



DECLARATION

of

**LANDSCAPE AND SIGNAGE
Covenants, Conditions, Restrictions and Easements**

for

**UNIVERSITY PARK PROFESSIONAL CENTER FILING NO. 1
and
LOT 1, UNIVERSITY BLUFFS FILING NO. 1**

85.00

This Declaration of Landscape and Signage Covenants, Conditions, Restrictions and Easements is made as of September 8, 1999 (the "Declaration"), by **University Park Homeowner's Association, Inc.**, a Colorado nonprofit corporation, its successors and assigns ("Declarant") and is consented to by **Elite Properties of America, Inc.**, a Colorado corporation ("EPA").

**ARTICLE I
GENERAL**

Section 1.1 Property Affected. EPA is the owner of certain real property located in El Paso County, Colorado, comprising approximately 181,958 square feet as described on **Exhibit A** attached hereto and incorporated herein by this reference, which is in the process of being platted as Lots 1, 2 and 3, University Park Professional Center, Filing No. 1, in the City of Colorado Springs, County of El Paso and State of Colorado (the "University Park Professional Lots"), and the owner of that certain parcel of land which consists of approximately 109,700 square feet and which is legally described as Lot 1, University Bluffs Filing No. 1, El Paso County, Colorado (the "Outlot"). The University Park Professional Lots and the Outlot will be collectively referred to in this Declaration as the "Property". The entire Property is hereby made subject to this Declaration as provided herein.

Section 1.2 Purposes of Declaration. Declarant has been established to undertake certain maintenance, repair and replacement obligations in connection with portions of that certain development located within the City of Colorado Springs, El Paso County, Colorado which is commonly referred to as University Park. EPA, as the owner of the Property on which certain improvements have been located which are for the benefit, enjoyment and enhancement of the entire University Park development, desires to cause the owners of the Property to share in a portion of the cost of maintaining, repairing and replacing the overall University Park improvements as well as to cause Declarant to maintain those overall University Park improvements which are located within the Property and to grant Declarant certain rights related thereto. As such, this Declaration is



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executed and recorded (a) in furtherance of a common and general plan to promote the maintenance, repair and replacement of those overall University Park improvements which are located within the Property; (b) to provide for the Declarant to maintain, replace, repair and manage the improvements which are located within the Property and to perform certain functions for the benefit of the Owners of the Property; (c) to define certain duties, powers and rights of Declarant and the Owners; and (d) to provide for certain obligations of the Owners to Declarant in connection with the Improvements.

Section 1.3 Declaration. Declarant, for itself, its successors and assigns and with the consent and approval of EPA, hereby declares that the Property, and each part thereof, shall, on and after the date this Declaration is recorded, will be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Property and the entire University Park development. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 8.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the Property and each part or parcel thereof; (b) Declarant and its successors and assigns; and (c) all other persons and entities having or acquiring any right, title or interest in the Property, or any part or parcel thereof, or any Improvement thereon, and their mortgagees, encumbrancers, claimants, heirs, personal representatives, successors and assigns.

ARTICLE 2
DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Assessment. "Assessment" shall mean the assessments against the Property as provided in Article 5 of this Declaration.

Section 2.2 Building Site or Lot. "Building Site" or "Lot" shall mean a parcel of land within the Property that is established and identified as a Building Site or Lot by an Owner by means of an instrument signed by EPA, duly acknowledged and recorded with the El Paso County Clerk and Recorder, which contains a legal description of the parcel in question and specifically designates it as a Building Site or Lot. Such instrument may be a deed conveying a parcel to an Owner, a plat or any other document that satisfies the foregoing requirements.

Section 2.3 City. "City" shall mean the City of Colorado Springs, Colorado.

Section 2.4 Declarant. "Declarant" shall mean University Park Homeowner's Association, Inc., a Colorado nonprofit corporation, its successors and assigns. A Person shall be deemed a "successor and assign" of University Park Homeowner's Association, Inc., as Declarant,

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only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to University Park Homeowner's Association, Inc. by consolidation or merger shall automatically be deemed a successor or assign of University Park Homeowner's Association, Inc., as Declarant under this Declaration. A successor or assign of Declarant, regardless of the method of assignment, will not be obligated to own any portion of the Property.

Section 2.5 Declaration. "Declaration" shall mean this Declaration of Landscape and Signage Covenants, Conditions, Restrictions and Easements for University Park Professional Center Filing No. 1 and Lot 1, University Bluffs Filing No. 1, including all attached exhibits and all subsequent amendments.

Section 2.6 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.7 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

Section 2.8 Improvements. Shall mean all of the real property and improvements described on **Exhibit B** attached hereto and incorporated herein by this reference.

Section 2.9 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Building Site, including sellers under executory contracts under Colorado law.

Section 2.10 Person. "Person" shall mean a natural person, a corporation, a general or limited partnership (including limited liability partnerships and limited liability limited partnerships), a limited liability company, a trust, an association or any other public or private entity recognized as being capable of owning real property under Colorado law.

Section 2.11 Plat. "Plat" shall mean the plat or plats of the Property that are duly recorded in the records of the El Paso County Clerk and Recorder. "Plat" shall also mean and include any amendments to such Plat or Plats and any supplemental plats in which other portions of the Property are platted, and which are duly recorded in the records of the El Paso County Clerk and Recorder.

Section 2.12 Property. "Property" shall mean and include the real property described in **Exhibit A** attached hereto.

Section 2.13 Related User. "Related User" shall mean: (a) any Person occupying a Building Site or portion thereof pursuant to a lease or other agreement with an Owner; (b) a guest or invitee of an Owner; and (c) any guest, employee, agent, representative, licensee, contractor, or invitee of any of the foregoing Persons.

ARTICLE 3
DUTIES AND POWERS OF ASSOCIATION

Section 3.1 General Duties and Powers of Declarant. The Declarant shall impose upon each Lot within the Property its Proportionate Share (as defined in Section 5.1 of this Declaration) of the Commercial Assessment Allocation (defined in Section 5.1 of this Declaration), both common assessments and special assessments, which shall be due and owing pursuant to the terms of Section 5.1 of this Declaration.

Section 3.2 Duty to Manage and Care for Property. The Declarant shall manage, operate, care for, maintain and repair and replace all Improvements and keep the same in an attractive and desirable condition; provided, however, maintenance, repair and replacement responsibilities for any Improvements shall not commence until the time indicated in Section 5.3 of this Declaration. In addition, all such maintenance, repair, and replacement of Improvements by Declarant shall be undertaken in a manner which will minimize interference with the conduct of business within the Property or on any portion thereof.

Section 3.3 Duty to Pay Taxes. Each Owner shall pay all taxes and assessments levied upon the Improvements, located within such Owner's Lot.

Section 3.4 Duty to Maintain Insurance. In addition to such insurance as each Owners shall elect to maintain in connection with its Lot and the Improvements located thereon, the Declarant shall obtain and keep in full force and effect at all times such property and liability insurance coverage as required by that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded at Reception No. 098005438 of the real property records of El Paso County, Colorado on January 15, 1998 (the "Master University Park Covenants"), including but not limited to property and liability insurance.

Section 3.5 Power to Enforce Declaration. The Declarant shall have the power to enforce the provisions of this Declaration, (a) by levying and collecting, a Site Assessment (defined in Section 4.3) against any Owner for breach of the terms of this Declaration, and (b) by exercising any right or remedy permitted by law or in equity.

ARTICLE 4
IMPROVEMENTS

Section 4.1 No Partition of Improvements. No Owner shall have the right to partition or seek partition of any Improvements or any part thereof.

Section 4.2 Alteration of Improvements. No Owner or Related User shall have the right to remove, alter or relocate any of the Improvements, even within that Owner's Lot, except in case of emergency, in which event notice of any action taken by such Owner or Related User in response to the emergency shall be promptly given to Declarant. If an Owner or the Related User of an Owner removes, alters or relocates any of the Improvements, even if there is an emergency, then the Owner and the Related User, if there is a Related User, shall have the joint and several obligation to promptly repair or replace the affected Improvements; and if such repair or replacement is not promptly done, then the Declarant shall have such rights as are available to it under this Declaration to enforce the obligations of the Owner and Related User, to include the imposition of a Site Assessment (as that term is defined in Section 4.3 of this Declaration) on the Lot of such Owner. The Declarant will have the sole and exclusive authority to remove, alter and relocate the Improvements, other than in the case of an emergency as provided above and only in a manner which does not materially alter the overall character of the landscaping.

Section 4.3 Liability of Owners for Damage. Each Owner or Related User shall be liable to the Declarant for any damage to the Improvements, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or Related User. The Declarant shall have the power, as elsewhere provided in this Declaration, to levy and collect a specific Lot Assessment against an Owner ("Site Assessment"), Related User, or other Person to cover the costs and expenses incurred by the Declarant on account of any such damage or any such violation of this Declaration, including without limitation, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.4 South Wall Maintenance. The Owner of Lot 1, University Bluffs Filing No. 1 (the "Outlot"), shall be solely responsible for maintaining, repairing and replacing that certain split faced block wall located only on the south property line of the Outlot.

ARTICLE 5 ASSESSMENTS

Section 5.1 Obligation for Assessments. The Property shall be allocated its "Commercial Portion" (as defined below) of the entire, collective amount Common Assessments and Special Assessments (but not Site Assessments) imposed by the University Park Homeowner's Association pursuant to the Master University Park Covenants (the "Commercial Assessment Allocation"). Each Owner, for each Building Site owned within the Property, by acceptance of a deed, shall be deemed to covenant and agree to pay to Declarant in the manner, amounts and times prescribed herein, its "Proportionate Share" of the Commercial Assessment Allocation on a per Lot basis (the "Assessments"). Each Owner's Proportionate Share of the Commercial Assessment Allocation shall be determined by multiplying (i) the percentage resulting when the Per Lot Square Footage of the applicable Lot (as described below) is divided by the Total Property Square Footage (as described below) (ii) by the total Commercial Assessment Allocation ("Proportionate Share"). For purposes of this Declaration, the Per Lot Square Footage is as follows:

Lot 1 University Park Professional Center:	45,732 sq. ft.
Lot 2 University Park Professional Center:	45,693 sq. ft.
Lot 3 University Park Professional Center:	90,536 sq. ft.
Lot 1 University Bluffs, Filing No. 1:	109,702 sq. ft.
Total Property Square Footage:	<u>291,663 sq. ft.</u>

For purposes of this Declaration, "Commercial Portion" which shall be imposed upon the entire Property and then allocated in the manner described above shall mean the following applicable amounts:

a. 30% of the Common Assessments and Special Assessments (but not Site Assessments imposed by the University Park Homeowner's Association pursuant to the Master University Park Covenants ("**the Master Covenants**")), until it is determined by the association responsible for administering the Master Covenants that, as of the start of a particular fiscal year, there are at least 200 homeowners who are obligated to pay assessments pursuant to the terms of the Master Covenants;

b. Following the time period indicated in item 5.1 a. above, 25% of the Common Assessments and Special Assessments (but not Site Assessments imposed by the Master Covenants, until it is determined by the association responsible for administering the Master Covenants that, as of the start of a particular fiscal year, there are at least 400 homeowners who are obligated to pay assessments pursuant to the terms of the Master Covenants;

c. Following the time period indicated in item 5.1 b. above and continuing thereafter, 20% of the Common Assessments and Special Assessments (but not Site Assessments imposed by the Master Covenants.

Section 5.2 Purpose of Assessments. The Assessments shall be used for the maintenance, repair and replacement of the Improvements, as well as all other common elements, pursuant to the Master University Park Covenants. The Assessments may not be used to pay for the initial cost of constructing and installing Improvements, but shall be used for the cost of repair, maintenance and replacement of the Improvements, as well as all other common elements pursuant to the Master University Park Covenants, after the initial construction and installation thereof.

Section 5.3 Declarant's Obligation. Until assessments are first levied by the Declarant pursuant to the Master University Park Covenants, Declarant shall pay all expenses related to the maintenance, repair and replacement of the Improvements.

Section 5.4 Assessment Procedure and Working Capital.

a. Assessment Procedure. At such time as assessments shall be established pursuant to the terms of the Master University Park Covenants, the Declarant shall cause to be prepared, delivered or mailed to each Owner, at least 30 days in advance of the date payment is due, a payment statement setting forth each Lot's Proportionate Share of the Commercial Allocation Assessment owed in connection with the Property. The Assessments will be based on the Declarant's budget of estimated annual maintenance, repair and replacement costs. Following each budget year, Declarant shall determine if any additional assessments are required to pay the actual costs and expenses incurred during the year, and will bill each Owner its Proportionate Share of such additional cost and expenses. If excess funds exist, after taking into account such reserves as Declarant reasonably determines to then be advisable, Declarant shall refund to the Owners of the Lots their respective Proportionate Share thereof. The annual Assessments shall be payable in advance in quarterly installments due on the first day of each successive quarter unless the Declarant otherwise directs or changes to monthly assessments. All payments of Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Declarant. Assessments shall be applicable to all Building Sites, including those owned by EPA. Declarant and every other Owner of a Building Site, at the time an Assessment is first levied, shall become responsible for Assessments at that time. Each Owner who subsequently acquires a Building Site shall become responsible for Assessments levied against the Building Site as of the date the Building Site is transferred to such Owner. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of Declarant.

b. Working Capital. In addition to the Assessments described in Section 5.1 of this Declaration, the first Owner of any Building Site following EPA shall be obligated to make a non-refundable contribution to the Declarant in the amount of \$2,500.00. All such contributions shall be maintained in a non-segregated working capital account for the use and benefit of the Declarant for, among other purposes, meeting unforeseen expenditures or purchasing additional equipment, property or services. The working capital contribution will be in addition to the Assessments, and will not relieve the Owners from paying any Assessments as they come due. The working capital contributions will be collected at the closing of the Owner's purchase from EPA, and failure to make such payments will entitle Declarant to collect the same in the manner provided for the collection of Assessments and will subject the applicable Owner to the same enforcement provisions as provided for in connection with the nonpayment of Assessments, including but not limited to the obligation to pay all Costs of Enforcement (defined in Section 5.7).

Section 5.5 Rate of Assessments. At such time as the Assessments, common or special, as applicable, are established pursuant to the Master University Park Covenants, each Building Site within the Property shall be obligated to pay its Proportionate Share of the Commercial Assessment Allocation as set forth in Section 5.1 of this Declaration.

Section 5.6 Failure to Fix Assessment. The failure by the Declarant to levy Assessments for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 5.7 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within 30 days after it is due, the Owner obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' and paralegal fees, court costs, deposition costs, witness expenses, and all related expenses, and to pay a reasonable late charge to be determined by the Declarant. Any Assessment which is not paid within 10 days after the date of any notice of default given under Section 5.9 shall bear interest from the due date at a rate which is the lower of eighteen percent per annum or the maximum percentage permitted by law from the due date until paid. The above referenced items, including the late charge, interest and the costs of enforcement for which the Owner is liable shall be referred to herein as the "Costs of Enforcement".

Section 5.8 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Declarant from that Owner shall be credited in such order of priority as the Declarant, in its discretion, determines.

Section 5.9 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within 30 days after its due date, the Declarant may mail a notice of default to the Owner and to each First Mortgagee of the Building Site who has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than 20 days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Building Site of the Owner. A default shall not be considered cured unless the past due sums, Costs of Enforcement, and all sums coming due through the date of payment are paid to the Declarant. If the delinquent Assessment and any Costs of Enforcement, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Declarant, at its option, may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration. The Declaration shall also have the right if there is a default by the Owner in the payment of any Assessment to accelerate and declare Assessments due and owing for the next twelve months to be immediately due and owing.

Section 5.10 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed and a lien against the Building Site and any improvements thereon. In the event of a default in payment of any Assessment, the Declarant may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Declarant by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Building Site, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the

Declarant all Assessments, together with the Costs of Enforcement, and this covenant shall be a charge on the land and a continuing lien upon the Building Site against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 5.12.

Section 5.11 Lawsuit to Enforce Assessments. The Declarant may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include the Costs of Enforcement against the defaulting Owner.

Section 5.12 Lien to Enforce Assessments. The Declarant shall have a lien against each Building Site to secure payment of assessment, charge, fine, penalty, or other amount due and owing with respect to the Building Site (the "Lien"). In addition to or in lieu of bringing suit to collect Assessments, the Declarant may foreclose its Lien as provided by law and in this Section. The Declarant may elect (but is not required) to file a claim of lien against the Building Site of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the Costs of Enforcement then accrued thereon, (c) the legal description and street address of the Building Site against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Declarant or other duly authorized agent of the Association. The Lien shall attach from the date of the failure of payment of the amount due and shall be superior to any liens and encumbrances other than tax liens made superior by statute and First Mortgages. The Lien shall be superior and prior to judgment liens, mechanics' liens, tax liens and all other consensual and non consensual liens by or against the Owner of the Building Site, other than the priority accorded to First Mortgages over the Lien by this Declaration or by law and the priority accorded to tax liens by law. The priority date for the Lien shall be the date of the recordation of this Declaration in the El Paso County, Colorado real property records. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all Costs of Enforcement, have been fully paid or satisfied, the Declarant shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Declarant to cover the cost of preparing and recorded the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including deeds of trust), or in any other manner permitted by law. The Declarant shall have the right and power to bid on the Building Sites at the sale and to acquire and hold, lease, mortgage, and convey the same. The Lien under this Section shall be subject to the provisions and restrictions of Section 8.4 hereof.

Section 5.13 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Declarant, and upon the written request of any Owner or Owner and any Person which has, or intends to acquire, any right, title or interest in the Building Site of such Owner, the Declarant shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Building Site and the Owner thereof, and setting forth the amount of any Assessment levied against such

Building Site which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

ARTICLE 6 INSURANCE

Section 6.1 Improvement Insurance. The Declarant shall maintain all such insurance coverage for the Improvements as provided for pursuant to the Master University Park Covenants.

Section 6.2 Insurance Trustee. The Declarant may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any Declarant obtained policy providing property or liability insurance in connection with the Improvements. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 6.3 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Declarant must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Declarant shall not obtain any policy if (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions of assessments may be made against the mortgagor or mortgagee's designee, or (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's Board of Directors, policyholders or Members, or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent First Mortgagee or any Owner from collecting insurance proceeds.

Section 6.4 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Building Site, and any other insurance coverage deemed appropriate by an Owner shall be obtained by such Owner at its sole cost and expense.

Section 6.5 Annual Review of Insurance Policies. All insurance policies carried by the Declarant for the Improvements shall be reviewed at least annually by the Declarant to ascertain that coverage provided by such policies adequately covers those risks insured by the Declarant.

Section 6.6 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Improvements is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal

obligation of such Owner, and any costs, expenses and fees incurred by the Declarant for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration by the Declarant exercising any rights or remedies under this Declaration or otherwise as permitted by law.

ARTICLE 7 EASEMENTS

Section 7.1 Declarant Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Declarant, its officers, agents, employees and assigns, upon, across, over, in and under the thirty foot (30') Landscape Easement described on the Plats (the "Declarant Easements"), together with the right to maintain, replace and repair the Improvements on, in and under the Declarant Easements.

Section 7.2 Easements Deemed Created. All conveyances of Building Sites hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the Declarant Easements, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for 30 years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of 10 years each unless terminated prior to the commencement of any applicable 10 year period by agreement of a majority of the Owners of the Property, based upon votes in an amount equal to each Owner's prorata share of the Total Property Square Footage, as set forth in Section 5.1 of this Declaration (the "Voting Percentage") and the approval of the Declarant and EPA.

Section 8.2 Amendment of Declaration by Declarant. This Declaration may be amended as follows:

- (a) Until the first Building Site subject to this Declaration has been conveyed by EPA by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended, supplemented or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.
- (b) By Declarant and a majority of the Owners, based upon each Owner's Proportionate Share.

Section 8.3 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Declarant, shall be entitled to (a) receive written notice from the Declarant of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under this Declaration, which default is not cured within 60 days after the Declarant learns of such default; (b) examine the books and records of the Declarant during normal business hours; (c) upon request, receive a copy of financial statements of the Declarant, within 90 days following the end of any fiscal year of the Declarant; (d) receive written notice of all determination of Assessments for the Property; (e) receive written notice of abandonment or termination of this Declaration; (f) receive notice of any amendment to this Declaration; (g) receive written notice of termination of any agreement for professional management by the Declarant of the Improvements following a decision of the Declarant to assume self-management of the Improvements; and (h) receive written notice of any damage to the Improvements if the cost of reconstruction exceeds \$10,000.00, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Improvements.

Section 8.4 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Building Site encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial or public trustee foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Building Site free and clear of any claims for unpaid Assessments or charges against such Building Site which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Owners of the Property. A First Mortgagee shall be deemed to have acquired title to a Building Site on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 8.5 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Improvements, and may pay any overdue premiums on hazard insurance policies for any Improvements, or may secure new coverage if the insurance policy on the Improvements lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Declarant.

Section 8.6 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of the Owners of the Property and approval by First Mortgagees, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer of the Declarant that the approvals of the required percentages of Owners, First Mortgagees and the Declarant were obtained. The Declarant shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 8.7 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Declarant for the purpose of service of such notice, or to the Building Site of such Person if no address has been given to the Declarant, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Declarant.

Section 8.8 Costs of Enforcement. In any action or proceeding under this Declaration, the Declarant shall be entitled to recover Costs of Enforcement. If the action or proceeding is by any other Person entitled to enforce a violation of this Declaration, then the prevailing party shall be entitled to recover his Costs of Enforcement.

Section 8.9 Limitation on Liability. Neither the Declarant, its Board of Directors, agents, officers or employee shall be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and each of such parties shall be indemnified by the Declarant to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law.

Section 8.10 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents, officers, directors, members, managers, partners or employees in connection with any portion of the Property, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 8.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 8.12 Severability. Each provision of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 8.13 Number and Gender. Unless the context requires a contrary construction, as used in this Declaration, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 8.14 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 8.15 Mergers and Consolidation. The Declarant may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Declarant with another association, its properties, rights and obligations may, by assignment or by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Declarant as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property together with the covenants and restrictions established upon any other property, as one plan.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

University Park Homeowner's Association, Inc.,
a Colorado nonprofit corporation

By: 

Its: _____

HOA Pres 9.7.99

This Declaration is hereby consented to and affirmed by Elite Properties of America, Inc., a Colorado corporation.

Attest: **Elite Properties of America, Inc.,**
a Colorado corporation

By: [Signature]
Its: EXEC. VICE PRES
AND ASST. SECRETARY

By: [Signature]
Its: Vice President

[CORPORATE SEAL]

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)



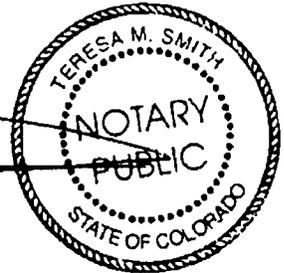
The foregoing instrument was acknowledged before me this 8th day of September, 1999 by JOSEPH LOUDLT, as PRESIDENT of University Park Homeowner's Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 5/19/01

(SEAL)

[Signature]
Notary Public



STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

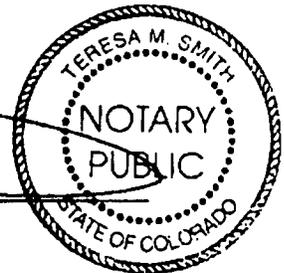
The foregoing instrument was acknowledged before me this 8th day of September, 1999 by RONALD J. BURK, as PRESIDENT and GEORGE B. as EXEC. VICE of Elite Properties of America, Inc., a Colorado corporation. LOU PRESIDENT AND ASST. SECRETARY

Witness my hand and official seal.

My commission expires: 5/19/01

(SEAL)

[Signature]
Notary Public



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EXHIBIT "A"
Declaration of Landscape and Signage
Covenants, Conditions, Restrictions and Easements

Legal description of Lots

Lot 1, 2 & 3, University Park Professional Center, Filing No. 1 in the City of Colorado Springs, County of El Paso.

Lot 1, University Bluffs Filing No. 1 City of Colorado Springs, County of El Paso.

EXHIBIT B
TO
DECLARATION
of
LANDSCAPE AND SIGNAGE
Covenants, Conditions, Restrictions and Easements

[Improvements]

All landscaping, signage, walls, and other improvements, located within that certain thirty foot (30') Landscape Easement depicted on the respective plats for University Bluffs Filing No. 1 and University Park Professional Center, recorded in the real property records of El Paso County, Colorado.