

The document that follows is a DRAFT, effective as of March 22, 2001. No reliance should be made, nor representations inferred from, the contents of this draft document.

***DESIGN AND ARCHITECTURAL
DECLARATION***

Table of Contents

ARTICLE 1

DEFINITIONS	-3-
Section 1.1 <u>"Act"</u>	-3-
Section 1.2 <u>"Articles"</u>	-3-
Section 1.3 <u>"Board"</u>	-3-
Section 1.4 <u>"Bylaws"</u>	-3-
Section 1.5 <u>"City"</u>	-3-
Section 1.6 <u>"Declarant"</u>	-3-
Section 1.7 <u>"Design Criteria"</u>	-4-
Section 1.8 <u>"Development Plan"</u>	-4-
Section 1.9 <u>"Development Rights"</u> or <u>"Special Declarant Rights"</u>	-4-
Section 1.10 <u>"DRC"</u>	-4-
Section 1.11 <u>"Initial Real Property"</u>	-4-
Section 1.12 <u>"Improvement(s)"</u>	-4-
Section 1.13 <u>"Owner"</u>	-4-
Section 1.14 <u>"Person"</u>	-4-
Section 1.15 <u>"Plans and Specifications"</u>	-4-
Section 1.16 <u>"Project Area"</u>	-4-
Section 1.17 <u>"Real Property"</u>	-4-
Section 1.18 <u>"Records"</u>	-5-
Section 1.19 <u>"SDC Design, Inc."</u>	-5-
Section 1.20 <u>"Unit"</u> or <u>"Units"</u>	-5-

ARTICLE 2

DESCRIPTION OF THE DEVELOPMENT PLAN AND DEVELOPMENT RIGHTS	-5-
Section 2.1 <u>Submission of Real Property</u>	-5-
Section 2.2 <u>Supplemental Declarations</u>	-5-
Section 2.3 <u>Not a Common Interest Community</u>	-5-
Section 2.4 <u>Subsequent Development of Common Interest Communities</u>	-6-
Section 2.5 <u>Reservation of Development Rights</u>	-6-

ARTICLE 3

SDC DESIGN, INC.	-6-
Section 3.1 <u>General Purposes.</u>	-6-
Section 3.2 <u>Authority.</u>	-6-
Section 3.3 <u>No Assessment or Common Expense Authority.</u>	-6-
Section 3.4 <u>Architectural and Design Board Membership</u>	-7-
Section 3.5 <u>Quorum</u>	-7-
Section 3.6 <u>Indemnification</u>	-7-

Section 3.7	<u>Liability Insurance</u>	-7-
Section 3.8	<u>Fidelity Insurance</u>	-7-
Section 3.9	<u>No Liability of SDC Design, Inc. or DRC Members</u>	-8-

ARTICLE 4

AESTHETIC COVENANTS, RESTRICTIONS AND EQUITABLE

SERVITUDES		-8-
Section 4.1	<u>Restriction on Improvements</u>	-8-
Section 4.2	<u>Establishment of the DRC</u>	-8-
Section 4.3	<u>Division of Duties of the DRC Among Subcommittees.</u>	-8-
Section 4.4	<u>Design Criteria</u>	-8-
Section 4.5	<u>Review Process</u>	-8-
Section 4.6	<u>Review Standards</u>	-9-
Section 4.7	<u>Requirements of Submitted Plans and Specifications</u>	-9-
Section 4.8	<u>Fee for Review</u>	-9-
Section 4.9	<u>Quorum</u>	-9-
Section 4.10	<u>Meetings of the DRC</u>	-9-
Section 4.11	<u>Reply and Communication.</u>	-9-
Section 4.12	<u>Variances.</u>	-10-
Section 4.13	<u>Waivers Not Implied.</u>	-10-
Section 4.14	<u>No Waiver of Future Approvals</u>	-10-
Section 4.15	<u>Appeal.</u>	-10-
Section 4.16	<u>Compensation of Members</u>	-10-
Section 4.17	<u>Records</u>	-10-
Section 4.18	<u>Indemnification.</u>	-10-

ARTICLE 5

COVENANT FOR PAYMENT OF APPLICATION FEES		-11-
Section 5.1	<u>Creation of Lien and Personal Obligation to Pay Application Fees.</u> ..	-11-
Section 5.2	<u>Imposition of Fees</u>	-11-
Section 5.3	<u>Effect of Non-Payment of Fees</u>	-11-
Section 5.4	<u>Lien Priority</u>	-11-

ARTICLE 6

GENERAL PROVISIONS		-12-
Section 6.1	<u>Enforcement.</u>	-12-
Section 6.2	<u>Violations Constitute a Nuisance</u>	-12-
Section 6.3	<u>Remedies Cumulative.</u>	-12-
Section 6.4	<u>Severability</u>	-12-
Section 6.5	<u>Amendment</u>	-12-
Section 6.6	<u>Unlimited Period of Declarant Amendment</u>	-12-
Section 6.7	<u>Term</u>	-13-
Section 6.8	<u>Non-Liability of Officials</u>	-13-

Section 6.9	<u>Non-Liability for Certain Changes and Amendments.</u>	-13-
Section 6.10	<u>Governing Law</u>	-13-
Section 6.11	<u>Exhibits</u>	-13-
Section 6.12	<u>Liberal Interpretation</u>	-13-
Section 6.13	<u>Singular Includes the Plural</u>	-13-
Section 6.14	<u>Captions</u>	-14-
CONSENT		-15-
EXHIBIT A		-16-
	<u>INITIAL REAL PROPERTY</u>	-16-
EXHIBIT B		
	<u>PROPERTY WHICH MAY BE ADDED TO THE DESIGN DECLARATION</u>	-17-

DESIGN AND ARCHITECTURAL DECLARATION

THIS DESIGN AND ARCHITECTURAL DECLARATION ("Design Declaration") is made on the date hereinafter set forth by Stapleton Development Corporation, a Colorado nonprofit corporation, whose address is 3333 Quebec Street, Suite 8100, Denver, CO 80207 ("Declarant").

RECITALS

A. Declarant is a nonprofit corporation created and incorporated under the Colorado Revised Nonprofit Corporation Act in order to implement the disposition of the property formerly known as the Stapleton International Airport.

B. Declarant is the owner of certain real property in the City and County of Denver (the "City"), which is legally described in *Exhibit A* attached hereto and by reference made a part hereof (the "Initial Real Property").

C. Declarant may become the owner of certain additional real property in the City and/or in the County of Adams, State of Colorado, owned by the City, which property is generally shown by the illustration contained in *Exhibit B* attached hereto and by reference made a part hereof (the "Project Area").

D. The City entered into a Master Lease and Disposition Agreement ("Master Lease Agreement") with Declarant in order to dispose of property within the former Stapleton International Airport in accordance with the Stapleton Development Plan dated March 1995, which Stapleton Development Plan may be supplemented or amended from time to time ("Development Plan").

E. Pursuant to the Master Lease Agreement and the Development Plan, the City may convey or transfer to the Declarant ownership to certain properties within the Project Area.

F. The Declarant may proceed, as properties are acquired by Declarant from the City, with the development of the properties acquired pursuant to the Development Plan.

G. As Declarant proceeds with development pursuant to the Development Plan, Declarant may subject portions of the property it acquires from the City to this Design Declaration, by exercising the annexation and supplementation rights of the Declarant set forth in this Design Declaration.

H. The purposes of this Design Declaration are as follows:

(i) to ensure that development occurs in a balanced manner, in accordance with the objectives of the Development Plan;

(ii) to ensure that development allows for mixed uses, including residential, office, retail, manufacturing, commercial, employment, education and public and private uses;

(iii) to allow for and encourage the community values set forth in the Development Plan, and to support affordable housing, education, jobs training, sustainable development and parks and open space within the Project Area;

(iv) to ensure the attractiveness of the individual lots, individual parcels, individual properties and individual Units [with "Units" as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time (the "Act")];

(v) to ensure the attractiveness of the Improvements and facilities developed within the real property subject to this Design Declaration; and

(vi) to preserve, protect, and enhance the values and amenities of the real property subject to this Design Declaration.

I. Declarant does not desire and is not creating, by this Design Declaration, a Common Interest Community (as defined in the Act), on the real property subject to this Design Declaration.

J. Declarant has caused "SDC Design, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as the entity to administer the aesthetic, architectural and equitable servitudes set forth in this Design Declaration, and for the purpose of exercising the functions set forth in this Design Declaration.

K. Implementation of the Development Plan by recordation of annexations and/or supplements to this Design Declaration is intended to be accomplished by the Declarant in the following manner and order:

(i) The Declarant will first obtain fee ownership from the City of a parcel of property within the Project Area.

(ii) As the Declarant obtains ownership of parcels of property within the Project Area, the Declarant may annex and subject those properties to this Design Declaration by specifically describing the property acquired in a supplement or amendment to this Design Declaration; provided, further, that the Declarant reserves the right and discretion concerning annexing and subjecting additional property to this Design Declaration.

(iii) All properties within the Project Area that are made subject to this Design Declaration shall then be subject to this Design Declaration and shall be a part of the "Real Property," as defined in this Design Declaration.

(iv) Nothing in this Design Declaration is intended to limit, preclude, or prevent any owner of property within the Project Area, or the owner of any property adjacent to or across a public street from the Project Area from voluntarily imposing and recording this Design Declaration against such owner's property for the purpose of becoming subject to this Design Declaration, subject to the prior written approval and consent of the Declarant, or the Declarant's successor or assignee.

NOW, THEREFORE, Declarant hereby declares that the Real Property shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the covenants, conditions, restrictions of this Design Declaration, and equitable servitudes in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use, and occupancy of the Real Property and to enhance the value, desirability, and attractiveness of the Real Property and other properties subject to this Design Declaration. Declarant further declares that this Design Declaration is made for the purpose of protecting the value and desirability of the Real Property. This Design Declaration touches and concerns the Real Property and shall: (i) run with the land and all parts thereof at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in the Real Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the Real Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by the Declarant, and the parties as provided for in this Design Declaration.

ARTICLE 1 DEFINITIONS

Definitions. Each capitalized term in this Design Declaration shall have the meaning specified as set forth below unless the context requires otherwise:

Section 1.1 **"Act"** shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*, as it may be amended from time to time.

Section 1.2 **"Articles"** shall mean the Articles of Incorporation for the SDC Design, Inc., and any amendments which may be made from time to time.

Section 1.3 **"Board"** shall mean the board of directors of SDC Design, Inc.

Section 1.4 **"Bylaws"** shall mean the Bylaws adopted by the Board, as amended from time to time.

Section 1.5 **"City"** shall mean the City and County of Denver.

Section 1.6 **"Declarant"** shall mean the Declarant named in this Design Declaration and/or, to the extent any rights or powers reserved to the Declarant are transferred or assigned to that party, any successor and/or assignee designated in this Design Declaration by written notice or assignment, provided that written notice of assignment is executed by the Declarant designated in this Design Declaration and by the transferee and recorded.

Section 1.7 **"Design Criteria"** shall mean those architectural and/or design standards as adopted by the DRC, from time to time.

Section 1.8 **"Development Plan"** shall mean the Stapleton Development Plan dated March 1995, as may be supplemented or amended from time to time.

Section 1.9 **"Development Rights"** or **"Special Declarant Rights"** shall mean those rights set forth in this Design Declaration.

Section 1.10 **"DRC"** shall mean the design review committee established by the Board pursuant to this Design Declaration.

Section 1.11 **"Initial Real Property"** shall mean the property described in *Exhibit A* of this Design Declaration, which Initial Real Property is also a part of and included within the definition of "Real Property" as defined and used in this Design Declaration.

Section 1.12 **"Improvement(s)"** shall mean structures or improvements of any kind installed within or upon a lot, parcel, property or Unit, which lot, parcel, property or Unit is a part of the Real Property.

Section 1.13 **"Owner"** shall mean the Declarant, or any Person that owns all or any part of Real Property.

Section 1.14 **"Person"** shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.15 **"Plans and Specifications"** shall mean any and all documents designed to guide, govern, or otherwise control the construction of an Improvement including, but not limited to, those indicating size, shape, configuration or materials; all site plans; excavation and grading plans; foundation plans, drainage plans; landscaping and fencing plans; elevation drawings, floor plans, specifications on all building products and construction techniques; samples of exterior colors; plans for utility services; and all other documentation or information relevant to the particular Improvement.

Section 1.16 **"Project Area"** shall mean initially all of the real estate generally described or depicted in *Exhibit A* of this Design Declaration. The Project Area shall also include any additional lands that may later become subject to Declarant's right of annexation by supplement or amendment of this Design Declaration.

Section 1.17 **"Real Property"** shall mean any property acquired by Declarant from the City which has been made subject to this Design Declaration pursuant to the expansion rights reserved in this Design Declaration. The Real Property shall include the Initial Real Property.

Section 1.18 "Records" shall mean the official real property records of, as appropriate, the City and/or the County of Adams, Colorado; "to Record" means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records.

Section 1.19 "SDC Design, Inc." shall mean SDC Design, Inc., and its successors and assigns.

Section 1.20 "Unit" or "Units" shall mean a physical portion of the Real Property designated for separate ownership, shown as a unit or lot on a recorded plat or map, consistent with the definition of "Unit" used in the Act.

ARTICLE 2

DESCRIPTION OF THE DEVELOPMENT PLAN AND DEVELOPMENT RIGHTS

Section 2.1 Submission of Real Property. The Declarant hereby submits the Real Property, including therein the Initial Real Property, to the terms and conditions of this Design Declaration. The Real Property shall be the only real property affected by and subject to this Design Declaration.

Section 2.2 Supplemental Declarations. Before or after portions of the Project Area are conveyed by Declarant to Owners other than Declarant, or before or after a portion of the Project Area is conveyed to Owners other than Declarant, a supplemental declaration for such portions of the Project Area may be recorded by the Declarant, to subject that property to this Design Declaration and which supplemental declaration may supplement the covenants, conditions and restrictions contained in this Design Declaration. Upon recordation of a supplemental declaration, the property covered thereby shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Design Declaration, except to the extent specifically stated or provided in that supplemental declaration.

Supplemental declarations must meet the following criteria: (a) the supplemental declaration must be executed and acknowledged by Declarant or by the Owner or Owners of that portion of the Project Area covered by the supplemental declaration; (b) if the property described in the supplemental declaration is not then owned by Declarant, the supplemental declaration may be voided by the Declarant, unless executed and acknowledged with the written consent of Declarant or Declarant's assignee; (c) the supplemental declaration must contain an adequate legal description of the property subject thereto; and (d) the supplemental declaration must contain a reference to this Design Declaration.

A deed by which Declarant conveys a parcel of property in the Project Area to another person may constitute a supplemental declaration if it meets the foregoing requirements.

Section 2.3 Not a Common Interest Community. The Real Property has not, by this Design Declaration, been established as a Common Interest Community and is not a Common Interest Community by virtue of this Design Declaration.

Section 2.4 Subsequent Development of Common Interest Communities. Before portions of the Real Property are conveyed by Owners other than Declarant, a declaration [as "declaration" is defined in sections 103(13) and 201 of the Act] for such portions may be recorded.

Section 2.5 Reservation of Development Rights. The Declarant reserves, for fifty (50) years after the recording of this Design Declaration, the following Development Rights and Special Declarant Rights:

(a) The right to add real estate within the Project Area to the Real Property by recordation of a supplemental declaration or an annexation or other instrument making this Design Declaration binding against such other real estate.

(b) The right to take such action necessary and convenient to implement the Development Plan and/or to implement this Design Declaration.

(c) The right to merge or consolidate SDC Design, Inc. with any master owner association for all or any part of the Real Property.

(d) The right to exercise any additional reserved right created by any other provision of this Design Declaration.

ARTICLE 3 SDC DESIGN, INC.

Section 3.1 General Purposes. SDC Design, Inc., through its Board and the DRC, shall perform the aesthetic, architectural and design review functions provided for in this Design Declaration so as to further the purposes set forth in the recitals and other provisions of this Design Declaration.

Section 3.2 Authority. The business affairs of SDC Design, Inc. shall be managed by the Board. The Board shall be governed by this Design Declaration, the Articles of Incorporation and Bylaws, as all of the same may be amended from time to time, and such other documents as may grant power and authority to SDC Design, Inc. and/or the Board, to the extent those powers and authorities are accepted by the Board. The Board may, by written resolution, delegate authority to a manager or managing agent, provided no such delegation shall relieve the Board of final responsibility.

Section 3.3 No Assessment or Common Expense Authority. Except for fees imposed for architectural and design review, as allowed for in this Design Declaration, neither the Board or the DRC shall have the authority to impose or levy assessments for common expenses. In all events, fees imposed for architectural and design review shall not be deemed as an assessment for a common expense under the Act.

Section 3.4 Architectural and Design Board Membership.

(a) The Board shall have seven (7) directors.

(b) Three (3) of the seven (7) directors of the Board shall be appointed by Forest City Stapleton, Inc. The other four (4) of the directors of the Board shall be appointed by mutual agreement of the Declarant and Forest City Stapleton, Inc. At such time as Declarant releases its appointment rights under this section, or ceases to operate or exist, Declarant shall no longer have appointment rights under this section, and Forest City Stapleton, Inc. shall be authorized to appoint all seven (7) directors to the Board.

(c) Appointed members of the Board may be removed by the party or parties with appointment power, as provided for above.

(d) Two (2) members of the Board may be representatives from or affiliates of the "Citizens Advisory Board" as this phrase is defined by the bylaws or other documents governing the Declarant.

(e) Each director shall hold office until such time as he or she has resigned and his or her successor has been appointed or until such time that the director is removed.

Section 3.5 Quorum. A quorum for any Board meeting or action shall be four (4) present or voting directors.

Section 3.6 Indemnification. To the full extent permitted by law, each officer and director of the Board shall be and are hereby indemnified by SDC Design, Inc. against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of SDC Design, Inc., or any settlements thereof, whether or not they are an officer or director at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of SDC Design, Inc.

Section 3.7 Liability Insurance. SDC Design, Inc. shall obtain and maintain adequate comprehensive policy of public and professional liability for SDC Design, Inc., its directors and for the DRC, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000.00).

Section 3.8 Fidelity Insurance. SDC Design, Inc. may obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, appointed DRC members, agents and employees and on the part of all others who handle or are responsible for handling the funds, including persons who serve SDC Design, Inc., the Board or the DRC with or without compensation.

Section 3.9 No Liability of SDC Design, Inc. or DRC Members. Neither SDC Design, Inc., the Board nor any DRC member, shall be liable to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the under this Design Declaration unless due to the wanton and willful misconduct of that person, party or entity.

ARTICLE 4 AESTHETIC COVENANTS, RESTRICTIONS AND EQUITABLE SERVITUDES

Section 4.1 Restriction on Improvements. Prior to commencement of construction of any Improvement upon any portion of the Real Property, including any renovation or alteration to any existing Improvement, the Plans and Specifications therefor shall be submitted to the DRC, and construction thereof may not commence unless and until the DRC has approved such Plans and Specifications in writing. This requirement shall not apply to subsequent renovations or alterations to residential Units.

Section 4.2 Establishment of the DRC. The Board shall appoint the DRC. The DRC shall consist of seven (7) members appointed, and subject to removal, by the Board. Each and every member of the DRC shall possess experience in the practice of real estate/land development (not to include real estate sales), or in the practice of architecture, urban design, land use planning, or other similar professional design practice. The Board may, at any time and from time to time, appoint one or more ex-officio members to the DRC who may serve in a non-voting, advisory capacity to the DRC.

Section 4.3 Division of Duties of the DRC Among Subcommittees. The DRC may, at any time and from time to time, create subcommittees and divide among such subcommittees the duties, responsibilities, and obligations of the DRC where such division is deemed in the best interest of the DRC. By way of example and not limitation, the DRC may create: (1) two or more subcommittees for the performance of aesthetic review functions related to residential and non-residential development review; or (2) two or more subcommittees to review development in different geographic areas of the Real Property.

Section 4.4 Design Criteria. The Board, after or with any recommendations of the DRC, may, from time to time, publish, amend, and promulgate Design Criteria, to implement the spirit and intent of this Design Declaration and to encourage and achieve efficient, coordinated, and high quality use of the property within the Real Property. The Design Criteria may be amended from time to time as provided by the Design Criteria and this Design Declaration. The Design Criteria may contain standards, requirements, recommendations, or limitations in addition to those expressly set forth or referred to in this Design Declaration and more stringent standards, requirements or limitations than the specific standards, requirements or limitations set forth or referred to in this Design Declaration.

Section 4.5 Review Process. All Real Property shall be subject to the review process set forth in this Design Declaration and the Design Criteria.

Section 4.6 Review Standards. Whenever in this Design Declaration or any Design Criteria the approval of the DRC is required, the DRC shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which the DRC deems relevant. The submittal requirements, specific procedures, form of approval process for waivers and variances, and timing of each decision shall be provided in the Design Criteria. The DRC shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated in the locations indicated are in compliance with this Design Declaration and the Design Criteria;

The DRC may condition its approval of Plans and Specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The DRC may consider and review any and all aspects of construction, construction of other Improvements and locations, quality and quantity of landscaping, and may disapprove aspects thereof which may, in the opinion of the DRC, adversely affect the living, work, educational or other environment or enjoyment of one or more Owner(s) or of the general value of property within the Project Area. The DRC is also permitted to consider technological advances in design, materials and construction and such design, materials and construction may or may not be permitted in accordance with the opinion of the DRC.

Section 4.7 Requirements of Submitted Plans and Specifications. The DRC may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the DRC of all required or requested Plans and Specifications and other information, the DRC may postpone review of any material submitted for approval. Any material modification or change to an approved set of Plans and Specifications must again be submitted to the DRC for its inspection and approval.

Section 4.8 Fee for Review. The DRC, with the approval of the Board, may require and impose a fee to accompany each application for review and for each approval.

Section 4.9 Quorum. A quorum of the DRC for any meeting or action shall be three (3) present and voting members.

Section 4.10 Meetings of the DRC. The DRC shall meet from time to time as it determines to perform its duties. The DRC may from time to time by resolution unanimously adopted in writing designate one or more of its members to take any action or perform any duties for and on behalf of the DRC, except the granting of waivers or variances pursuant to this Article. In the absence of such designation, the vote of the majority of a quorum of present and voting members of the DRC at a meeting, or the written consent of a majority of all of the members of the DRC taken without a meeting, shall constitute an act of the DRC.

Section 4.11 Reply and Communication. The DRC is under no obligation to reply to all submittals of Plans and Specifications, flexibility in response being expressly reserved to the DRC. All communications and submittals shall be addressed to the DRC at such address as the chairman of the DRC may designate.

Section 4.12 Variances. The DRC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Design Declaration or in the Design Criteria in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Design Declaration or any Design Criteria.

Section 4.13 Waivers Not Implied. The approval or consent of the DRC, or appointed representative thereof, to any application for approval or any Improvement shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the DRC as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 4.14 No Waiver of Future Approvals. The approval or consent of the DRC to any Plans or Specifications, to any work completed or proposed for performance or completion, or to any other matter that requires the approval or consent of the DRC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter subsequently or additionally submitted for approval or consent by the same or a different Person, including subsequent renovation or remodeling of an Improvement.

Section 4.15 Appeal. Decisions of the DRC may be appealed by an Owner to the Board, pursuant to such guidelines or procedures as the Board may from time to time adopt. The Board shall grant an appeal only if it determines, in its sole discretion, that the DRC's action was arbitrary, capricious, or an abuse of discretion.

Section 4.16 Compensation of Members. The members of the DRC may, at the sole discretion of the Board, be entitled to reasonable compensation for services rendered, together with reimbursement for expenses incurred by them in performance of their duties. Any decision to provide such compensation may be determined and memorialized in writing by formal action of the Board.

Section 4.17 Records. The DRC shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records may be open and available for inspection by any interested party, subject to reasonable advance notice, during reasonable hours of the business day.

Section 4.18 Indemnification. To the full extent permitted by law, each member of the DRC shall be and is hereby indemnified by SDC Design, Inc. against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon such member in any proceeding to which such member may be a party, or in which such member may become involved, by reason of being or having been a member of the DRC, or any settlements thereof, whether or not such member is a member of the DRC at the time such expenses are incurred. This indemnification shall not apply to cases where such member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In addition, in the event of a settlement, the indemnification shall apply only when SDC Design, Inc. approves such settlement and reimbursement as being in the best interests of the DRC.

ARTICLE 5

COVENANT FOR PAYMENT OF APPLICATION FEES

Section 5.1 Creation of Lien and Personal Obligation to Pay Application Fees. Declarant, for each individual lot, individual parcel, individual property and individual unit in the Real Property, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the application fee for DRC review of their Plans and Specifications. Such fee, including charges, late charges, attorney fees, fines and interest charged shall be the personal obligation of the Owner at the time an application is made, or deemed approved, as applicable. The fee, including charges, late charges, attorney fees, fines and interest charged, shall be a charge on each applicable individual lot, individual parcel, individual property and individual unit in the Real Property, and shall be a continuing lien. The personal obligation to pay any past due sums due shall not pass to a successor in title, unless expressly assumed by them. No Owner may become exempt from liability for payment of the fee by waiver or by abandonment or otherwise. All fees shall be payable in the amounts specified, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that SDC Design, Inc., the Board or the DRC are not properly exercising duties and powers under this Design Declaration.

Section 5.2 Imposition of Fees. The Board may only levy a fee upon application for design review, or upon approval of an Owner's proposed Improvements. Until the Board collects fees, the Declarant may, at its election and discretion, cause third parties to subsidize or assist in the payment of costs and expenses of the SDC Design, Inc., the Board and the DRC.

Section 5.3 Effect of Non-Payment of Fees. Any fee, including any charge or fee provided for in this Design Declaration, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Board, and the Board may assess a reasonable late charge thereon as determined by the Board. Further, SDC Design, Inc. may bring an action at law or in equity, or both, against the person(s) personally obligated to pay any overdue fees and charges, and may also proceed to foreclose its lien. An action at law or in equity against an Owner to recover a money judgment for unpaid fees or charges may be commenced and pursued without foreclosing, or in any way waiving, the lien therefor. Foreclosure or attempted foreclosure of the lien provided for in this Design Declaration shall not be deemed to estop or otherwise preclude a subsequent foreclosure or attempting to foreclose the lien for any subsequent fees or charges which are not fully paid when due.

Section 5.4 Lien Priority. The lien of SDC Design, Inc. under this Article is prior to all other liens and encumbrances.

ARTICLE 6 GENERAL PROVISIONS

Section 6.1 Enforcement. Declarant and each Owner of any portion of the Real Property shall comply with this Design Declaration, as amended, supplemented or modified from time to time. Failure to comply with this Design Declaration shall be grounds for an action by SDC Design, Inc., the Board or the DRC, or any of them, to recover sums due for damages or injunctive relief, or both. Failure to enforce this Design Declaration shall in no event be deemed a waiver of the right to do so at a later date or in a similar event.

Section 6.2 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Design Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated by SDC Design, Inc., the Board or the DRC, or any of them, whether or not the relief sought is for negative or affirmative action.

Section 6.3 Remedies Cumulative. Each remedy provided under this Design Declaration is cumulative and not exclusive.

Section 6.4 Severability. Each of the provisions of this Design Declaration shall be deemed independent and severable. If any provision of this or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Design Declaration which can be given effect without the invalid provisions or applications.

Section 6.5 Amendment. Any amendment to this Design Declaration or termination of this Design Declaration shall require the affirmative consent of Declarant and Forest City Stapleton, Inc., and/or its successors and/or assigns. If Declarant releases its amendment rights under this section, or ceases to operate or exist, any such written instrument shall no longer require Declarant's approval.

Section 6.6 Unlimited Period of Declarant Amendment. In addition to other amendments and supplements permitted by this Design Declaration, the Declarant expressly reserves the right and discretion to unilaterally amend this Design Declaration at any time and from time to time in order to add, delete, or revise any term, condition, or provision necessary or convenient to: (a) permit, allow, or facilitate financing and insurance opportunities for all or any portion of the Real Property by an institutional or governmental lender, purchaser, or insurer of mortgage loans, including by way of example, the Department of Veteran Affairs (VA), Department of Housing and Urban Development (HUD), Federal Housing Administration (FHA) and Colorado Housing Finance Authority (CHFA); (b) bring this Design Declaration into conformance or compliance with any applicable governmental statute, rule, or regulation or judicial determination; (c) bring this Design Declaration into conformance with the Master Lease and Disposition Agreement or any other agreement for the transfer of property made between the Declarant and the City; (d) enable any title insurance company to issue title insurance coverage with respect to all or any portion of the Real Property or property proposed for inclusion into or addition to this Design Declaration.

Section 6.7 Term. This Design Declaration, including all of the covenants, conditions and restrictions contained herein, shall remain effective and affect the Real Property up to and including the fiftieth (50th) anniversary of the date of Recording of this Design Declaration. After such fiftieth (50th) anniversary, this Design Declaration, including all covenants, conditions and restrictions contained herein, shall be automatically extended for successive periods of ten (10) years each, unless amended and extinguished by a written instrument approved by the Declarant and Forest City Stapleton, Inc., and/or its successors and/or assigns and recorded in the Records. If Declarant releases its amendment or extinguishment rights under this section, or ceases to operate or exist, any such written instrument shall no longer require Declarant's approval.

Section 6.8 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, SDC Design, Inc., the Board, any director of the Board, the DRC or any member of the DRC, nor any officers, directors, partners, or employees of the Declarant or any other Person shall be liable, except for wanton and willful act or omissions, for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of Plans or Specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, SDC Design, Inc., the Board, any director of the Board, the DRC or any member of the DRC, any officers, directors, partners, or employees of the Declarant or any other Person or such committees or officers reasonably believed to be within the scope of their respective duties.

Section 6.9 Non-Liability for Certain Changes and Amendments. Neither the Declarant, so long as Declarant has not released this right or no longer exists or no longer is operating, nor its express successors and/or assigns, or Forest City Stapleton, Inc., shall be liable to, or subject to injunction by, any Owner or to one another in the event that any change in zoning or any change in development rights of the property within the Project Area is sought or obtained, or in the event that any subdivision plat amendment or change in density shall be sought and obtained.

Section 6.10 Governing Law. This Design Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Design Declaration in the Records.

Section 6.11 Exhibits. All exhibits and riders attached hereto shall be deemed incorporated herein by this reference unless stated otherwise.

Section 6.12 Liberal Interpretation. The provisions of this Design Declaration shall be liberally construed to effectuate their purposes of creating aesthetic equitable servitudes for the development of the Real Property and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Design Declaration.

Section 6.13 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 6.14 Captions. All captions and titles used in this are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

IN WITNESS WHEREOF, the Declarant has caused this Design Declaration to be executed by its duly authorized agent this ____ day of _____, 20__.

STAPLETON DEVELOPMENT CORPORATION,
a Colorado nonprofit corporation

By: _____
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 20__, by _____, as President of Stapleton Development Corporation, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

CONSENT

The undersigned, does hereby consent to, ratify, confirm, adopt and approve the provisions of the foregoing Design Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent this _____ day of _____, 20____.

Forest City Stapleton, Inc.

By: _____
Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 20____, by _____, as Authorized Agent of Forest City Stapleton, Inc.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

EXHIBIT A

INITIAL REAL PROPERTY

[Insert legal description of the Project Area]

EXHIBIT B

PROPERTY WHICH MAY BE ADDED TO THE DESIGN DECLARATION

[Insert illustration of Project Area]

AFTER RECORDING RETURN TO:

ORTEN & HINDMAN, P.C.
11901 W. 48th Avenue
Wheat Ridge, CO 80033-2166
Attn: JCMO