

**AGREEMENT BETWEEN NORTHERN INFRASTRUCTURE
GENERAL IMPROVEMENT DISTRICT AND
SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT
AND ITS ENTERPRISE
FOR THE PURPOSE OF CONSTRUCTION, INSTALLATION
AND MAINTENANCE OF WATER LINES, WASTEWATER LINES,
ACCESSORIES AND APPURTENANCES THERETO**

THIS AGREEMENT ("the Agreement") is made and entered into effective the 27th day of April, 1998 by and between the Northern Infrastructure General Improvement District ("GID"), 5291 East 60th Avenue, Commerce City, Colorado 80022, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado, and South Adams County Water and Sanitation District, 6595 E. 70th Avenue, Commerce City, Colorado 80022, a special district organized and existing under the laws of the State of Colorado ("SACWSD"), also acting in an enterprise capacity pursuant to its Water and Sewer Enterprise ("SACWSD Enterprise").

RECITALS

- A. GID is a general improvement district organized and existing under and by virtue of the laws of the State of Colorado.
- B. SACWSD is a special district organized and existing under and by virtue of the laws of the State of Colorado to provide water and wastewater services, and provides such services by and through its Water and Sewer Enterprise under Article X, Section 20 of the Colorado Constitution, and § 37-45-101.5, et seq., Colorado Revised Statutes.
- C. The parties to this Agreement have determined that construction, installation and maintenance of water lines and wastewater lines, lift stations, pumping stations and associated facilities in that portion of the area known as the Northern Range Area of the City of Commerce City, Colorado, as such area is generally delineated on the map attached hereto as Exhibit "A" ("the Northern Range Area") are a prerequisite for proper development of the Northern Range Area.
- D. GID and SACWSD are empowered to enter into contracts and intergovernmental agreements with one another to provide for provision of public facilities and services (§§ 29-1-203, 31-25-611, 31-35-402, and 32-1-1001, Colorado Revised Statutes, and Article XIV, Section 18, Colorado Constitution).

- E. The GID and SACWSD share a common interest in facilitating, expediting and accomplishing the construction of public water and wastewater facilities for development of the Northern Range Area, and find and declare that their constituents and the public will derive benefits from construction of these public improvements.
- F. In order to provide for public water and wastewater facilities to help accomplish development of the Northern Range Area, GID and SACWSD have determined that an agreement between GID and SACWSD and SACWSD Enterprise is necessary and in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The Project. SACWSD Enterprise agrees to be responsible for the design, construction and installation of the improvements and facilities as described on the plans attached as Exhibit "B" ("Project"), and accordingly shall make all interpretations and decisions regarding the Project, including contracting for work required for completion of the Project, except that the GID and SACWSD Enterprise shall be listed as co-owners on the contract documents, and agree that they shall jointly approve the following in regards to the Project:
 - a. Location of the work to be performed pursuant to the Project.
 - b. Scope of the Project.
 - c. The time for commencement and completion of the Project.
 - d. Cost of the Project.
 - e. Construction documents.
 - f. Change orders.
2. Familiarity With Project. By executing this Agreement, SACWSD Enterprise agrees that it will perform or contract to perform all work required for completion of the Project in a reasonably timely manner, subject to the provisions of this Agreement.
3. Payment of Project Costs. GID shall be responsible for timely payment for all costs approved by SACWSD Enterprise and the GID regarding the Project, which shall include any approved change orders. Upon receiving an invoice approved by SACWSD

Enterprise and GID, GID shall pay such progress payments within thirty (30) days of receipt. The bond issued and indebtedness incurred by the GID to finance the Project shall not be considered a debt or obligation of SACWSD or SACWSD Enterprise.

4. Requirement for Finalization of Financing Documents. It is expressly agreed and understood that a condition precedent to commencement of any ground-breaking work on the Project is that the financing documents necessary for the Funding for the Project shall be finalized and approved, and monies available therefrom for the costs of the Project.
5. Consent Required for Service. GID and SACWSD agree that no land located within or without the boundaries of the GID shall receive a water supply or wastewater services from or through any facilities or capacity constructed as part of the Project, unless the landowner(s) is first approved by GID and SACWSD for such services. The landowner(s) must agree to be bound by:
 - a. The terms and conditions required by GID and SACWSD for such services, including, but not limited to, payment of rebate and recapture costs to the GID for construction and installation of the Project, and
 - b. The terms, provisions and requirements of the "Agreement Regarding Annexation and Rebate of Costs Expended for Water and Wastewater Main Extension Lines" dated January 10, 1996 by and between SACWSD and the City of Commerce City, a municipal corporation, incorporated herein by this reference, except that a specific rebate formula will be developed for the Project by SACWSD and the GID, and
 - c. The Rules and Regulations of SACWSD, as they presently exist or may be amended in the future, and
 - d. Declaration of Covenants and Restrictions between the landowner and United Power, Inc., a Colorado cooperative corporation, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference, which shall be recorded in the real estate records of the Clerk and Recorder of Adams County, Colorado, and
 - e. The Participation Agreement between South Adams County Water and Sanitation District, the Northern Infrastructure General Improvement District, and the City of Commerce City.

6. Priority for Purchase of Taps. Through the end of the year 2002, SACWSD on an annual basis shall give priority through June 30th of each year to lands currently within SACWSD as of the date of this Agreement, and any existing lands within the GID as of the date of this Agreement, with SACWSD (including GID) landowners having the first right to purchase:

- a. 75% of the water taps available each year based on the then-existing water supply of SACWSD Enterprise, and
- b. 75% of the sewer taps available each year based on the then-existing wastewater treatment plant capacity of SACWSD Enterprise.

See, however, SACWSD's disclosures regarding limited water and sewer capacity in paragraph 9 below. This priority to be given for water and sewer taps shall not apply to new customers who dedicate surface water rights and who pay for wastewater treatment plant upgrades so as to enable SACWSD Enterprise to provide such new service without impacting landowners within the GID.

For the time period in which the GID still has outstanding indebtedness for the costs of the Project, all water and wastewater service capacity made available in the Northern Range Area due to construction and installation of the Project shall be reserved for land within the GID, except for those users approved by joint agreement between the GID and SACWSD as provided above in paragraph 5.

7. Project Representatives.

- a. The GID initially designates the following as Project Representative on behalf of GID:

Timothy J. Gagen, City Manager
City of Commerce City
5291 E. 60th Avenue
Commerce City, CO 80022

- b. SACWSD and SACWSD Enterprise initially designate the following as Project Representative on behalf of SACWSD and SACWSD Enterprise:

Larry L. Ford, Manager
South Adams County Water and Sanitation District
6595 E. 70th Avenue
P. O. Box 597
Commerce City, CO 80037-2646

8. Project Property.

- a. GID agrees to seek approval from the City of Commerce City so that SACWSD Enterprise may use for the Project any and all public right-of-way owned by the City of Commerce City, Colorado.
- b. SACWSD Enterprise shall be responsible, at the expense and cost of GID, for obtaining conveyance of necessary easements to GID for completion of the Project which are not available for use pursuant to paragraph 8.a. above. To the extent possible, the easements to be acquired at the cost of GID shall include the ability to use such easements for telecommunications, general utilities and facilities necessary for the supply of telephone, electric and gas service. The GID shall join SACWSD Enterprise as co-petitioner in any condemnation proceedings to the extent necessary. SACWSD and GID shall jointly approve and manage the use of these easements.
- c. At the time the Project is conveyed to SACWSD, as provided in paragraph 10 below, an interest in the easements for water and wastewater facilities shall be transferred to SACWSD, and all other interests in easements acquired pursuant to paragraph 8.b. shall be transferred to the City of Commerce City.

9. Diligent Pursuit of Water Supply and Wastewater Facilities. SACWSD Enterprise agrees to diligently proceed and exercise its best reasonable efforts to obtain an adequate water supply and wastewater treatment capacity required for use by the landowners within the GID of the facilities and lines to be constructed and installed pursuant to the Project. Presently, SACWSD Enterprise has a limited amount of uncommitted water taps -- approximately 1700 taps. Additional water supplies and wastewater treatment capacity necessary to serve the properties located within the GID will be pursued by SACWSD Enterprise over time. While SACWSD Enterprise will use its best efforts, SACWSD cannot guarantee that such water supplies or wastewater treatment capacity will be secured according to any schedule that development is projected to occur within the

GID. (See SACWSD Disclosure document, incorporated herein by this reference.)

It is agreed and acknowledged that SACWSD Enterprise has allocated certain portions of system development fees, wastewater resource fees and similar purpose fees collected and/or to be collected by SACWSD Enterprise, to acquisition of water supplies, water facilities and wastewater treatment capacity; accordingly, SACWSD Enterprise agrees and commits to continue its policy of using such fees for the acquisition of water supplies, water facilities and wastewater facilities for overall improvements to the SACWSD Water and Wastewater System, which will assist with the provision of service to the GID, to the extent permitted under those certain Resolutions authorizing SACWSD Enterprise Revenue Bonds, Series 1990 and Series 1993.

10. Ownership of Project. Until all indebtedness incurred for construction and installation of water and wastewater facilities pursuant to the Project is paid and satisfied in full, the facilities constructed and installed pursuant to the Project shall remain the sole and separate property of GID. When the said indebtedness is paid and satisfied in full, ownership of the Project shall be transferred in an "as is" condition without warranty, express or implied, by GID to SACWSD, without payment of any transfer charges or any other fees or costs by SACWSD to GID.
11. Warranties. SACWSD Enterprise shall assure that customary warranties by the construction contractors shall be provided for in the construction documents, and include GID as an additional beneficiary thereof.
12. Operation and Maintenance of Project. Upon successful completion of the Project, SACWSD Enterprise shall be responsible at its sole cost for operation and maintenance of all facilities constructed and installed pursuant to the Project. Such operation and maintenance shall be consistent with, and subject to, the rules and regulations of SACWSD for operation and maintenance of all water and wastewater facilities owned by SACWSD, with SACWSD Enterprise entitled to impose fees and charges as set forth in paragraph 13 below.
13. SACWSD Fees and Charges. SACWSD Enterprise shall be entitled to impose any and all fees and charges for use of the facilities constructed pursuant to the Project, including, but not limited to, tap fees, fees for water and wastewater services, and surcharges, provided that such fees are

consistent with its adopted rules and regulations, as such rules and regulations presently exist or may be amended in the future. Prior to imposing any increase in tap fees, SACWSD Enterprise agrees to give thirty (30) days advance written notice to GID prior to the effective date thereof. SACWSD Enterprise shall retain the sole discretion to increase tap fees and to impose any and all fees and charges it deems necessary. Land included within the GID and included within SACWSD also shall be subject to the administrative mill levy imposed on all properties within SACWSD. The GID also shall cooperate with SACWSD in maintaining the status of SACWSD Enterprise.

14. SACWSD Bond Resolutions. This Agreement is expressly made subject to those certain Resolutions authorizing the SACWSD Enterprise Revenue Bonds, Series 1990 and Series 1993, and this Agreement shall be construed as authorizing SACWSD Enterprise to issue additional revenue bonds, general obligations bonds, or other forms of indebtedness, as may be necessary in the future.
15. Revenue of GID; Termination. GID initially plans to rely upon the following revenues (tax levies, specific ownership taxes, utility line extension rebates, water and sewer line extension rebates) to provide for the payment of its general obligation bond purchased by United Power, and the participation agreement amounts payable to SACWSD and the City of Commerce City. GID shall not impose additional fees and charges for use of the Project facilities without first giving SACWSD thirty (30) days advance written notice to SACWSD prior to the effective date thereof. GID shall retain the sole discretion to increase such fees and to impose any and all fees and charges it deems necessary. Once all indebtedness incurred for construction and installation of the water and wastewater facilities pursuant to the Project are paid in full, and ownership of the Project has been transferred to SACWSD under paragraph 10 above, GID and SACWSD jointly shall confer on whether the GID shall continue in existence.
16. Time of the Essence. Time is of the essence under this Agreement, and if any condition hereof is not fulfilled, tendered or performed by either of the parties hereto as provided in this Agreement, then the non-defaulting party shall have the right to an action for specific performance.
17. Notice of Default; Attorney Fees and Costs. In the event that either party defaults in the performance of any term or provision of this Agreement, the party claiming the breach shall give the other party notice of the claimed breach or

default, and request that the breach be corrected or cured within thirty (30) days. If the breach or default is not corrected or cured within the 30-day period, the party claiming breach can use whatever remedies available at law or in equity to address the circumstances at hand, including, but not by way of limitation, specific performance and/or damages. Any non-defaulting party shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

18. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, and addressed to the address of the addressee shown above.
19. Entire Agreement. This Agreement contains the entire agreement between the parties as to the subject matter hereof. This Agreement and its terms may not be modified in any manner, except by an instrument in writing signed by both parties. This Agreement was jointly drafted by counsel for both parties, and therefore cannot be construed against one party.
20. Paragraph Headings. The paragraph headings are inserted only for convenient references and do not define, limit or prescribe the scope of this Agreement.
21. Severability and General Cooperation. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. Provided, however, in the event of such an invalid, illegal, or unenforceable provision, the parties to this Agreement shall negotiate in good faith to replace any such severed provision in order to fulfill the intent of this Agreement. The parties hereto agree to cooperate generally on matters not expressly addressed herein so as to facilitate the terms and intent of the Agreement.
22. Due Authorization. Each party to this Agreement has been duly authorized by all necessary action and this Agreement is the valid and enforceable obligation of each party hereto to the extent that the respective terms, provisions and conditions apply to the respective parties.

23. Agreement Binding. The provisions of this Agreement shall be binding upon the parties. No assignment of the rights or obligations of the parties hereunder shall be made without the written consent of the other party.
24. Non-Waiver of Governmental Immunity. Nothing contained in this Agreement shall constitute or be interpreted as a waiver or abnegation of the legislative, governmental or police power or immunities of GID or SACWSD, though the GID and SACWSD shall not use the foregoing powers or immunities as a defense to complying with the terms of this Agreement.
25. Relationship of Parties. Nothing contained herein shall be construed to create a joint venture or other form of partnership between the parties, nor is this Agreement to be construed as creating any rights in any third parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement effective the day and year first above written.

GID:

NORTHERN INFRASTRUCTURE GENERAL
IMPROVEMENT DISTRICT

By: David R.D. Busby
David R.D. Busby, President

ATTEST:

Judith H. Ridgeley
Judith H. Ridgeley, Secretary

SACWSD:

SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT

By: Jean Klein
Jean Klein, President
Board of Directors

ATTEST:

Robert J. Aragon
Robert J. Aragon, Secretary

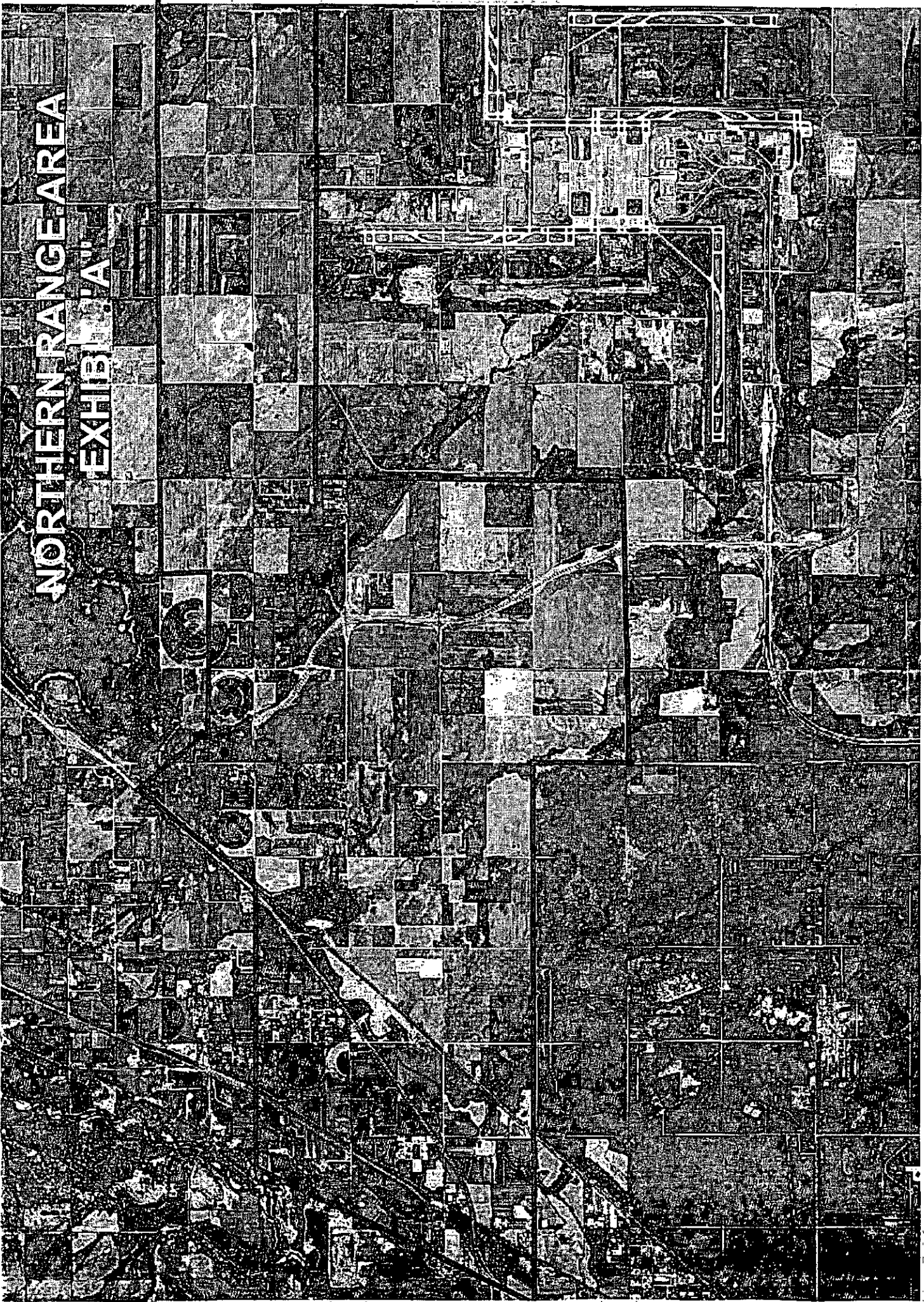
SACWSD WATER AND SEWER ENTERPRISE:

By: *Jean Klein*
Jean Klein, President
Water and Sewer Enterprise

ATTEST:

Robert J. Aragon
Robert J. Aragon, Secretary
Water and Sewer Enterprise

NORTHERN RANGE AREA
EXHIBIT "A"



DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions ("**Declaration**") is made as of this the _____ day of _____, 1998, by and between ~~HENDERSON RENTAL PROPERTIES, INC.~~, a Colorado corporation ("**Owner**") and UNITED POWER, INC., a Colorado cooperative corporation.

RECITALS:

A. The Owner is the owner of that certain real property located in Adams County, Colorado, more particularly described below, which is located within the Northern Infrastructure General Improvement District ("**District**"). At some time in the future, it is contemplated that the Owner will develop the properties owned by them and, in connection with the development, will need to obtain sewer service, electric service and other utilities. The Owner's property is also located in United Power, Inc's service district and United Power, Inc is by law the sole provider of electric power.

B. The Owner has voted/or consented to permit the District to issue bonds in the principal amount of \$11,500,000.00, denominated as the City of Commerce City Northern Infrastructure General Improvement District, Limited Tax General Bond Obligation Series 1998. The proceeds of the bond issue will be used for the purpose of developing certain sewer and water line improvements within the District.

C. The City of Commerce City has agreed to waive certain use taxes and to provide certain other funding for interest to accrue on the bonds provided that United Power, Inc. waive certain utility rebates. The waiver of utility rebates will place United Power, Inc. at a competitive disadvantage over other potential providers of electric power within the District.

D. The District proposes selling the bonds to Consumer Services Association, Inc. ("**CSA**"), a subsidiary of United Power, Inc. Waiving the rebates and purchasing the bonds will expose United Power, Inc. and Consumer Services, Inc to a risk of economic loss that they would be unwilling to undertake but for the fact that the Property is in United Power, Inc's service area and all homes built and businesses operated on the Property must purchase power from United Power, Inc. However, in the event of deregulation, United Power and Consumer Services may be exposed to risks that they will not be able to control until the Bonds are repaid. To protect them from these risks, the Owner agrees that United Power, Inc., Consumer Services Association, Inc. and their affiliates, shall have the right to provide electric power to the property until the Bonds have been repaid and shall be entitled to compete in providing other utility services to the Owners, on the terms and conditions provided for herein.

NOW, THEREFORE, in consideration of the mutual consideration recited above, and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledges, the parties hereby covenant and agree as follows:

AGREEMENT

1. Definitions. Except as otherwise defined above, the following defined terms shall have the following meanings ascribed to them as used in this Declaration:

1.1 **"Bond(s)"** shall mean the City of Commerce City Northern Infrastructure General Improvement District Limited Tax General Obligation Bond Series 1998, and any and all other replacement and refunding bonds.

1.2 **"District"** shall mean the City of Commerce City, Northern Infrastructure General Improvement District and its successors and assigns.

1.3 **"Owner"** shall mean all of the Persons executing this Declaration designated as an owner below, and all of their successors and assigns, heirs and personal representatives.

1.4 **"Person(s)"** shall mean any corporation, partnership, trust, limited liability company, governmental body or agency, natural person or any other legal entity.

1.5 **"Property"** shall mean that certain real property situated within Adams County, Colorado, more particularly described in Schedule 1 attached hereto.

1.6 **"United Power"** shall mean United Power, Inc., a Colorado cooperative corporation, Consumer Services Association, Inc., a Colorado corporation, and any presently existing or hereafter created subsidiary or other affiliate of either, and their successors and assigns. All of the rights and privileges shall inure to the benefit of each such entity, severally.

1.7 **"Utility"** or **"Utilities"** shall mean any service or product sold to customers located on or about the Property which service or product is customarily transmitted through or across a physical line or through airwaves, including, without limitation, electric power, telephone, cable services, data communications and natural gas, but excluding consumable water and sanitary sewer.

2. Electric Service. Owner hereby covenants and agrees that so long as any amounts remain outstanding under the Bonds the Owner shall, notwithstanding any partial or complete deregulation of the electric service industry purchase all electric power to be used on or about the Property from United Power, unless United Power is unable to supply such electric power. Upon repayment of the Bonds, United Power agrees to execute and record a memorandum to terminate the restrictions and covenants contained in this Section 2.

3. Parity Service Provider. The Owner agrees and covenants that United Power shall have the non-exclusive right to provide to any customer who is located on or about the Property any Utility service, on a parity basis with all other persons who provide any Utility(ies) for use on or about the Property. As used herein, "parity basis" shall mean that United Power shall not be charged any fee or royalty, shall not be subjected to any cost or expense, or be made subject to any terms or conditions, which are any more burdensome than those applicable to the other providers of the same

Utility service for use or consumption on or about the Property. For example, if United Power (or one of its subsidiaries) elects to provide telephone services to customers located on the Property, the Owner shall not charge United Power an access fee as a condition to United Power's providing telephone service to any customer on or about the Property unless that same fee is charged to all telephone service providers who service the same customers.

4. Utility Lines. Owner hereby grants and conveys to United Power a non-exclusive right of access in and to any area of the Property now or hereafter subject to any utility easement, right-of-way, or other right of access evidenced in writing that has been or is within 90 years after the date hereof created for the benefit of any other Person for the purpose of providing any Utility service for consumption on or about the Property (hereafter referred to as a "Utility Agreement"). United Power's right of access (i) shall be situate in a location coextensive with the location described in or provided for in the Utility Agreement; and (ii) shall be on the same terms and subject to all of the terms contained in the Utility Agreement. For example, if Owner grants a ten-foot wide easement to ABC Telephone Co. which permits ABC to install and maintain underground telephone lines on the Property to service its customers, then United Power (and, as defined, any of its subsidiaries) shall also have an easement to install and maintain its own underground telephone lines in the same location.

5. Term. The provisions of this Declaration shall be, except as otherwise provided herein, perpetual. In the event that the term of this Declaration or any provisions contained herein violate the rule against perpetuities or are otherwise held to be invalid, the term hereof shall be reformed to 90 years from the date hereof or, if later, the maximum duration allowable by law.

6. Warranties. Owner does hereby warrant and represent to United Power that this Declaration, once executed, constitutes the valid and binding obligation of Owner in accordance with its terms and that Owner owns the Property.

7. Waiver of Rebates. Until the Bonds have been repaid in full, Owner does hereby assign to United Power and waive its right to receive any Utility extension line rebates which would otherwise be payable pursuant to United Power's rules and regulations upon the connection with United Power's electric facilities. United Power is hereby authorized by the Owner to pay, and shall pay, any such rebate first to the City of Commerce City until it has received an aggregate of \$2,000,000 and then to the District, until such time as the Bonds have been repaid in full. Upon the request of the District, United Power agrees to execute an agreement establishing a Declaration of Covenants and Restrictions, substantially on the same terms and conditions as provided in this Declaration, with any person who owns any real property subsequently annexed into the district or which utilizes the water and/or sewer facilities owned or financed by the District.

8. Miscellaneous. The Owner further covenants and agrees for the benefit of United Power the following:

8.1 Interpretation. This Declaration is the entire agreement between the Owner and United Power with respect to the provisions contained herein. Any prior verbal statements or representations are merged herein.

8.2 Severability. If any provision of this Declaration is determined to be unenforceable, the remaining provisions shall nonetheless remain enforceable to maximum extent permitted by law, each of which shall be severable.

8.3 Successors and Assigns. The terms of this Declaration shall be covenants running with the land and shall be enforceable against all future owners of all or any portions of the Property. These Declarations shall inure to the benefit of and be enforceable by United Power and its successors and assigns. This Declaration shall be binding upon the Owner and all of the Owner's successors, assigns, heirs and personal representatives.

8.4 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado. In the event that any action is initiated for damages and/or specific performance, the prevailing parties shall be entitled to recover its costs and expenses, including attorneys' fees, incurred in connection therewith.

8.5 Counterparts. This Declaration may be executed in counterparts, each of which once taken together, shall constitute a single binding original.

IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first written above.

"Owner"

a _____

By: _____

Name: _____

Title: _____

Notice Address: _____

"United Power"

UNITED POWER, INC., a Colorado cooperative corporation

By: _____

Name: _____

Title: _____

Notice Address: 1855 East 160th Avenue
Brighton, CO 80601

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

Subscribed and sworn to before me this _____ day of _____, 1998, by
_____, as _____ of United Power, Inc., a Colorado cooperative
corporation.

Witness my hand and official seal.

My Commission Expires:

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 1998, by
_____, as _____ of _____, a
_____.

Witness my hand and official seal.

My Commission Expires:

Notary Public