

**PARTICIPATION AGREEMENT BY AND AMONG
SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT,
THE CITY OF COMMERCE CITY, COLORADO AND
THE NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT**

THIS AGREEMENT ("Participation Agreement") is made and entered into this 27th day of April, 1998 by and among the South Adams County Water and Sanitation District, a special district organized and existing under the laws of the State of Colorado ("SACWSD"), the City of Commerce City, Colorado, a municipal corporation ("City") and the Northern Infrastructure General Improvement District, a public corporation and body politic organized and existing under the laws of the State of Colorado ("GID").

RECITALS

A. 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.

B. City is a municipal corporation organized and existing under and by virtue of the laws of the State of Colorado and its Home Rule Charter adopted pursuant to Article XX of the Colorado Constitution.

C. GID is a public corporation and body politic organized and existing under the laws of the State of Colorado, to provide water and wastewater services to its inhabitants.

D. SACWSD, City and GID 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, 32-1-1001, Colorado Revised Statutes, and Article XIV, §18, Colorado Constitution).

E. SACWSD and the GID, with support from the City, have entered into a intergovernmental agreement whereby South Adams will construct, install, and maintain water lines and wastewater lines, lift stations, pumping stations, and associated facilities (the "Project") in that portion of the area known as the Northern Range area of the City, as such area is generally delineated on the map attached hereto as Exhibit A ("Northern Range Area").

F. SACWSD has expended or will expend a sum of \$500,000 toward costs of the Project.

G. City has expended or will expend a sum of \$1,000,000 toward costs of the Project.

H. In a special election conducted on November 4, 1997, the electors of the GID authorized the debt of the GID to be increased to a total of \$15,000,000 for the purpose of financing water and sewer improvements. Additionally, the GID issued the City of Commerce City Northern Infrastructure General Improvement District Limited Tax General Obligation Bond, Series 1998 in an aggregate principal amount not to exceed \$11,500,000 for the purpose of financing the water and sewer improvements.

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

1. Participation by SACWSD. In addition to constructing, installing and maintaining water lines and waste water lines, lift stations, pumping stations, and associated facilities associated with the Project, SACWSD has expended the sum of \$500,000 toward costs of the Project.

2. Participation by City. City has expended or will expend a sum of \$1,000,000 toward costs of the Project.

3. Recovery of Associated Costs. The parties agree that SACWSD shall recover its expense in the sum of \$500,000 and City shall recover its expense in the sum of \$1,000,000 as mentioned in paragraphs 1 and 2 hereof, without interest, (collectively, the "Obligations") as soon as possible by the following method:

(a) SACWSD shall impose and collect a water and sewer surcharge in the amount of Four Dollars (\$4.00) per month (\$2.00 for water and \$2.00 for sewer) for each single family equivalent unit (as defined in regulations of SACWSD) within the Northern Range Area which is connected to the Project, which surcharge shall be used to repay SACWSD and the City in proportion to their respective expenditures for costs of the Project.

4. The GID and SACWSD hereby covenant and agree to annually maintain such books and accounts showing the amounts of the surcharge collected and the payments made on the Obligations. The GID and SACWSD hereby agree to provide reasonable access to each other and the City to such books and accounts. The GID and SACWSD each agree to provide audited financial statements to each other and the City.

5. SACWSD agrees that no property will receive service from the Project unless the owner of such property has signed and recorded a Declaration of Covenants and Restrictions in the form attached hereto as Exhibit B..

6. It is further agreed and understood that any obligations imposed pursuant to the Utility Rebate Agreement dated as of the 27th day of April, 1998 by and between GID and United Power, Inc. are not affected by the terms and provisions of this Participation Agreement.

7. In the event that any party hereto defaults in the performance of any term or provision of this Participation Agreement, the party claiming the breach shall give the defaulting 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 the breach may enforce the obligations of any other party by an action for mandamus or specific performance.

8. Any notice required or permitted to be delivered hereunder to the parties hereto 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 as follows:

Address of the Northern General Improvement District:

5291 E. 60th Avenue
Commerce City, CO 80022

Address of the City of Commerce City:

5291 E. 60th Avenue
Commerce City, CO 80022

Address of South Adams County Water and Sanitation District:

6595 E. 70th Avenue
Commerce City, CO 80022

9. This Participation Agreement and its terms may not be modified in any manner, except by an instrument in writing signed by the parties. This Participation Agreement was jointly drafted by counsel for the parties, and therefore cannot be construed against one party.

10. In case any one or more of the provisions contained in this Participation 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 Participation 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 Participation Agreement shall negotiate in good faith to replace any such severed provision in order to fulfill the intent of this Participation Agreement. The parties hereto agree to cooperate generally on matters not expressly addressed herein so as to facilitate the terms and intent of the Participation Agreement.

11. Each party to this Participation Agreement has been duly authorized by all necessary action and this Participation 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.

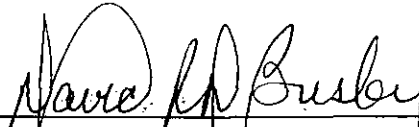
12. The provisions of this Participation Agreement shall be binding upon the parties. No assignment of the rights or obligations of the parties hereunder shall be made without the written consent of the other party.

13. Nothing contained in this Participation Agreement shall constitute or be interpreted as a waiver or abnegation of the legislative, governmental or police power or immunities of GID, City or SACWSD, though the GID, City and SACWSD shall not use the foregoing powers or immunities as a defense to complying with the terms of this Participation Agreement.

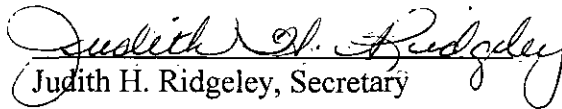
14. Nothing contained herein shall be construed to create a joint venture or other form of partnership between the parties, nor is this Participation Agreement to be construed as creating any rights in any third parties.

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

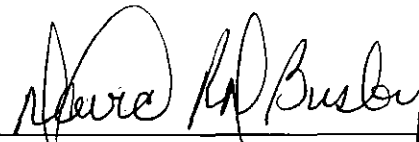
CITY OF COMMERCE CITY NORTHERN
INFRASTRUCTURE GENERAL IMPROVEMENT
DISTRICT

By: 
David R.D. Busby, President

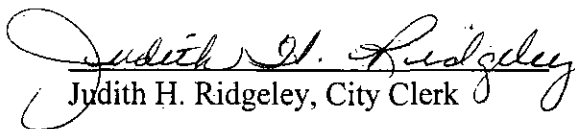
ATTEST:


Judith H. Ridgeley, Secretary

CITY OF COMMERCE CITY

By: 
David R.D. Busby, Mayor

ATTEST:


Judith H. Ridgeley, City Clerk

SACWSD:

SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT

By: Jean Klein
Jean Klein, President
Board of Directors

ATTEST:

Robert J. Aragon
Robert Aragon, Secretary

NORTHERN RANGE AREA
EXHIBIT "A"

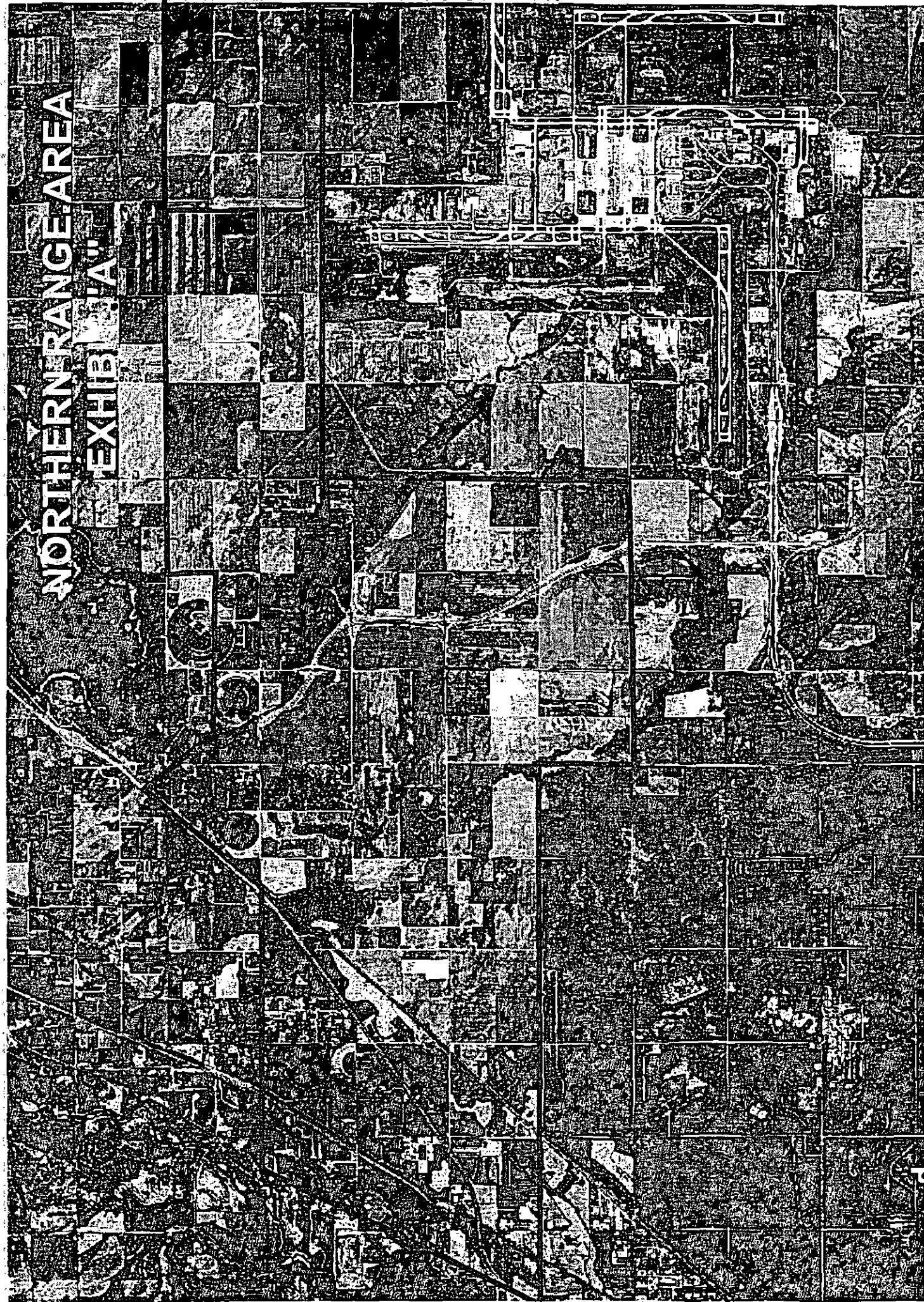


Exhibit B

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: _____
