the drainage of water in the Community.

20. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Elements and that portion of the Limited Common Elements as necessary for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the expiration of the Period of Declarant Control, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easements) on the Common Elements.

ARTICLE XI USE OF THE COMMON ELEMENTS

1. Owners' Easements. Subject to the provisions of Section 2 of this Article, every Owner shall have a non-exclusive right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to such Owner's Loft, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to such Owner's Loft, for the purpose of getting to and from such Owner's Unit and public ways, which rights and easements shall be appurtenant to and pass with the transfer of title to every Loft.

2. Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

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

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to

mortgage said property 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 Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lofts not owned by the Declarant, and unless such is approved by all of the Owners of Lofts to which is allocated any Limited Common Element that will be subject to a Security Interest;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;

(d) The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply;

(e) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against such Owner's Unit or any other amount due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association's rules and regulations;

(f) The right of the Association to dedicate or transfer 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 Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lofts not owned by the Declarant, and unless first approved by all of the Owners of Lofts to which is allocated any Limited Common Element that will be dedicated or transferred, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection (e);

(g) The right of the Association, through its Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board may deem to be useful, beneficial or otherwise appropriate; and

(h) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. Delegation of Use. Any Owner may delegate such Owner's rights of use of and access over the Common Elements to the members of such Owner's family, such Owner's tenants, or contract purchasers who reside on such Owner's Loft.

4. Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Loft, and such right shall be exclusive except as to those Owners with a right to use such Limited Common Elements.

5. New Additions to Common Elements. The Association shall have the right to construct new additions to the Common Elements. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Lofts as provided in Article V hereof. The construction of new additions to the Common Elements shall not affect an Owner by way of modification of such Owner's voting power in the Association.

6. Conveyance or Encumbrance of Common Elements.

(a) Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if Persons entitled to cast at least eight percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lofts not owned by a Declarant, agree to that action; and all Owners of each Unit to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a Security Interest.

(b) An agreement to convey Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Community is situated and is effective only upon recordation.

(c) The Association, on behalf of all Owners, may contract to convey an interest in the Community pursuant to subsection (a) of this section, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale or other transfer of Common Elements by the Association is

void.

(e) A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of ingress and egress to the Unit and support of the Loft.

(f) A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

7. Acquiring and Disposing of Real and Personal Property. In addition to the Common Elements owned by the Association, the Association may acquire, own and hold for the use and benefit of all owners tangible and intangible personal property and real property for such uses and purposes as the Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. Transfer of a Loft, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

ARTICLE XII
CONVEYANCES, OWNERSHIP AND TAXATION OF LOFTS

1. Contracts Entered into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Condominium Map and/or this Declaration in the office of the Clerk and Recorder of the City and County of Denver, Colorado, may legally describe such Unit in the manner set forth in Section 2 of this Article and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in the City and County of Denver, Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Condominium Map and such Unit shall be subject in all respects to this Declaration.

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

Condominium Unit ____, Towne Square Lofts, according to

the Condominium Map thereof, recorded on _____ at Reception No. _____ in the records of the office of the Clerk and Recorder of the City and County of Denver, Colorado, and as defined and described in the Declaration of Covenants, Conditions and Restrictions of Towne Square Lofts recorded on _____ 2001 at Reception No. in said records.

3. Legal Effect of Description.

(a) Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit substantially in the manner set forth in Section 2 of this Article shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Loft, including all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from each Unit and the use of all the General Common Elements, as well as all of the Limited Common Elements appurtenant to said Loft, all as more fully provided in this Declaration.

(b) It shall not be necessary to use the term "unit" as a part of the legally sufficient description of a Loft.

4. Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. The Association shall be assessed for the Common Elements. 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 Loft.

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

6. Non-Partitionability. The Common Elements shall be owned by the Association and shall remain undivided and not subject to partition. By the acceptance of such Owner's deed or other instrument of conveyance or assignment, each Owner specifically waives such Owner's right to institute and/or maintain a partition action or

any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses and all damages which the Association incurs in connection therewith.

ARTICLE XIII MECHANIC'S LIENS

1. Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, such Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Loft.

2. Enforcement by the Association. At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 1 of this Article by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 2 and such amount to be indemnified shall be and constitute an additional assessment for collection by the Association subject to all of the provisions of Article V hereof.

3. Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Community, or any portion thereof, is effected against two or more Lofts, the owner (s) of any of the affected Lofts may pay to the lienholder the amount of the lien attributable to such Owner's Unit and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of such Owner's Unit from any such lien shall be equal to the quotient of (i) the amount of the lien divided by (ii) the total number of Lofts affected by the lien. Partial payment and release of any such lien with respect to any Loft(s) shall not

prevent the lienholder from enforcing such Owner's rights against the Unit (s) for which payment has not been received.

ARTICLE XIV
SECURITY INTERESTS

1. Approval by Members and Security Interest Holders of First Security Interests. Notwithstanding any provisions of this Declaration to the contrary, the Association shall not:

(a) except as provided by statute, in case of condemnation or substantial loss to the Lofts and/or Common Elements, unless it has obtained the prior written approval of the owners (other than the Declarant) casting at least sixty-seven percent (67%) of the votes in the Association and of those Security Interest Holders holding at least sixty-seven percent (67%) of the First Security Interests (based upon one vote for each First Security Interest owned):

(1) by act or omission seek to abandon or terminate the Community;

(2) change the pro rata interest or obligations of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, (however, this requirement will be deemed waived to the extent necessary to allow phasing, add-ons, or annexations in accordance with this Declaration);

(3) partition or subdivide any Loft;

(4) seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Community is not a transfer within the meaning of this clause. (However, this requirement will be deemed waived to the extent necessary to allow phasing, add-ons, or annexations, in accordance with this Declaration);

(5) use hazard insurance proceeds for losses to any property (whether Lofts or Common Elements) for other than the repair, replacement, or reconstruction of such property.

(b) Unless it has obtained the consent of owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association, and of Security Interest Holders who represent at least fifty-one percent (51%) of the votes of Lofts that are subject to such First Security Interests (and who have submitted a written request

that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests), add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which govern any of the following, provided that the implied approval of any Security Interest Holder of a First Security Interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail with a "return receipt" requested:

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%) assessment liens, or the priority of assessment liens;
- (3) reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of interests in the General Common Elements, Limited Common Elements, or rights to their use;
- (6) redefinition of any Unit boundaries;
- (7) convertibility of Lofts into Common Elements or vice versa;
- (8) expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community;
- (9) hazard or fidelity insurance requirements;
- (10) imposition of any restrictions on the leasing of Lofts;
- (11) imposition of any restrictions on an Owner's right to sell or transfer such Owner's Loft;
- (12) a decision by the Association (if the Community consists of fifty (50) or more Lofts) to establish self-management if professional management had been required previously by the Declaration, the Articles of Incorporation, or Bylaws of the Association, or by a Security Interest Holder of a First Security Interest who has submitted a written request that the Association notify them on any proposed action

requiring the consent of a specified percentage of Security Interest Holders of First Security Interests;

(13) restoration or repair of the Community (after a damage or partial condemnation) in a manner other than that specified in the Declaration, the Articles of Incorporation, or Bylaws of the Association; or

(14) any provisions that expressly benefit Security Interest Holders, or insurers or guarantors of Security Interests.

2. Termination of Legal Status. Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests and who represent at least fifty-one percent (51%) of the votes of the Lofts that are subject to such First Security Interests. Termination of the legal status of the Community for reasons other than substantial destruction or condemnation of the Community shall be permitted if agreed to by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of such Security Interest Holders of First Security Interests and who represent at least sixty-seven percent (67%) of the votes of the Lofts subject to First Security Interests.

3. Notice of Action. Upon written request to the Association, identifying the name and address of the Security Interest Holder of a First Security Interest or insurer or guarantor of the First Security Interest, and the residence address of the Unit which is subject to such First Security Interest, each Security Interest Holder of a First Security Interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Community or any Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

(b) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor, or any default by such owner in any obligation under the Declaration, Article of Incorporation or Bylaws of the Association if and when the Board has actual knowledge of such default, and such delinquency or default remains uncured for a period of sixty (60) days;

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

(d) any proposed action that would require the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

4. Audit. At any time after the date when the Community includes at least forty-five (45) Lofts, the Association shall provide an audited statement for the preceding fiscal year to any Security Interest Holder of a First Security Interest, insurer or guarantor of any First Security Interest, who submits a written request for such audit; and such audit shall be made available within one hundred twenty (120) days of the Association's fiscal year end. When the Community consists of fewer than forty-five (45) Lofts and there is not an audited statement available, any Security Interest Holder will be allowed to have an audited statement prepared at its own expense.

5. Confirmation of Rights of Security Interest Holders of First Security Interests. No provision of this Declaration, the Articles of Incorporation, or Bylaws of the Association give any Owner, or any other party, priority over any rights of the Security Interest Holder of a First Security Interest, pursuant to its First Security Interest, in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Lofts and/or Common Elements.

ARTICLE XV GENERAL PROVISIONS

1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. All provisions of the Declaration, the Articles of Incorporation

and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

4. Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms and provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

5. Annexation.

(a) Additional property may be annexed to this Declaration with the consent of two-thirds of the Members. Each such annexation shall be effected, if at all, by recording of an Annexation of Additional Land in the office of the Clerk and Recorder of the City and County of Denver, Colorado. The Annexation of Additional Land for such property shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land, shall state that the Declarant (or other Person) is the owner of the Lofts thereby created, shall assign an identifying number to each new Loft, shall describe any Common Elements within the property being annexed, shall reallocate the Allocated Interests among all Lofts, and may include such other provisions as Declarant deems appropriate. All provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording both a Condominium Map and an Annexation of Additional Land with respect to such property. The maximum total number of Lofts that may be added by all annexations, together, shall not exceed the Lofts that May Be Created less the number of Lofts listed on the attached Exhibit B.

(b) upon any such annexation which adds Lofts, the Allocated Interests of each Unit shall automatically be reduced to a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lofts then subject to this Declaration; and the Allocated Interests of each Unit so annexed shall be the same fraction. Such reduction of Allocated Interests shall be automatic and no further documentation need be filed of record or further action need be taken by the Declarant,

any Unit Owner or any Security Interest Holder to reflect such modification in Allocated Interest.

(c) Each portion of the Community which is annexed to this Declaration by a Condominium Map and an Annexation of Additional Land, as provided in the preceding subsection(a), shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community which has been annexed to this Declaration, upon the first conveyance of any Unit in such portion of the Community to any Person other than the Declarant.

6. Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in Article XIV, above, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by a vote or agreement of Owners holding at least sixty-seven percent (67%) of the Allocated Interests.

(b) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the Declaration must be recorded in every county in which any portion of the Community is located, and is effective only upon recordation.

(d) Amendments to the Declaration that are required by this Declaration to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

7. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register such Owner's mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or

sent, as aforesaid, to such Owner at the address of such Owner's Loft. All notices, demands, or other notices intended to be served upon the Board or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, to Towne Square Condominiums, LLC, 3950 Lewiston, Suite 102, Aurora, Colorado 80011, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

8. HUD or VA Approval. During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantees on one or more First Security Interests: annexation of additional real property; amendment of this Declaration; termination of this Community; or merger or consolidation of the Association.

9. Transfer of Special Declarant Rights. A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with the Act.

10. Eminent Domain. The taking by eminent domain of a Loft(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

11. Termination of Community. The Community may be terminated only in accordance with the Act.

12. Association as Trustee. With respect to a third Person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third Person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third Person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third Person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

13. Run with Land; Binding upon Successors. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are, or which hereafter become, a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to the their respective heirs,

personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any Person.

ARTICLE XVI
COMBINING AND SUBDIVIDING UNITS

1. Declarant's Right to Combine and Settle. Declarant hereby reserves the right to combine physically all or part of the area or space of one or more adjoining (horizontally or vertically) Units; to physically subdivide a Unit into two or more Units; and to redesignate and reallocate Limited Common Elements in connection with any combination or subdivision. Declarant shall not exercise said rights unless it is the Owner of the Unit(s) to be subdivided or combined. Declarant also reserves the right to convert any Units owned by it into Common Elements. In no event may any subdivision of Units cause the total number of Units on the Property to exceed 63.

2. Reallocation of Limited Common Elements. If Declarant reallocates the boundaries of any Unit or physically combines two or more Units, it may designate, as additional Limited Common Elements appurtenant to the Unit or Units so created, any walks, floors or other structural separations between that formerly constituted the Unit boundary, or any space that would be occupied by such structural separations but for the relocation of the Unit boundary or combination of such Units; provided however, that if two or more Units are combined, then all such walks, floors or other structural separations or such spaces shall automatically become Common Elements if the Combined Units become subject to separate ownership in the future. If a Unit boundary is relocated without creating a single Unit out of two or more Units, or if Declarant converts any Units to Common Elements, the percentage interests in the Common Elements appurtenant to the Units shall be reallocated in accordance with the formula set forth herein. However, if two or more Units are combined into a single Unit, such combined Unit shall be allocated the undivided interests in the Common Elements appurtenant to the Units so combined and the Owner of such combined Unit shall be responsible for the assessments for Common Expenses allowable to the Units so combined.

3. Unit Owner Rights. Each Owner of a Unit shall have the right to combine two or more adjacent Units, or to divide two or more Units which have previously been combined by Declarant or by an Owner subsequent to recording the Condominium Map. Except as provided in the foregoing sentence, there may be no other adjoining or subdividing of Units by Owners. A combination or division of Units by an Owner shall require the consent of the Association and shall be effected in accordance with the procedures set forth in the Act. The exercise of the rights granted in this paragraph shall be subject to the prior consent of each first mortgagee having an interest in any

such combined or divided Units. If Units are combined, the undivided interest in the Common Elements appurtenant to the combined Unit, the votes allocated to such Unit, and the percentage of Common Expenses, as applicable, shall be the sum of the undivided interests in the Units that were combined. Any previously combined Units which are later divided shall be reinstated to the undivided interests in the Common Elements, the votes and the percentage of Common Expenses, as applicable, which they had prior to combination.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of _____, 2001.

DECLARANT:

Towne Square Condominiums, LLC, a Colorado limited liability company, by

Gateway Business Park, its Manager

By: _____
Paul W. Powers, Authorized Signatory

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by Paul W. Powers as Authorized Signatory of Gateway Business Park, LLC. a Colorado limited liability company, as Manager of Towne Square Condominiums, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public

My Commission expires: _____

DRAFT, July 5, 2001

EXHIBIT A
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TOWNE SQUARE LOFTS

A PARCEL OF LAND BEING PLOT 4, BLOCK 1, GATEWAY PARK IV – DENVER
FILING NO. 3, AS RECORDED ON APRIL 30, 1999 IN BOOK 32, PAGES 58-59 AT
RECEPTION NO. 99000076813, BEING A PORTION OF THE NORTHWEST
QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 3
SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND
COUNTY OF DENVER, STATE OF COLORADO.

EXHIBIT B
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TOWNE SQUARE LOFTS

<u>Unit No.</u>	<u>Allocated Interests Attributable to the Loft</u>
201	1.88%
202	1.34%
203	1.34%
204	1.60%
205	1.60%
206	1.34%
207	1.60%
208	1.96%
209	1.75%
210	1.60%
211	1.98%
212	1.98%
213	1.15%
214	1.78%
215	1.34%
216	1.34%
217	1.60%
218	1.60%
219	1.34%
220	1.34%
221	1.88%
301	1.88%
302	1.34%
303	1.34%
304	1.60%
305	1.60%
306	1.34%
307	1.60%

308	1.96%
309	1.75%
310	1.60%
311	1.98%
312	1.98%
313	1.15%
314	1.78%
315	1.34%
316	1.34%
317	1.60%
318	1.60%
319	1.34%
320	1.34%
321	1.88%
401	1.88%
402	1.34%
403	1.34%
404	1.60%
405	1.60%
406	1.34%
407	1.60%
408	1.96%
409	1.75%
410	1.60%
411	1.98%
412	1.98%
413	1.15%
414	1.78%
415	1.34%
416	1.34%
417	1.60%
418	1.60%
419	1.34%
420	1.34%
421	1.88%

DRAFT, July 5, 2001

EXHIBIT C
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TOWNE SQUARE LOFTS

The following documents, if they are recorded, are recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado: