

conveyance of twenty-five percent (25%) of the Units to Unit Owners other than Declarant, at least one member and not less than 25% of the members of the Executive Board shall be elected exclusively by Voting Members other than Declarant, and not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, not less than 33% of the members of the Executive Board shall be elected exclusively by Voting Members other than Declarant. Subject to the foregoing, Declarant shall continue to control the Association and have the right to appoint and remove officers and members of the Executive Board appointed by Declarant for a period ending on the earlier of (i) sixty (60) days after conveyance of ninety percent (90%) of the Units to Unit Owners other than Declarant, or (ii) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business ("Period of Declarant Control"). Subsequent to the Period of Declarant Control, the Executive Board shall be increased to five (5) members. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board prior to the termination of the Period of Declarant Control set forth hereinabove and, in such event, Declarant may require, for the duration of the Period of Declarant Control, that the actions of the Association or the Executive Board be approved by Declarant before they become effective.

10.5 Executive Board and Officer Liability. Neither the members of the Executive Board nor officers of the Association, whether elected or designated by Declarant, shall be personally liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Executive Board members or officers, except for acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association hereby agrees to indemnify, defend and hold harmless each of the members of the Executive Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the members of the Executive Board or the officers of the Association on behalf of the Unit Owners or the Association, or arising out of their status as members of the Executive Board or officers of the Association, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. The foregoing undertaking of indemnity includes indemnification against and in respect of all costs and expenses, including attorney fees, actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, administrative or criminal, in which a member of the Executive Board or officer of the Association is involved by virtue of being or having been a member of the Executive Board or officer of the Association, and such indemnification includes all amounts necessary to discharge judgments and fines and amounts paid in settlement.

10.6 Special Declarant Rights. During the Period of Declarant Control, Declarant shall have the right to add the Development Area to the Condominium, create additional Units, Common Elements and Limited Common Elements, within all or any part of the Condominium or Development Area, and otherwise to exercise any or all Special Declarant Rights provided for under the Act.

11. Operation, Maintenance and Extraordinary Expense Assessments. Prior to the conveyance of the first Unit, the Executive Board shall prepare an initial operating budget, estimate the Common Expenses, and establish the initial monthly assessment in respect of each Unit based on such operating budget and the Percentage Interest of each Unit ("Initial Assessment Amount"). Each Unit Owner's obligation to pay the Initial Assessment Amount in respect of such Unit Owner's Unit

shall begin on the first day of the month in which title to the Unit is conveyed to such Unit Owner and shall, together with an amount equal to two (2) months of the Initial Assessment Amount or Common Expense Liability assessment amount, as the case may be, be paid at the closing of the sale of such Unit. Each Unit Owner shall be liable for and shall pay the Initial Assessment Amount to the Association each month on or before the first day of each month. If title to a Unit is derived from Declarant, the Initial Assessment Amount for the month in which the closing occurs shall be prorated to the date of the closing. Thereafter, on or before December 1, 2007, and on or before December 1 of each subsequent year, the Executive Board shall estimate the Common Expenses, including the total amount necessary to pay the expenses of maintaining, repairing and insuring the Condominium for the succeeding year, together with reasonable amounts for reserves for contingencies and replacements and, on before December 15 of such year, notify each Unit Owner in writing of the amount of such estimate, accompanied by a reasonable itemization thereof ("Annual Budget"). On December 31 of each year, each Unit Owner shall be assessed, and shall become personally liable for the payment of, an amount equal to the amount of the Annual Budget times the Percentage Interest allocated to such Unit Owner's Unit ("Common Expenses Liability"). On January 10 of the immediately succeeding year, and on the tenth day of each month of such year, 1/12th of the Common Expenses Liability in respect of each Unit shall become delinquent. Any failure or delay of the Executive Board in determining the Annual Budget or notifying Unit Owners of the amount payable in respect of a new year shall not constitute a waiver or release of Unit Owners' obligations to pay maintenance costs and necessary reserves when such amounts are determined and, in the absence of an Annual Budget or notice of the amount payable in respect a new year, each Unit Owner shall continue to pay the Common Expenses Liability amount established for the prior year and continue payment of such amount until the new Common Expenses Liability amount is determined. In the event an unanticipated or extraordinary expense or liability, or necessary capital expenditure, occurs or arises and such expense or liability is not included in the Annual Budget, the Executive Board may assess each Unit Owner an amount equal to the total amount of such expense or liability times the Percentage Interest allocated to such Unit Owner's Unit ("Extraordinary Expense Assessment"). The Executive Board shall notify each Unit Owner of the amount of the Extraordinary Expense Assessment payable by such Unit Owner and the date or dates the Extraordinary Expense Assessment is due and payable. The amount of the Extraordinary Expense Assessment shall become delinquent if not paid within ten (10) days of the date or dates due and payable. Expenses incurred or to be incurred for the construction, maintenance, repair or replacement of Limited Common Elements shall be specially assessed against the Units to which the Limited Common Elements are allocated, as reasonably determined by the Executive Board, and the Executive Board shall notify affected Unit Owners of the amount of such assessments and the date or dates such assessments are due and payable. Such Limited Common Element assessments shall become delinquent if not paid within ten (10) days of the date or dates due and payable. Any amount payable by a Unit Owner hereunder, including Common Expenses Liability amounts and Extraordinary Expense Assessment amounts, which have become delinquent shall bear interest, from the date of delinquency to the date paid in full, at an annual rate equal to the lesser of sixteen percent (16%), or the Prime Rate plus six percent (6%). "Prime Rate", as used herein, means the annual rate of interest quoted as the "Prime Rate" in the Money Rates Section of The Wall Street Journal, Midwest Edition. The Association shall have a lien on a Unit for any amount payable by a Unit Owner hereunder or under the Community Rules from the time the amount payable becomes due and a notice stating the dollar amount of such lien is recorded in the office of the Register of Deeds of Sarpy County, Nebraska. Such lien shall be subordinate to the lien of any First Mortgage recorded

prior to the recording of the notice of such lien. The Association's lien may be foreclosed in like manner as a mortgage on real estate but the Association shall give reasonable notice of its action to all lienholders in respect of the Unit whose interest would be effected. In lieu of enforcing such lien, the Association may initiate an action at law to collect the amounts due and payable. Common Expenses Liability assessments, Extraordinary Expense Assessments, and all other amounts payable by a Unit Owner pursuant to this Declaration or the Community Rules are the personal, individual debts of such Unit Owner and, if a Unit is owned by more than one Person, the liability of such Persons in respect thereof shall be joint and several. A Unit Owner's liability for such amounts is and shall not be affected by any waiver of the right to use or non-use of any of the Common Elements or by abandonment of such Unit Owner's Unit.

12. **Insurance, Damage, Destruction and Reconstruction.**

12.1 **Scope of Coverage.** Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, the Association shall maintain, to the extent reasonably available:

(1) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed by Unit Owners, insuring against all risks of direct physical loss commonly insured against, in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Executive Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Executive Board, but not less than One Million Dollars (\$1,000,000.00) per injury or injuries, including death, arising out of a single occurrence, and Fifty Thousand Dollars (\$50,000.00) property damage; or in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than One Million Fifty Thousand Dollars (\$1,050,000.00), covering all occurrences commonly insured against for death, bodily injury and property damage arising out or in connection with the use, ownership or maintenance of the Common Elements.

(3) Such other insurance as the Executive Board shall determine from time to time to be appropriate to protect the Association or the Owners.

(4) The property and liability insurance policies must provide that: (i) each Unit Owner is an insured Person under the policy with respect to liability arising out of his or her interest in the Common Elements or membership in the Association; (ii) the insurer waives its right to subrogation under the policy against any Unit Owner or member of his or her household; (iii) no act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the

Association, will void the policy or be a condition to recovery under the policy; (iv) if, at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. The property insurance policies (I) shall contain standard mortgage clause endorsements in favor of Mortgagees as their respective interests appear, (ii) shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to the Mortgagee of each Dwelling Unit, and (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable if the Unit Owners elect to sell the Condominium or terminate the Condominium.

12.2 Certificates of Insurance. An insurer that has issued an insurance policy to the Association shall issue certificates or memoranda to the Association and, upon written request, to any Unit Owner or Mortgagee. Insurance policies obtained pursuant to this paragraph shall provide that they may not be canceled or non-renewed until thirty (30) days after written notice of the proposed cancellation or non-renewal has been mailed to the Association, to each Unit Owner, and to each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

12.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this paragraph shall be a Common Expense and shall be paid for by the Association.

12.4 Insurance Obtained by Owners. The issuance of insurance policies to the Association shall not prevent a Unit Owner from obtaining insurance for such Unit Owner's own benefit. **THE ASSOCIATION DOES NOT MAINTAIN PERSONAL PROPERTY INSURANCE COVERAGE FOR ANY UNIT OWNER.**

12.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association pursuant to this paragraph must be adjusted with the Association and the insurance proceeds shall be payable to the Association or to an insurance trustee designated for that purpose, and not to any Mortgagee. The Association or the insurance trustee shall hold any insurance proceeds in trust for the Unit Owners and Mortgagees as their interests may appear. Subject to the provisions of section 12.6 hereof, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and Mortgagees shall not be 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 Condominium is terminated. The rights of Mortgagees under any standard mortgage clause endorsement shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act and this Declaration with respect to the application of insurance proceeds for the repair or reconstruction of the Units or Common Elements. Payment by an insurance company to the Association or to an insurance trustee designated by the Association of the proceeds of any policy, and the receipt of a release from the Association of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any

payments of the proceeds of any policy by the Association or an insurance trustee designated by the Association.

12.6 Repair or Replacement. Any portion of the Condominium which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (I) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the Unit Owners vote not to repair or replace. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expenses Liability. If the entire Condominium is not repaired or replaced (I) 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 Condominium, (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt must be distributed to the owners of those Units and the owners of the Units to which those Limited Common Elements were allocated, or to Mortgagees, as their interests may appear, and (iii) the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under subsection (a) of Neb. Rev. Stat. § 76-831, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this section, Neb. Rev. Stat. § 76-855 governs the distribution of insurance proceeds if the Condominium is terminated.

12.7 Insurance Unavailability. If the insurance described in this paragraph 12 is not reasonably available, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

12.8 Other Insurance. The Executive Board may obtain such other insurance as the Executive Board deems necessary or appropriate or which is required under the Act or under applicable requirements or guidelines of the Federal National Mortgage Association including, without limitation, workers' compensation insurance, employers' liability insurance, fidelity bonds, and director and officer liability insurance.

13. Condemnation. In the event of a taking or condemnation by competent authority of any part of the Condominium, the Association shall, if necessary, restore the improvements in the remaining portion of the Condominium to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards paid to the Association shall be applied first to the cost of any restoration, and any remaining portion of such proceeds or awards shall be, in the discretion of the Executive Board, either (I) applied to pay Common Expenses, or (ii) distributed to the remaining Unit Owners and their respective Mortgagees, as their interests may appear, based on their current Allocated Interests. Each Unit Owner appoints the Association as attorney-in-fact for the purpose of representing such Unit Owner in any condemnation proceedings or in negotiations, settlements or agreements with the condemning authority. In the event part or all of one or more Units is taken or condemned, the portion so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act, and the Association shall equitably adjust Allocated Interests of the remaining Units.

14. **Amendment of Declaration.**

14.1 **Amendment Procedure.** Except in those instances specifically identified in Neb. Rev. Stat. § 76-854, the Declaration may be amended only in accordance with and pursuant to Neb. Rev. Stat. § 76-854. Every amendment to the Declaration must be recorded in the office of the Register of Deeds of Sarpy County, Nebraska, and such amendment shall be effective only upon its recordation. Amendments to the Declaration required 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.

14.2 **Challenge to Amendment.** No action to challenge the validity of an amendment adopted by the Association pursuant to Neb. Rev. Stat. § 76-854 may be brought more than one (1) year after the amendment is recorded.

14.3 **Certain Amendments.** Except to the extent expressly permitted or required by sections of the Nebraska Condominium Act other than § 76-854, no amendment may create or increase special Declarant rights, increase the number of Units, or change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted in the absence of the unanimous consent of all Unit Owners and all First Mortgagees.

14.4 **Other Material Amendments.** Material amendments to the Declaration other than those specifically addressed hereinabove at Section 14.3 must also be approved by the holders of mortgages that represent not less than fifty-one percent (51%) of the votes allocated to Units that are subject to such mortgages. If such mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposed amendment, such mortgagee shall be automatically deemed to have approved such amendment if such notice was delivered to such mortgagee by certified or registered mail, postage prepaid, return receipt requested.

15. **Termination.** The Condominium may be terminated only in accordance with and pursuant to Neb. Rev. Stat. § 76-855; provided however, in the event of substantial destruction or condemnation of the Condominium, the Condominium may be terminated only with the approval of sixty-seven percent (67%) or more of the Voting Members and by mortgagees representing not less than fifty-one percent (51%) of the votes allocated to Units that are subject to such mortgages.

16. **Miscellaneous Provisions.**

16.1 **Mortgagee Notice.** Upon written request to the Executive Board, any Mortgagee shall be provided a copy of any and all notices permitted or required by this Declaration to be provided to the Unit Owner whose Unit is subject to such Mortgagee's First Mortgage. In addition, the Mortgagee and guarantor of such mortgage, if any, on any Unit shall be provided timely written notice of:

- (1) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its mortgage;

(2) any sixty (60) day delinquency in the payment of Common Expense Liability, Extraordinary Expense Assessment, or any other amount payable by the Unit Owner of the Unit on which the Mortgagee holds a mortgage;

(3) a lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(4) any proposed action that requires the consent of a specified percentage of Mortgagees.

16.2 Unit Owner Waiver of Subrogation. Each Unit Owner hereby waives and releases any and all claims which he, she or it may have against any other Unit Owner, the Association, the Executive Board, members of the Executive Board, Declarant, and their respective employees and agents, for damage to the Common Elements, the Units, or any personal property located in the Units or Common Elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

16.3 Notices. Any notice required or permitted by this Declaration or the Condominium Act shall be in writing and shall be addressed to the Executive Board or the Association, or any Unit Owner, as the case may be, at 1910 Thurston Avenue, Bellevue, Nebraska 68005 (indicating thereon the number of the respective Unit if addressed to a Unit Owner). The Association or the Executive Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may also designate a different address for notices to him, her or it by giving written notice of change of address to the Executive Board. Notices addressed in compliance herewith shall be deemed delivered three (3) business days after mailing when mailed by certified mail, return receipt requested; on actual delivery to the intended recipient when delivered in person; or, if addressed to a Unit Owner who has not indicated a different address for notice, when deposited in such Unit Owner's mailbox in the Building or at the door of his, her or its Unit.

16.4 Effect of Declaration. Each grantee of Declarant and its successors and assigns, and each subsequent owner of a Unit, by acceptance of a deed of conveyance to the Unit, accepts the same subject to all restrictions, conditions, covenants and reservations of this Declaration, and the rights and powers granted or reserved by this Declaration to Declarant.

16.5 Waiver. No covenant, restriction, condition or provision of this Declaration shall be deemed to have been waived or abrogated by reason of any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

16.6 Captions. The captions (headings) contained herein are included solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

16.7 Gender; Number. Whenever the context so requires, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

16.8 Severability. The invalidity or unenforceability of any covenant, restriction, condition, limitation or other provision of this Declaration shall not affect or render the remainder of the Declaration invalid or unenforceable, and to this end the provisions hereof are severable.

IN WITNESS WHEREOF, the Declarant has executed and acknowledged this Declaration on and as of the date first above written.

SILVERTHORNE PARTNERS, LLC,
a Nebraska limited liability company

By _____
Title: _____

STATE OF NEBRASKA) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, a _____ of SILVERTHORNE PARTNERS, LLC, a Nebraska limited liability company, on behalf of the company.

Notary Public

CONSENT TO AND RATIFICATION OF DECLARATION

Enterprise Bank, a banking corporation ("Lender"), hereby consents to the foregoing Condominium Declaration; agrees that the Property identified in Exhibit "A" of said Condominium Declaration shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved, mortgaged or otherwise, encumbered subject to the provisions of said Condominium Declaration; agrees that said Condominium Declaration and all of its provisions shall be and are covenants running with the Property, and shall be binding upon Lender and its successors and assigns; and Lender hereby ratifies and approves the recordation of said Condominium Declaration in the office of the Register of Deeds of Douglas County, Nebraska.

LENDER:

ENTERPRISE BANK

By _____
Title _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, a _____ of Enterprise Bank, a banking corporation, on behalf of the bank.

[SEAL]

Notary Public

F:\SILVERTHORNE\Condominium Declaration

EXHIBIT "A"
Legal Description of the Land
Silverthorne Condominium

Lot 1, Hillcrest Replat 3 and Lot 39A, Hillcrest, an Addition to the City of Bellevue, as surveyed, platted and recorded, in Sarpy County, Nebraska.