

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS**

THIS DECLARATION is made this 20<sup>th</sup> day of September, 1999 by Six Ninety Nine Properties, LLC, a Colorado limited liability company, 545 E. Pikes Peak, Ste. 207, Colorado Springs, CO 80903, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property (the "Property") in the County of El Paso, State of Colorado, more particularly described as:

Paint Brush Hills Filing No. 8

WHEREAS, Declarant desires, among other things, to provide for the development and use of the Property under unified control whether or not there is diversity of ownership so as to facilitate over-all harmonious design, appearance, and location of structures and other improvements and to promote harmonious uses.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, used, developed, occupied, leased, and conveyed subject to the following reservations, easements, restrictions, covenants, and conditions which are for the purpose of protecting the value, usefulness, quality, attractiveness, and desirability of the Property and which shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the each person who owns or occupies any part of the Property. The term "Lot" as used herein shall mean a numbered Lot or lettered tract on the recorded plat of the Property.

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**SINGLE FAMILY RESIDENTIAL RESTRICTIONS**

1. Residential Use Only. Except as otherwise stated herein, all Lots in the Property shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Property shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession, or other activity conducted for gain, except for governmental activities, shall be carried on or within the Property except as approved by the Architectural Control Committee.

2. Other Structures Prohibited. No structure shall be erected within the Property except single-family dwellings, accessory buildings, and accessory structures approved in advance in writing by the Architectural Control Committee.

3. New Construction. All construction shall be new. No building or dwelling unit may be moved onto a Lot or building site except as expressly hereinafter provided for temporary buildings.

4. Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

5. Construction. A structure shall not be occupied in the course of original construction until substantially completed. All construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

6. Temporary Buildings. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by the Declarant, or with the permission of the Architectural Control Committee, by builders on or owners of homes within the Property. Model homes may be used and exhibited only by Declarant, or with the permission of the Architectural Control Committee, by builders or owners of homes within the Property.

Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes. No structure other than a dwelling, no accessory building other than a guest house, no trailer, tent, or other temporary quarters may be used for living purposes or be parked, installed, or set up on a Lot except as otherwise specifically permitted herein. No other structure may be placed on any Lot before completion of the dwelling on such Lot except with the permission of the Architectural Control Committee.

7. Drilling Prohibited. Except when performed by or on behalf of a governmental agency or the Declarant, no derrick or other structure designed for use in or used for boring or drilling for water, oil, or natural gas shall be permitted upon or above the surface of the Property.

8. No Water Wells. Except when performed by or on behalf of a governmental entity, no commercial, industrial, municipal, or other water wells shall be drilled on the Property.

#### **UTILITIES, EASEMENTS, AND DRAINAGE**

9. Utility Easements. Declarant hereby reserves to itself, its successors and assigns, over, under, in, and across portions of each Lot a 10-foot strip along and adjoining each rear Lot line and a 5-foot strip along and adjoining each side Lot line, perpetual, alienable, divisible, and releasable easements, and the right to grant from time to time easements for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for sewer lines, for any other utility lines, for drainage, and for other similar facilities and purposes.

10. Drainage. All surface, underdrain, and subsurface waters on each Lot must be discharged or detained by all builders on and owners of Lots in accordance with the recorded plat,

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the drainage plan, the subdivision construction drawings, and all related documents which were prepared in connection with the approval by El Paso County of Paint Brush Hills Filing No. 8, (those documents are sometimes collectively referred to below as the "Drainage Control Documents"). At the time when a builder sells a Lot and any structures thereon to a homeowner, the Lot grading must conform to the Drainage Control Documents, and all successors in interest to the Lot must at all times maintain such grading to continue to conform to the Drainage Control Documents. No material change may be made by any builder or owner of any Lot in the ground level, slope, pitch, or drainage patterns which are shown on the Drainage Control Documents unless the Lot owner obtains the prior written consent and approval of the Architectural Control Committee. Grading shall be maintained at all times so as to conduct irrigation and surface water away from buildings and so as to protect foundations and footings from excess moisture, and to protect against surface water flowing upon neighboring homes or Lots.

11. Underground Utilities. All utilities and customary service devices for access, control, or use of utilities shall be installed underground, except for normal control and hookup panels or boxes.

**DENSITY, SET BACK, AND QUALITY STANDARDS**

12. One Dwelling Per Lot. Except as otherwise provided herein, no more than one dwelling, together with any permitted accessory buildings and structures, shall be erected or maintained on any Lot.

13. Setbacks. Except for fireplace projections, eaves, and overhangs which have been approved in writing by the Architectural Control Committee, no building, fence, porch, projection, or other part of a building shall be located within 40 feet of the front line or within 40

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feet of the rear line of any Lot or within 15 feet of either side line of the Lot or on any corner Lot within 15 feet of the street which borders the side line, unless otherwise approved in writing by the Architectural Control Committee.

14. Front Curb. No owner or other person shall landscape within six feet of the front curb in such a manner that pedestrian use would be impeded. No fencing, trees, or shrubs shall be allowed within six feet of the front curb of each Lot. However, the use within such six-foot strip of gravel, stepping stones, sidewalks, or other types of landscaping which are conducive to pedestrian traffic is not prohibited and is encouraged.

15. Coverage of Front of House. At least thirty five percent (35%) of the surface area of the front of each home built on a Lot shall be constructed of brick, stone, stucco, or other type of masonry approved by the Architectural Control Committee and shall be shown on the front elevation of the home as a part of the plans submitted to the Architectural Control Committee for approval pursuant to the terms hereof.

16. Square Footage. No dwelling shall be erected, permitted, or maintained having a floor area, exclusive of any open porch or garage, of less than:

- a. 1,400 square feet for a single level or ranch-style home, or
- b. 1,600 square feet on the above-ground floors for a two-story, bi-level, or tri-level home.

17. Garage. Every single-family dwelling erected on any Lot shall have a garage capable of containing at least two automobiles.

18. Yard Light. There shall be installed prior to occupancy of a dwelling and thereafter maintained in good operating condition a front yard gas or electric light, no less than fifteen feet

nor more than thirty feet from the front lot line, the design of which shall have been approved by the Architectural Control Committee.

19. Height. No dwelling or other structure shall be more than two stories in height.

20. Sod and Trees. Each Lot owner shall furnish, install, and thereafter maintain in good condition and appearance a minimum of 2,500 square feet and a maximum of 4,000 square feet of sod on that Lot. The sod must either be installed on the front portion of the Lot or be installed in one or more alternative areas pursuant to a landscaping plan approved by the Architectural Control Committee. Such a plan showing water conservation is encouraged but must be approved by the Architectural Control Committee. Each Lot owner is required to plant and thereafter maintain in good condition and appearance three deciduous trees, with a minimum of 1.5 inch caliper two feet above the ball, and two evergreens with a minimum height of 5 feet. Such sod and trees must be installed by the Lot owner no later than six months after the first occupancy of said dwelling. This sod and tree requirement is binding upon each subsequent Lot owner.

21. Colors. All exterior paint colors and roof colors, including any color changes after the initial construction, must have prior approval of the Architectural Control Committee.

22. Roof. Roofing materials shall be limited to asphalt shingles, wood shakes, clay, concrete, or synthetic tile with all colors to be approved by the Architectural Control Committee.

23. Prohibited Construction. No mobile homes, trailer homes, modular, pre-cut, or manufactured housing shall be placed or erected on any Lot within the Property. All homes shall be constructed by a contractor duly licensed by the El Paso County Regional Building Department.

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24. Mailbox. Each Lot shall have one mailbox, and each mailbox in the Property shall be of similar design and material as the home, or as approved by the Architectural Control Committee and the U.S. Postal Service.

25. Driveways. All driveways must consist of a minimum 18' X 20' concrete pad adjoining the garage, and the remaining portion of the driveway to the public street must be of concrete with a minimum width of nine feet.

### FENCING

26. Perimeter Fence. Except as otherwise set forth herein, fencing up to and around the perimeter of individual Lots will be limited to a rail-type or other open fence. The top of such a perimeter fence shall not be higher than four feet from the ground. The material of all such perimeter fences shall be wood or a similar natural material or as otherwise approved by the Architectural Control Committee.

27. Privacy Fence. A solid privacy fence may be constructed in the rear or on the side of a home on a Lot. A privacy fence cannot extend into the building setback for either the side or the rear of the Lot. The height of the privacy fence cannot exceed six feet. Privacy fence materials are limited to wood, block, or a material that bears a close resemblance to either wood or block. Privacy fence colors must bear a close resemblance to natural wood, or in the case of a block fence, must be of an 'earth tone' approved by the Architectural Control Committee.

28. Maintenance. All fencing must be maintained in a quality manner. Fencing that is in disrepair, down, leaning, or falling apart must be repaired or removed immediately and in any event no more than thirty days after notice from the Architectural Control Committee.

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29. Pre-Approval of Fencing. All fencing must have prior written approval by the Architectural Control Committee.

30. Aerials and Antennae. No aerial or antenna for transmission of radio, television, or other electronic signals may be maintained or erected within the Property, except as approved by the Architectural Control Committee. No aerial or antenna for reception of radio or television or electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets, except as approved by the Architectural Control Committee. Small cableless antennae will generally be allowed.

31. Exterior Maintenance. Each owner shall maintain the exterior of the dwelling and any fencing and accessory buildings in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent and shall cause them to be repainted periodically and before the surfacing becomes weatherbeaten or worn off or as directed by the Architectural Control Committee.

32. Accessory Buildings. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same Lot and be approved by the Architectural Control Committee.

33. Restoration. Any dwelling or building which is destroyed in whole or in part by fire, windstorm, or for any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months after such destruction.

### LIVING-ENVIRONMENT STANDARDS

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34. Clothes Lines. All outdoor clothes poles, clothes lines, and other facilities for drying or airing clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

35. Garbage. No ashes, trash, rubbish, garbage, or other refuse shall be stored, accumulated, or deposited outside of a home or so as to be visible from any neighboring property or street except during refuse collection.

36. Noise. No exterior speakers, horns, whistles, bells, or other sound devices except devices used exclusively for security purposes shall be located, used, or placed on a structure or within any Lot.

**RESTRICTIONS CONDITIONED UPON REVOCABLE PERMISSSION**

37. Electronics. Except with the permission of the Architectural Control Committee, which permission shall be revocable, no electronic or radio transmitter of any kind other than garage door openers and cellular, digital, and similar phones and personal computing devices shall be located or operated on the Property or any Lot.

38. Animals. No animals except an aggregate of two domesticated household dogs or cats, and except domesticated birds and fish which are permanently confined indoors, shall be kept or maintained within any Lot, and they may only be kept as pets. No animals shall be kept, bred, or maintained within any Lot for any commercial purposes. Dogs which are known as hybrid wolves or similar mixed breeds which have a breed history for violent behavior toward humans or other dogs shall not be kept within or on any Lot nor may they be characterized as a domesticated household pet. Any animal on any Lot which, in the opinion of the Architectural Control

Committee, makes an unreasonable amount of noise or offensive odor or is or becomes a nuisance so as to be an annoyance to or disturb the peace and quiet of the occupants of any other Lot shall be permanently removed from the Property. When not indoors, all dogs must either be on a leash or confined to the Lot by means of approved fencing. If a dog is determined by the Architectural Control Committee in its sole discretion to be a dangerous dog, as the term "dangerous dog" is defined in Section 18-9-204.5(2)(b) of the Colorado Revised Statutes, any occupant of the Lot upon which such dog is being kept, whether or not such occupant is the owner of such dog, shall forthwith permanently remove such dog from the Property upon written directive from the Architectural Control Committee.

39. Motor Homes and Boats. Each owner may store on the owner's Lot, but not on any street in the Property, a maximum of one motor home, one trailer, and one boat, all of which must be currently registered and/or titled to the owner or resident of said Lot. All such vehicles must be stored on the side or rear portion of the Lot and be in a screened or other prepared area which has been pre-approved in writing by the Architectural Control Committee.

40. Unlicensed and Inoperable Vehicles. No motor vehicle which is inoperable, unlicensed, or the registration for which is not current, or which is being junked, repaired, dismantle, or wrecked, unless said vehicle is located within an enclosed building, shall be permitted to be parked or stored on any street in the Property or on any Lot. All motor vehicles permitted under these covenants which are not parked in a garage must be parked on an improved and designated area, not in a yard area.

41. Signs. No signs shall be permitted on any Lot or structure except for one sign of customary size for offering the signed property for sale or for rent; one sign of customary size for

identification of the occupant and address of any dwelling; such multiple signs for sale, administration, and directional purposes during development as are approved by the Architectural Control Committee; such signs as identify or give directional or other information regarding a governmental or educational office or facility; such signs as may be necessary or appropriate to advise of rules and regulations or to caution or warn of danger; and such signs as may be required by law. All permitted signs must be professionally painted, lettered, and constructed, and be maintained in good condition and repair.

**ARCHITECTURAL CONTROL COMMITTEE**

42. Initial Committee. Declarant is the initial Architectural Control Committee with power to delegate or assign such capacity by written instrument signed and acknowledged by Declarant and filed for record with the Clerk and Recorder of the County of El Paso, State of Colorado. Declarant, or the Architectural Control Committee acting by delegation or assignment from Declarant, may at its election reconstitute the Architectural Control Committee so that it shall consist of three individuals and may appoint Lot owners and/or residents of the Property as the members of the Architectural Control Committee. Whenever a member of the Committee shall be deceased or unwilling or unqualified to act, the remaining members or member shall appoint Lot owners and/or residents of the area as members of the Architectural Control Committee so as to fill the existing vacancies, and any vacancy which is not so filled within 90 days after it occurs may be filled by Declarant within the following 90-day period. Vacancies in the membership of the Architectural Control Committee not filled as above provided may be filled by record owners of a majority of the Lots in the Property. Any Lot owners and/or residents appointed to the Architectural Control Committee by Declarant or by owners of Lots in the

Property may be removed and replaced by the record owners of a majority of Lots in the Property. Any appointment, removal, or replacement of residents as members of the Architectural Control Committee shall be by written instrument signed and acknowledged by Declarant or other person or persons above authorized to make appointment, removal, or replacement and filed for record with the County Clerk and Recorder of the County of El Paso, State of Colorado.

**APPROVAL OF PLANS AND STRUCTURES**

43. Prior Approval by Committee. No structure shall begin to be erected, placed, moved onto, or permitted to remain on any Lot, nor shall any existing structure upon any Lot be altered in any way to change the exterior appearance thereof, except in accordance with two complete sets of plans previously submitted to the Architectural Control Committee at its address as specified above and previously approved in writing by such Committee. The plot plan submitted for approval shall have a minimum scale of one inch equals 20 feet and shall show the location of all buildings, drives, walks, fences, swimming pools, and other structures. Structural plans shall show all exterior elevations and shall indicate and locate on each elevation the materials to be used and shall designate the exterior colors to be used by means of actual color samples. A current soils report for the building site shall be submitted to the Architectural Control Committee prior to beginning construction of any building on a Lot. No change in the exterior appearance, type, color, grade, height, or location of any dwelling, building, or other structure shall be made without the prior approval of the Architectural Control Committee.

44. Submission of Plans. All plans, samples, and other materials submitted for approval shall be delivered to the Architectural Control Committee at its address specified above. A written statement of the approval or disapproval or other action by the Architectural Control

Committee shall establish the action of the approving authority and shall protect any person relying on the statement. Failure of the Architectural Control Committee to act within 45 days after delivery of the required materials to its address will constitute an approval by the Architectural Control Committee. The Architectural Control Committee may establish, charge, and collect reasonable fees to cover expenses incurred to review of plans submitted pursuant to this Declaration.

45. Waivers. The Architectural Control Committee may, but is not required to, accept, review, and approve or disapprove, in whole or in part, applications for the modification or waiver of any requirement of this Declaration regarding the Property. In granting or denying any approval hereunder, the Architectural Control Committee shall be guided by the purposes of this Declaration and shall take into consideration the preservation of property values, the maintenance of an aesthetically pleasing subdivision, and the protection of residents from harmful, offensive, or unreasonably annoying activity.

46. Criteria for Approval. The Architectural Control Committee shall approve any proposed improvement, including a structure, on a Lot only if it deems in its reasonable discretion that the improvement (a) will not be detrimental to the appearance of the surrounding areas of the development as a whole, (b) will be in harmony with the surrounding areas, (c) will not detract from the attractiveness of the development or its enjoyment by the other owners in the development, and (d) and does not affect the drainage plan as set forth in the Drainage Control Documents. The Architectural Control Committee may condition its approval of any proposed improvement upon the making of such changes therein as the Committee deems appropriate.

**BINDING EFFECT AND ENFORCEMENT**

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47. Acceptance by Owners. Each owner and each occupant of any Lot accepts such Lot subject to all of the covenants and restrictions in this Declaration. Each covenant and restriction is for the benefit of Declarant and of each owner of a Lot and shall apply to and bind the respective owners of each Lot and their successors in interest.

48. Successors. The rights and powers of Declarant under this Declaration shall pass to the successors and assigns of Declarant. Declarant may, by written instrument of assignment, transfer in whole or in part any or all of its rights and powers under this Declaration.

49. Enforcement. Declarant, the Architectural Control Committee, or any one or more of the owners of any Lots within the Property shall have the right to enforce, by any proceeding at law or in equity for damages or for injunction, or both, all restrictions, covenants, conditions, rights, and duties, imposed, allowed, or granted by this Declaration. If the Declarant or the Architectural Control Committee is the plaintiff in any proceeding seeking injunctive relief, the plaintiff shall not be required to provide any security or bond which might otherwise be required by law or rule of practice, and each Lot owner or occupant of a Lot hereby irrevocably waives any right or privilege to require that any such security or bond be provided. In any such proceedings, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees. Failure by Declarant, the Architectural Control Committee, or any owner to enforce any restriction, covenant, condition, duty, or right herein contained shall in no event be deemed a waiver of the right to do so thereafter. No breach or continuing breach of any of the restrictions, covenants, conditions, duties, or obligations imposed, allowed, or granted by this Declaration shall be grounds for cancellation, termination, or rescission of this Declaration or any provision hereof.

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50. Breach. In case of any breach of any provision of this Declaration, Declarant or the Architectural Control Committee may give to the owner of the Lot where the breach occurs or the occupants thereof written notice stating the nature of the breach and stating the intent of Declarant or the Committee to invoke this provision of this Declaration. If within a period stated in the notice, but not less than ten days after the giving of notice, the breach is not cured and terminated or appropriate measures to cure and terminate are not begun and thereafter continuously prosecuted with diligence, Declarant or the Committee may cause the breach to be cured and terminated at the expense of the owner so notified. The costs so incurred by Declarant or the Committee shall be paid by such owner and if not paid within 30 days after Declarant has sent such owner notice of the amount due, such amount plus cost of collection, including attorney's fees, shall become a lien on the owner's Lot by recording a copy of the notice and the amount due with an affidavit on behalf of Declarant or the Committee that the amount demanded is payable pursuant to this Declaration. Such lien shall be subordinate to any previous liens or encumbrances then of record and may be foreclosed by Declarant or the Committee as a mortgage. Declarant or the Committee may also file a suit or cause of action against the Lot owner or owner's agents in addition to the lien and recover all costs and attorney's fees.

**PROTECTION OF LENDERS AND ENCUMBRANCES**

51. Lien. Violation of any covenant, restriction, or other provision of this Declaration shall not impair the lien or any mortgage or deed of trust on a Lot.

52. Injunction. An action for injunction based on failure to obtain approval of the Architectural Control Committee may be brought after construction of the challenged structure has been substantially completed in addition to damages and attorney's fees. Any action to

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enforce these restrictions shall not affect the lien of a mortgage, deed of trust or other encumbrance.

### DURATION AND AMENDMENT

53. Amendment. From time to time, any one or more of the covenants, restrictions, or provisions of this Declaration may be amended or this Declaration terminated by an instrument signed and acknowledged by the Declarant.

54. Renewal. Unless sooner terminated or amended as above described, the covenants, restrictions, and provisions in this Declaration shall remain in full force until the year 2030, A.D. and shall be automatically renewed for successive periods of ten years unless before the year 2030, or before the end of any ten-year extension, there is filed for record with the County Clerk and Recorder of El Paso County an instrument stating that extension is not desired and is signed and acknowledged by the then record owners of 75% or more of the Lots.

55. No Waiver. The covenants, restrictions, and other provisions of this Declaration cannot be changed, terminated, or rendered ineffective except in the manner above provided for termination or amendment. Failure of Declarant, the Architectural Control Committee, or the owner of a Lot subject to this Declaration to enforce any of the covenants, restrictions, or provisions shall not waive or impair the right thereafter to enforce the same or any other covenant, restriction, or provision. Approval or disapproval by the Architectural Control Committee of any plans, specifications, drawings, Lot plans, grading plans, heights, or any other materials or matters submitted to the Architectural Control Committee shall not waive or impair the right and duty of the Architectural Control Committee to approve, disapprove, object to, or consent to any features or elements, whether the same or different, embodied in any other plans,



specifications, drawings, Lot plans, grading plans, heights, or other matters or materials submitted to the it. If any covenant, restriction, or other provision of this Declaration shall be held invalid or for any reason becomes unenforceable, the other covenants, restrictions, and provisions shall not be affected or impaired but shall remain in full force and effect.

**EXTENSION TO ADDITIONAL AREAS**

56. Extension by Declarant. From time to time, Declarant may include within the real estate subject to this Declaration additional areas which are contiguous and adjoin the area originally subject to this Declaration or an area to which this Declaration has been previously extended in accordance with this provision. Such extensions shall be effected by filing with the Clerk and Recorder of El Paso County a supplemental Declaration together with a map and legal description designating the additional area to be extended. Declarant may impose additional restrictions on areas so added and may grant additional rights of access in connection with such areas.

57. Homeowners' Association. At any time the Declarant may establish a Colorado not-for-profit corporation to constitute a homeowners' association for the owners of all Lots within the Property and any additional lots in the subdivision known generally as Falcon Hills. Each Lot owner, by purchasing a Lot, shall be deemed to have agreed to become, and shall be, a member of such association and be subject to the provisions of its governing documents, rules, and

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regulations and shall pay the dues, assessments, and penalties as are adopted by it.

IN WITNESS WHEREOF, the undersigned Declarant executes this Declaration at Colorado Springs, Colorado, this 20<sup>TH</sup> day of September, 1999.

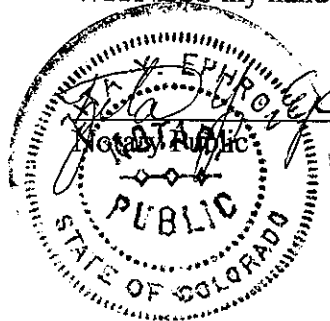
Declarant:  
Six Ninety Nine Properties, LLC,

By: Harold Fong  
Harold Fong, Manager

STATE OF COLORADO)  
  )SS  
COUNTY OF EL PASO )

Subscribed and sworn to before me on this 20<sup>th</sup> day of September, 1999 by Harold Fong, manager of the Declarant, Six Ninety Nine Properties, LLC.

WITNESS my hand and official seal.



My commission expires: 12/11/99

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