

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
MOUNTAIN TERRACE TOWN HOMES

GRAND COUNTY, COLORADO

RIVER ROCKS DEVELOPMENT, LLC
AND
HOME OWNER

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This Declaration is made and entered into by River Rocks Development, LLC, hereinafter referred to as “Declarant”:

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the County of Grand, State of Colorado which is described on **Exhibit 1** attached hereto and incorporated by reference, hereinafter referred to as the “Property”; and

WHEREAS, Declarant has or shall have constructed five buildings on the Property which buildings shall consist of a total of 10 separately designed Units; and

WHEREAS Declarant desires to create a Common Interest Community on the real estate described in **Exhibit 1**, the name of which is **Mountain Terrace Town Homes**, in which portions of the real estate described in **Exhibit 1** will be designed for separate ownership and the remainder of which will be designated for common ownership solely by the owners of the separate ownership portions; and

WHEREAS Declarant has caused to be incorporated under the laws of the State of Colorado **Mountain Terrace Homeowners Association**, a nonprofit corporation for the purpose of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land encompassing the Property and shall be a burden and a benefit to the Declarant, its grantees, successors and assigns, and any person acquiring or owning an interest in the real property and improvements thereon which is subject to this Declaration, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
SUBMISSION AND DEFINITIONS

Section 1.1 Submission of Real Estate: Declarant hereby submits the real estate to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the “Act”). In the event that the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

Section 1.2 Names:

- (a) Planned Community: The name of the Common Interest Community (Planned Community) is **Mountain Terrace Town Homes**;
- (b) Association: The name of the Association is the **Mountain Terrace Homeowners Association**

Section 1.3 Real Estate: The Common Interest Community (Planned Community) is located in the County of Grand, State of Colorado. The real estate of the Common Interest Community (Planned Community) is as described in Exhibit 1 hereinabove and referred to herein as the Property.

Section 1.4 Definition of Terms: Each term not otherwise defined in this Declaration or in the plat or map shall have the meanings specified or used in the Act. As used in this Declaration, the terms hereinafter set forth shall have the following meanings:

- (a) “Articles” means the articles of incorporation of the Association.
- (b) “Association” means Mountain Terrace Homeowners Association, a Colorado nonprofit corporation, its successors and assigns, organized under C.R.S § 38-33.3-301, the Articles and

Bylaws of which, as hereinafter defined, along with this Declaration, shall govern the administration of the Project; the members of which shall be all of the Owners.

- (c) "Building" means one or more of the building improvements erected within the Common Interest Community.
- (d) "Bylaws" means the bylaws of the Association.
- (e) "Common Elements" shall mean that any portion labeled "OUTLOT A", excluding lots 1 through 10, as set forth on the Final Plat and or As-built Plat.
- (f) "Common Expenses" means and includes:
 - (1) All sums lawfully assessed against the Owners by the Board, as hereinafter defined;
 - (2) Expenses or liabilities incurred in the administration, maintenance, repair or replacement of the Common Elements, including assessments for the creation and maintenance of reserves;
 - (3) Expenses declared Common Expenses by provisions of this Declaration and the Bylaws; and
 - (4) Expenses agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least a sixty-seven percent (67%) share of the Common Elements.
- (g) "Common Interest Community" as the term is used herein or in C.R.S. § 38-33.3-101, *et seq.*, shall mean the Project as defined in this Declaration, known as Mountain Terrace.
- (h) "Declarant" means any person or group of persons acting in concert who:
 - (1) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or
 - (2) Reserves or succeeds to any special Declarant right.
- (i) "Declaration" means any recorded instruments however denominated, that create a Common Interest Community, including any amendments to those instruments and also including, but not limited to, plats and maps.
- (j) "Executive Board" or "Board" means the governing body of the Association.
- (k) "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.
- (l) "Lot" shall mean and refer to a physical portion of this Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined pursuant to this Declaration (commonly referred to as a townhome).
- (m) "Managing Agent" means the independent contractor employed by the Board to perform the management and operational functions of the Project.
- (n) "Plat" means that part of the Declaration that depicts all or any portion of a Common Interest Community, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in the County of Grand, State of Colorado.

- (o) "Owner" means the Person or Persons, as hereinafter defined, owning a Lot in fee simple including the Declarant so long as any Lot, as defined herein, is owned by Declarant, and including contract sellers, but excluding those having such interest merely as security for the performance of obligations.
- (p) "Person" means an individual, corporation, partnership, combination, association, trustee and or any other legal entity.
- (q) "Project" means this Common Interest Community and all of its constituent parts, including the Property, the Common Elements, the Lots, the Buildings and the improvements submitted pursuant to this Declaration.

Section 1.5 Plat: The Plat shall be recorded in the office of the Clerk and Recorder of the County of Grand, Colorado and may be supplemented or amended as necessary to show all Lots and Common Elements subject hereto, and otherwise in compliance with the requirements of C.R.S. § 38-33.3-209.

Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner to: amend the Plat and supplements thereto; to conform the Plat to the actual location and dimensions of any of the constructed improvements; to establish, vacate and relocate utility easements, access easements and parking spaces; and to establish Common Elements. In interpreting any and all provisions of this Declaration, the actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered in any deed or deed of trust, notwithstanding any minor deviations from the location of such Lot indicated on the Plat. Notwithstanding the foregoing, Declarant specifically does not reserve the right to change the overall plan of the Project or to decide not to construct planned Lots or improvements to the Common Elements.

ARTICLE II LOTS

Section 2.1 Division Into Lots: The Project is hereby divided into Ten (10) Lots. This is the maximum number of Lots the Declarant reserves the right to create and develop.

Section 2.2 Prior to Recording of Declaration and Plat: Every instrument for sale of a Lot entered into prior to the recording of the Plat and this Declaration may legally describe a Lot by its Identifying Number, followed by the words "Mountain Terrace," with further reference to the Plat thereof and this Declaration to be recorded and upon the legal description of such Lot as set forth in Exhibit 3 hereto. Upon recordation of the Plat and this Declaration, such description shall be conclusively presumed to relate to the Lots therein described. No instrument for sale executed prior to the recording of the plat and declaration shall be legally binding upon a purchaser unless it has been disclosed at or at prior to the time of execution that the legal description of the plat and subject lot have not been approved by Grand County and will not be recognized as legal parcel of real property until such approvals are received and recorded.

Section 2.3 After Recording of Declaration and Plat: After the Declaration and Plat have been filed for record in the real estate records of the County of Grand, State of Colorado, every instrument affecting title to a Lot may describe the Lot by its Identifying Number, in substantially the following form:

Lot No. _____, Mountain Terrace, as defined in the Declaration and Plat for Mountain Terrace recorded in the real estate records of the Clerk and Recorder of the County of Grand, Colorado, on _____, 2007, at Reception No. _____, in said records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect title to a Lot. Each such description shall be construed to include a nonexclusive easement for ingress and egress throughout and for the use of the Common Elements and other easements and rights appurtenant to such Lot.

- (a) Every deed, lease, Mortgage, will or other instrument affecting title to a Lot which legally describes said Lot in the manner set forth in Section 2.6(b) hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Lot. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout and for use of the Common Elements and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

Section 2.4 Supplements and Amendments: The reference to the Plat or the Declaration in any instrument shall be deemed to include any supplement or amendment to either, without specific reference thereto.

Section 2.5 No Partition: The Common Elements shall be owned by the Association and no Owner or any other person shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance of a Lot, each Owner shall be deemed to specifically waive any right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements and this Section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to reimburse the Association for the Association's costs, expenses and attorney fees in defending any such action. Notwithstanding the foregoing, any Co-Owner of a Lot may sue for partition among the Co-Owners of such Lot, provided such partition shall take the form of a sale of the entire Lot and a subsequent division of the proceeds of the sale among such Co-Owners. Partition in kind shall not be allowed and each Owner hereby expressly waives any and all right of and to partition in kind.

Section 2.6 Title: Title to a Lot shall be held in fee simple and may be held and owned by more than one person as joint tenants or as tenants in common or in any other relationship recognized under the laws of the State of Colorado.

Section 2.7 Certain Work Prohibited: No Owner shall undertake any work in his Lot which would jeopardize the soundness or safety of the Project, reduce the value thereof or impair an easement or hereditament thereon or thereto, nor shall any Owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio, or porch which is accessible from, associated with and which adjoins a Lot, without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such enclosure and with respect to the materials, plans and specifications for such enclosure. Structural alterations shall not be made by an Owner to the exterior portions of his Lot or to the Building(s) or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Building(s) without the prior written approval of the Board (which approval may be withheld for any reason) first having been obtained. No owner shall increase the number of bedrooms depicted for that town home unit at the time of final plat or as-built plat approval.

Section 2.8 Use of Lots: No Lot shall be used at any time for any business or commercial activity, except as follows: (1) the Owner thereof may lease or rent such Lot for private residential living purposes (subject to paragraph 12.1 hereafter); (2) Declarant or its nominee or agents may use any Lot(s) as a model or sales Lot or as a rental or construction office until all Lots owned by Declarant in the Project are conveyed by Declarant; sales, business, rental offices may not be maintained on common elements or open space after final construction. No building other than those shown on final plat or as-built plat may be erected at any time on the common elements, and the space required for any such structures built shall be removed from the open space calculation for the development, and (3) the Association shall have the right, but not the obligation, to purchase, own, or lease any Lot for a manager's residence or office, or building superintendent or engineer, and the Association may also maintain offices, within the Common Elements.

Section 2.9 Occupancy of Lots: Each Owner shall be entitled to the exclusive ownership and possession of his Lot in accordance with all applicable County of Grand municipal ordinances and zoning requirements; provided, however, each Lot shall be occupied and used only as and for residential use as a single-family residential dwelling. The number of bedrooms shall not exceed the number depicted for the town home at the time of final plat or as-built plat approval. No Lot shall be occupied for living or sleeping purposes by

more persons that it was designed to accommodate. For purpose of the foregoing, each Lot shall be deemed to have been designed to accommodate a maximum of two permanent occupants per bedroom or other space within a Lot designed primarily for the purpose of sleeping.

Section 2.10 Owner's Maintenance Responsibility: For purposes of maintenance, repair, alteration, and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the interior and exterior walls, the paneling, wallpaper, paint, wall and floor tile, and flooring, making up the finished surfaces of the perimeter walls, ceilings and floors within the Lot and the Lot's doors and windows, including any patio, balcony, yard or deck enclosure. No Owner shall, however, make any changes or alterations to any Common Elements. In addition to the stated prohibited changes/alterations, no owner shall increase the number of bedrooms in any townhome depicted for that townhome at the time of final plat or as-built plat approval. Each Owner shall have the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition the interior of his Lot, including the fixtures, doors and windows thereof and the improvements affixed thereto, and such other items and areas as may be required in the Bylaws. Also, an Owner shall maintain, clean and keep in a neat and clean condition the fireplace within his Lot, the deck, yard, porch and/or patio areas adjoining and/or leading to a Lot, if any. All fixtures, appliances and equipment installed within a Lot commencing at a point where the utilities enter the Lot shall be maintained and kept in repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Board or the Managing Agent may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this section shall be the sole expense of said Owner.

Determination of whether such repair or maintenance is the obligation of the Association shall rest solely with the Association, which shall have sole responsibility for determining the kind and type of materials used in such repair and maintenance.

Section 2.11 Compliance with Provisions of Declaration, Articles and Bylaws of the Association: Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws, and the decisions, rules, regulations and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorney fees, maintainable by the Managing Agent or Executive Board in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. Aggrieved Owners shall also have rights of action against the Association.

Section 2.12 Right to Mortgage: Any Owner shall have the right from time to time to encumber its Lot by a Mortgage and may create Mortgages junior to the lien of a First Mortgage on his Lot; provided, however, that (i) any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien(s) for Common Expense Assessments and other obligations created by this Declaration, the Articles and the Bylaws and (ii) that the Mortgagee under any such junior Mortgage shall release, for the purpose of restoration of any improvements upon the Project, all of its right, title and interest in and to the proceeds of any insurance policies obtained by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of the Association and if not so furnished, the same may be executed by the Association, as attorney-in-fact for such junior Mortgagees.

- (a) Protection of Mortgagee: No violation, breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage, taken in good faith and for value; nor shall such violation, breach, failure or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage or result in any liability, personal or otherwise, of any First Mortgagee subject to the priorities of C.R.S. § 38-33.3-316. The priority of any lien for Assessments pursuant to C.R.S. § 38-33.3-316(b)(I) of the Act shall not include any fees or costs related to the collection of any such unpaid Assessments. Any purchaser at foreclosure under a First Mortgage shall, however, take title subject to this

Declaration; provided, however, violations, breaches of or failures to comply with any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed the breaches or violations hereof or failures to comply herewith by such purchaser, its heirs, personal representatives, successors or assigns.

- (b) Consent of Eligible Mortgagees: Any Eligible Mortgagee who fails to submit a response to any written request for its consent or approval within thirty (30) days after receipt thereof by registered or certified U.S. Mail, return receipt requested, shall be conclusively deemed to have consented to and approved such matter.

Section 2.13 Right to Combine Lots: Any Owner may physically combine the area or space of one Lot with the area or space of one or more adjoining Lots, all of which Lots are owned by such Owner, pursuant to C.R.S. § 38-33.3-213, and with the written consent of any First Mortgagee having an interest in said Lots. Any joining of lots would need to be approved by and in compliance with the Grand County land use and building codes and receipt of approvals from Grand County are required when combining lots, in addition to consent of the first mortgagee. For the duration of any such combination, any walls, floors or other structural separations but for the combination of such Lots, shall be deemed to be Common Elements, provided, however, that such walls, floors or other structural separations of such space shall automatically revert to their original status if the combined Lots thereafter become subject to separate ownership. Upon any combination of Lots as provided for herein and for the duration thereof, the Owner of the combined Lots shall be entitled to cast one (1) vote for each of the combined Lots. Such Owner shall be personally obligated for each of the separate Common Expense Assessment obligations of each of such combined Lots.

Section 2.14 Party Wall: The Common Walls between the Lots shall be party walls in all respects and the Owners shall have the right to jointly use any such Common Walls which are located on or bordering on their Lots, subject to the terms and conditions hereinafter set forth. Each Owner shall be deemed to own the necessary easements for the perpetual lateral and subjacent support of the Common Walls with equal rights of joint use. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2.15 Maintenance of Party Wall: The respective Owners of the Lots shall equally bear the cost of maintaining any Common Walls located on or bordering on their property and in the event that any such Common Wall should be injured or damaged by a cause other than the intentional act or negligence of any Owner of a Lot, the same shall be repaired or rebuilt at the equal cost of the Owners of the Lots sharing that Common Wall, provided that any sum received from insurance against such injury or damage shall first be applied to such repair or rebuilding. Each Owner shall be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Common Walls located within the improvements on such Owner's Lot.

Section 2.16 Maintenance of Roof: The Owners of the Lots shall maintain, at their own expense, the roofs over the improvements on their respective Lots in good repair and in the original materials and colors unless otherwise agreed upon in writing by a majority of the Lot Owners. If the Owners of a common roof jointly repair the roofs, then the cost of such repair shall be apportioned according to the relative area over each Lot; e.g. if the cost of the repair of the roof common to Lot 1 and Lot 2 is \$1,000.00 and 70% of the repaired roof is over Lot 1, the Owner of Lot 1 shall pay \$700.00 of the repair, and the Owner of Lot 2 shall pay \$300.00. Any sum received from insurance against such injury or damage shall first be applied to such repair or rebuilding. If the Owners are unable to agree as to the necessity of a major repair or replacement of the roof, the dispute shall be submitted to arbitration as described below in **Paragraph 19**.

The Owners of the Lots shall maintain, at their own expense, the walkways, gutters and downspouts on their respective Lots in good repair. If the Owners of a walkway, gutter or downspout jointly repair such item(s), then the cost of such repair shall be apportioned according to the relative area over each Lot; e.g. if the cost of the repair of a gutter common to Lot 1 and Lot 2 is \$1,000.00 and 70% of the repaired gutter is located on Lot 1, the Owner of Lot 1 shall pay \$700.00 of the repair, and the Owner of

Lot 2 shall pay \$300.00. Any sum received from insurance against such injury or damage shall first be applied to such repair or rebuilding.

Section 2.17 Negligent Acts: If the negligence or intentional act of the Owner of any Lot shall cause damage to any Common Wall, roof, walkway, driveway gutter and/or downspout, then such Owner shall bear the entire cost of repair or rebuilding of said Common Wall, roof, walkway, driveway, gutter and/or downspout.

Section 2.18 Exposure to the Elements: Notwithstanding any other provision of this Declaration, an Owner who by his or her negligence or willful act causes a Common Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 2.19 Alterations: No Owner of any of the above-described Lots shall alter or change any Common Wall in any manner, except as to interior decoration not affecting the structure of such Common Wall, or after reasonable notice to the other Owner, to repair or restore sewer, water or other utilities located within the party wall, or to repair the party wall in accordance with this agreement subject to the obligation to restore the party wall to its previous cosmetic and structural condition, at such Owner's sole expense. Such Common Walls shall always remain in the same location as now exists, unless otherwise agreed in writing by the Owners of the affected Lots on which said Common Walls are located. All fences and walkways shall remain in their current location unless otherwise agreed by all Owners on whose property such fence borders or by all Owners having an ownership interest or easement over such walkway.

ARTICLE III COMMON ELEMENTS

Section 3.1 Conveyance to Association: Declarant does hereby bargain sell, convey and grant to the Association all right, title and interest in and to all of the Common Elements of the Project as defined in this Declaration and warrants same to be free and clear of all liens and encumbrances, save and except taxes for the year 2006 and subsequent years and except for and subject to the "Permitted Exceptions": (i) the terms and conditions of this Declaration; (ii) easements, reservations and restrictions of record; or (iii) easements and restrictions as shown on the Plat.

Section 3.2 Right of Use: Each Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association may from time to time adopt Rules and Regulations governing the use of the Common Elements. Such Rules and Regulations shall be uniform and non-discriminatory and further the purposes of this Declaration. Each Owner, by the acceptance of a deed or other instrument of conveyance of a Lot, shall be conclusively deemed to agree to be bound by all such Rules and Regulations. No part of the Common Elements shall be subject to a lease between the Association and another party.

ARTICLE IV EASEMENTS

Section 4.1 Owners' Easements for Access, Support and Utilities: Each Owner shall have a non-exclusive easement for access between his Lot and roads and streets adjacent to the Project and the roads, streets and driveways in the Project, over and on the halls, corridors, stairs, walks, bridges and exterior access and other easements which are part of the Common Elements. Each Owner shall have a non-exclusive easement in, on and over the Common Elements, including the Common Elements within the Lot of another Owner, for horizontal and lateral support his Lot, for utility service to that Lot, including but not limited to, water, sewer, gas, electricity, telephone and television service and for the release of smoke, arising from any fireplace within a Lot, through the flue leading therefrom. An exterior section of each building shall be allocated for the use of installation of utilities such as electrical, gas, telephone and cable for telephone and or internet services. Such utilities will be delivered to other attached units via the utility easement set forth in the final plat of the development. Such area shall be accessible to any and all utility companies for purpose of installation and or repair of such utilities. Access to such area shall not be

obstructed at any time. This area allocated on any building within the development shall be considered as part of the utility easement

Section 4.2 Easement for Encroachments: If any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, a valid easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Elements, or upon another Lot, the Owner of that Lot shall and does have a valid easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Lot for purposes of Marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building(s), by error in the Plat, by settling, construction, rising or shifting of the earth, or by changes in position caused by repair, reconstruction or movement of the Project or any part thereof.

Section 4.3 Easements in Lots for Repair, Maintenance and Emergencies: Some of the Common Elements are or may be located within a Lot or may be conveniently accessible only through a particular Lot. The Association, Board and Managing Agent shall and each Owner shall have an easement, which may be exercised for any Owner by the Association, the Board or the Managing Agent, as his agent, for access through each Lot and to all Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein necessary to prevent damage to the Common Elements or to another Lot or for making repairs or replacements. Non-emergency repairs shall be made only during regular business hours or business days after twenty-four (24) hours notice to the occupant of the Lot wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected Lot shall be warned of impending entry as early as is reasonably possible. Damage to the interior or any part of a Lot resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Lot, at the instance of the Association, the Board or the Managing Agent, shall be a Common Expense of all the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or improvements. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage.

Section 4.4 Easements Deemed Appurtenant: The easements, uses and rights herein created for an Owner shall be appurtenant to the Lot of that Owner and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

Section 4.5 Emergency Easement: A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter servicing the Project, to enter upon all streets, roads and driveways located in the Project, and upon the Property, in the performance of their duties.

Section 4.6 Other Easements: There are no other easements other than those depicted on the Plat recorded herewith.

Section 4.7 Indemnification: Except as provided for herein, each Owner shall indemnify and hold the other Owner harmless from and against any and all liability for injury and damage to the other's real or personal property, or to any person or persons, in the event such injury or damage shall result from, arise out of, or be attributable to any action pursuant to this Declaration.

ARTICLE V
THE ASSOCIATION

Section 5.1 General Purposes and Powers: The Association, through the Board or the Managing Agent, shall perform functions and hold and manage the Property as provided in this Declaration so as to further the interests of Owners of Lots in the Project. It shall have all powers necessary or desirable to effectuate such purposes.

Section 5.2 Membership: The Owner of a Lot shall automatically become a member of the Association. Said membership is appurtenant to the Lot of said Owner and the ownership of the membership for a Lot shall automatically pass with fee simple title to the Lot. Each Owner shall automatically be entitled to the benefits and subject to the membership for his Lot. If the fee simple title to a Lot is held by more than one Person, each Owner of a Lot shall be member of the Association. Memberships in the Association shall be limited to Owners of Lots in the Project.

Section 5.3 Executive Board: The affairs of the Association shall be managed by an Executive Board which may by resolution delegate any portion of its authority to an executive committee, or to a director or Managing Agent for the Association. There shall be not less than three (3) nor more than ten (10) members of the Executive Board, the specific number to be set forth from time to time in the Bylaws, all of whom shall be Owners elected by Owners. Regardless of the number of members of the Board, the terms of at least one-third (1/3) of such Board shall expire annually. Declarant may appoint and remove officers and members of the Executive Board. Notwithstanding the foregoing, Declarant control of the Executive Board shall terminate no later than sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Lot Owners other than a Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised, whichever first occurs. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Lot Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Lot Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Lot Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the executive board must be elected by Lot Owners other than the Declarant.

Section 5.4 Termination of Declarant Control: Within sixty (60) days after the Lot Owners other than the Declarant elect a majority of the members of the executive board, the Declarant shall deliver to the Association all property of the Lot Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- (a) The original or a certified copy of the recorded declaration as amended, the Association's articles of incorporation, if the Association is incorporated, bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;
- (b) An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;
- (c) The Association funds or control thereof;
- (d) All of the Declarant's tangible personal property that has been represented by the Declarant to be property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

- (e) A copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the improvements in the common interest community;
- (f) All insurance policies then in force, in which the Lot Owners, the Association, or its directors and officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community;
- (h) Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one (1) year prior to the date on which Lot Owners other than the Declarant took control of the Association;
- (i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- (j) A roster of Lot Owners and mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- (k) Employment contracts in which the Association is a contracting party;
- (l) Any service contract in which the Association is a contracting party or in which the Association or the Lot Owners have any obligation to pay a fee to the person performing the services.

Section 5.5 Voting of Owners: The Owner or Owners of each Lot shall be entitled to one (1) vote for each such Lot owned by said Owner or Owners.

Section 5.6 Bylaws and Articles: The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by provisions of the Articles and Bylaws of the Association.

Section 5.7 Association as Attorney-in-Fact for Owners: The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence, as hereinafter provided and to grant utility easements through any portion of the Common Elements. The acceptance by any Person of any interest in any Lot shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it.

Section 5.8 Common Elements: The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements. This would include any common elements that are located within a lot. Without limiting the generality of the foregoing, said obligation shall include the keeping of such Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow as well as removing noxious weeds and any other materials from such Common Elements which might impair access to the Project or the Lots; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions betterments or improvements to or on the Common Elements.

Section 5.9 Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interest of all, some or any Owners on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include, as examples, the providing of surveillance or similar security services or the providing of garbage and trash collection services.

Section 5.10 Labor and Services: The Association (i) may obtain and pay for the services of a Managing Agent, for a term of three (3) years or less, terminable by either party upon ninety (90) days written notice without payment of a termination fee, who shall be an independent contractor to manage affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts; (ii) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration; and (iii) may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

Section 5.11 Declarant Control: The Declarant shall have all the powers reserved in C.R.S. § 38-33.3-303(5) to appoint and remove officers and members of the Executive Board.

Section 5.12 Property of Association: The Association may pay for, acquire and hold or lease real property and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family and Guests may use such property. Upon termination of the Common Interest Community and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. Each Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Lot.

Section 5.13 Association Right to Grant Utility Easements: The Association shall have the right to grant utility easements under, through or over the Common Elements which are reasonably necessary to the ongoing development and operation of the Project. The rights granted to the Association in this subparagraph shall only be used in the promotion of the collective best interests of the Owners.

Section 5.14 Audit: Any Mortgagee may have any audit of the Association's books and records performed at its own expense.

Section 5.15 Enforcement by Association: The Board may suspend any Owner's acting or voting rights in the Association or the right of the Owner to use the recreational facilities of the Project during any period or periods during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take justified action against any Owner to enforce compliance with such rules, regulations or other obligations herein or in the Bylaws mentioned or to obtain damages for noncompliance thereof, all to the extent permitted by law.

Section 5.16 Certificate: The Executive Board may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Executive Board, together with the identity and address of the Managing Agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

Section 5.17 Implied Rights: The Association shall have and may execute any right or privilege given to it expressly by this Declaration or the Articles or Bylaws, or reasonably to be implied from the provisions of said documents, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE VI ALLOCATED INTERESTS

Section 6.1 Allocated Interest: The Common Expense liability and votes in the Association allocated to each Lot are set forth in **Exhibit 2**.

Section 6.2 Determination of Allocated Interest: The interests allocated to each Lot are equal to a percentage of the whole derived by dividing the improved area of each Lot by the total improved area of all Lots in this Common Interest Community.

ARTICLE VII
COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 7.1 Assessment for Common Expenses:

- (a) All Owners, including Declarant, shall be obligated to pay the annual assessments imposed by the Executive Board to meet the Common Expenses from and after the conveyance of the first Lot by Declarant. The assessments shall be made pro rata according to each Owner's interest in and to the Common Elements of the Project. Except as hereinbefore provided, the Limited Common Elements shall be maintained as Common Elements and Owners having the exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated Common Expenses shall be determined annually and shall be due monthly, in advance, on the first day of each month. The Executive Board shall prepare and deliver or mail to each Owner an itemized annual budget showing the various estimated or actual expenses for which the assessments are made. Contributions for assessments shall be prorated if the ownership of a Lot commences on a day other than the first (1st) day of the month. The assessments made for Common Expenses shall be based upon the annual requirements deemed to be such aggregate sum as the Executive Board shall from time to time determine is to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, which sum may include, among other things expenses of management; terms and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in Article IX hereafter; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collections; wages; water and sewer charges; legal and accounting fees; capital expenditures made by the Board in any one (1) calendar year; expenses and liabilities incurred by the Managing Agent or Executive Board under or by reason of this Declaration; deficits remaining from a previous period; and other costs or expenses relating to the Common Elements. Further, it shall be mandatory for the Board to establish, out of such annual assessments, a contingency or reserve fund for the repair, replacement and maintenance of the Common Elements that must be replaced periodically. The failure of the Executive Board to fix the assessment for any year shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay same. Any Owner or first Mortgagee may, **pursuant to C.R.S. 38-33-107**, inspect the Association's records of receipts and expenditures at any reasonable time during convenient weekday business hours, and upon ten (10) days' notice to the Executive Board or Managing Agent, if any, and upon payment of a reasonable fee, any Owner or Mortgagee of such Owner shall be furnished a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. At the end of any calendar year, the Executive Board may, but shall not be required to, refund to each Owner his proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses. Each Owner shall be obligated to pay all charges for any separately metered utilities servicing their Lot. All utilities that are master metered shall be a Common Expense hereunder.
- (b) The Common Expense Assessments of the Association shall be a continuing lien upon the Lot against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Lot recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A Lien under this paragraph is also prior to the security interests described in (b)(2) of this paragraph to the extent of an amount equal to the common expense assessments based on a periodic budget adopted by the Association under section 38-33.3-315(1), C.R.S., which

would have become due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this paragraph of an action or nonjudicial foreclosure either to enforce or to extinguish the lien. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, cancellation or forfeiture shall relieve any Lot from continuing liability for any Common Expense Assessments thereafter becoming due.

- (c) Subject to the limitation set forth in Section 7.3 hereafter, the Executive Board shall have the right during any calendar year to levy and assess against all of the Owners a special assessment for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as may be necessary to keep the Project as a first class residential property, including, without limitation, expenditures for capital improvements. Such special assessment shall be borne by the Owners in accordance with each Owner's interest in the Common Elements and shall be a lien on each Lot when levied and shall be due and payable as determined by the Executive Board.

Section 7.2 Assessment Reserves: The Association shall require an Owner, other than Declarant, to deposit with the Association (one time only) an amount not exceeding two (2) times the amount of the estimated monthly common assessment, which sum shall be held, by the Association, in a segregated account as a reserve and for working capital. Such a payment shall not be considered an advance payment of regular assessments and shall not relieve an Owner from making the regular monthly payment of the common assessment as the same comes due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee for any unused portion thereof.

Section 7.3 Special Assessments: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, or for a maintenance expense or any other expense properly incurred, provided that any such assessment shall have the approval of the Executive Board. The assessment may be vetoed by a vote of fifty-one percent (51%) of each class of Members who are eligible to vote at a meeting duly called for this purpose. All special assessments shall be made pro rata according to each Owner's interest in and to the Common Elements of the Project as set forth herein.

Section 7.4 Liens Against Lots - Removal From Lien - Effect of Part Payment:

- (a) No labor performed or materials furnished, with the consent or at the request of an Owner of a particular Lot, or his agent, shall be the basis for the filing of a lien pursuant to law against the Lot or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Lot to the Managing Agent or the Board in the case of emergency repairs. Labor performed or materials furnished for the Common Elements, if duly authorized by the Managing Agent or the Executive Board in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each of the Lots in the Project.
- (b) In the event a lien is effected against two or more Lots, the Owners of the separate Lots may remove their Lots from said lien by payment of the fractional or proportional amount attributable to each of the Lots affected. Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the Lot shall be released from the lien paid, satisfied or discharged. Partial

payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Lot not so released or discharged.

- (c) Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Lot of the Owner, or any part thereof, for labor performed or for materials furnished in work on such Owner's Lot. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorney fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

Section 7.5 Rate of Assessment: Both annual common expense and special assessments shall be fixed at such rates for all Lots sufficient to meet the expected needs of the Association.

Section 7.6 Lien for Non-Payment of Common Expenses: All sums assessed by the Board pursuant to any provision of this Declaration, including, without limitation, the share of Common Expenses chargeable to any Lot, shall constitute a lien on such Lot superior (prior) to all other liens and encumbrances, excepting only:

- (1) Tax and special assessment liens on the Lot in favor of any governmental assessing Lot, and
 - (2) All sums unpaid on the first Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance.
 - (3) Liens and encumbrances recorded before the recordation of the Declaration.
- (a) If any assessment shall remain unpaid after twenty (20) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the rate of eighteen percent (18%) per annum, and the Executive Board may impose a late charge on such defaulting Owner to cover the extra cost and expenses involved in handling such delinquent assessments.
 - (b) To evidence such lien the Executive Board or Managing agent shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Executive Board and shall be recorded in the office of the Clerk and Recorder of the County of Grand, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney fees. The Owner shall also be required to pay to the Association the monthly assessment for the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a Receiver to collect the same. The Executive Board shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey same. The assessment lien shall attach whether or not such notice is filed.
 - (c) Any party holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Lot, and upon such payment shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance, provided that any first Mortgagee who acquires title to and comes into possession of a Lot by foreclosure or by a deed in lieu thereof, or any purchaser at a foreclosure sale, shall acquire title to such Lot free and clear of any claims or lien for unpaid Common Expenses against such Lot which accrue prior to the time such holder acquires title to and comes into

possession of the Lot. Notwithstanding the foregoing, any first Mortgagee who acquires title in the manner stated in this paragraph (c), shall acquire title subject to any lien created under C.R.S. § 38-33.-316.

- (d) The Association shall, upon request, deliver written notice to the first Mortgagee of a Lot of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due, as well as, of any other default of an Owner hereunder known to the Association which is not cured within sixty (60) days.
- (e) Each Owner hereby agrees that the Association's liens on a Lot for assessments as hereinbefore described shall be superior to the homestead exemptions provided by C.R.S. 38-41-201, et. seq. and by 11 U.S.C. 522d(1), and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within the Project shall signify such grantee's waiver of the homestead rights granted in said section of the Colorado statutes and the United States Bankruptcy Code.
- (f) Any recorded lien for non-payment of the Common Expenses may be released by recording a Release of Lien executed by one of the Executive Board or other authorized agent of the Association.

Section 7.7 Owners' Obligations for Payment of Assessments: The amount of the Common Expenses and/or any special assessment assessed against each Lot shall be the personal and individual debt of the Owner or Owners thereof and a lien upon the Lot at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses and/or special assessments and costs of suit and attorney fees, shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses and / or any special assessment by waiver of the use or enjoyment of any of the General Common Elements or by abandonment of his Lot.

Section 7.8 Liability For Common Expenses Upon Transfer of a Lot:

- (a) Upon payment of a reasonable fee from any Owner or any Mortgagee or prospective grantee or Mortgagee of a Lot, the Association, by its Managing Agent or Executive Board, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Lot, the amount of the monthly payment, the amount of any assessment reserve on deposit with the Association and any credit for advanced payments for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith.
- (b) The personal obligation for all unpaid Common Expenses and / or any special assessments shall not pass to successors in title or interest unless assumed by them. Upon payment of a reasonable fee, and upon written request, any prospective grantee shall be entitled to a statement from the Managing Agent or Executive Board setting forth with respect to the subject Lot, the amount of the monthly payment on the unpaid Common Expenses, if any, with respect to the subject Lot, the amount of the monthly payment on the annual assessment, the date of that such monthly payment becomes due, the amount of any assessment reserve on deposit with the Association and any credit for advanced payments for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith. Unless such request for such a statement shall be complied with within ten days from the receipt thereof, the Lot conveyed shall not be subject to a lien for any unpaid assessments against the subject Lot.

ARTICLE VIII
DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

Section 8.1 Association as Attorney-in-Fact - Damage & Destruction - Obsolescence: This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its destruction, repair or obsolescence.

Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of the deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and stead for the purpose of dealing with the Project upon its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each Lot and the Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless eighty percent (80%) of the Owners, including one hundred percent (100%) of the affected Lot owners elect not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

- (a) In the event of damage or destruction to the Project to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).
- (b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners of the Project and their Lots. Such deficiency assessment shall be made pro rata according to each Owner's interest in the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each owner and a lien on his Lot and may be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Lot of any Owner refusing or failing to pay said deficiency assessment within the time provided, and the Association shall cause to be recorded a notice that the Lot of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Lot shall be used and disbursed by the Association, as attorney-in-fact, in the following order:
 - (1) For payment of the balance of the lien of any first mortgage;
 - (2) For payment of taxes and special assessment liens in favor of any assessing entity;

- (3) For payment of unpaid Common Expenses, including any deficiency assessment;
 - (4) For payment of junior Mortgagees and encumbrances in the order of and to the extent of their priority; and,
 - (5) The balance remaining, if any, shall be paid to the Owner.
- (c) If the Project is destroyed or damaged, the Board shall adopt a plan for the repair and reconstruction of the Project, and all Owners shall be bound by the terms and provisions of such plan, unless the Owners representing an aggregate ownership interest of eighty percent, or more, of the Lot Owners including one hundred percent (100%) of the affected Lot owners, and all of the first mortgagees vote not to adopt such plan within one hundred (100) days after the damage or destruction. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damages, as well as the proceeds of a special assessment to be made against all of the Owners of the Project and their Lots. Any assessment made in connection with such plan shall be made pro rata according to each Owner's percentage interest in the Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his Lot and may be enforced and collected as is provided herein above. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Lot of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Lot of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Lot shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this section.
- (d) If the Project is damaged or destroyed and if the Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Lots, including one hundred percent of the affected Lot owners, and all of the first mortgagees vote not to adopt a plan for repair and reconstruction, then the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the Bylaws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Lots. If such policy or policies do not set forth the interests of the Owners, the insurance settlement proceeds shall be divided according to each Owner's interest in and to the Common Elements, as set forth on **Exhibit 2** hereto. Each such account shall be in the name of the Association, and shall be further identified by the Lot designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from the account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b) (1) through (5) of this section. The provisions contained in this subparagraph shall not hinder the protection given to a first Mortgagee under a mortgagee endorsement.
- (e) The Owners representing an aggregate ownership interest of sixty six and two thirds percent (66 2/3%), or more, of the Lots may agree that the Lots are obsolete and adopt a plan

for the renewal and reconstruction, which plan shall have the approval or consent of all of the first Mortgagees. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, then the expenses thereof shall be payable by all of the Owners as Common Expenses provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the adoption of such plan that his or its Lot shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen (15) days within which to cancel such plan. If such plan is not canceled then the Lot shall be purchased by the Association according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notified the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in the subparagraph shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with him another independent appraiser. If the two (2) appraisers designated by the parties, or selected pursuant hereto in the event of the default of a party, are unable to agree, they shall appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two (2) independent appraisers and from the names of the four (4) persons so nominated one (1) shall be drawn by lot by any judge of any court of record in Colorado and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two (2) appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraphs (b) (1) through (5) of this section.

- (f) The Owners representing an aggregate ownership interest of sixty six and two thirds percent ($66 \frac{2}{3}\%$), or more, of the Common Elements may agree that the Lots are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval or consent of every first Mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat, the Articles and the Bylaws. The sales proceeds shall be apportioned between the Owner on the basis of each Owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account shall be in the name of the Association, and shall be further identified by the Lot designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this section.

Section 8.2 Condemnation:

- (a) Consequences of Condemnation: If at any time or times during the continuance of the Common Interest Community pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this paragraph shall apply.

- (b) Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.
- (c) Complete Taking: In the event the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Common Interest Community pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements.
- (d) Partial Taking: In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Common Interest Community ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and other proceeds, and shall apportion the amounts so allocated among the Owners as follows:
 - (1) the total amount allocated to severance damages shall be apportioned to those Lots which were so taken or condemned
 - (2) the respective amounts allocated to the taking of, or injury to, a particular Lot and / or improvements an Owner had made within his own Lot shall be apportioned to the particular Lot involved, and
 - (3) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances.
- (e) The total amount allocated to taking of, or injury to, the Common Elements shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award made pursuant to this subparagraph shall be made by checks payable jointly to the Owners and their first Mortgagees.

- (f) Distribution: The Association shall as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in Section 8.1 of this Declaration.
- (g) Mortgagee Notice: The Association shall give timely written notice to each first Mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify said first Mortgagee in the event of the taking of all or any part of the Common Elements.
- (h) Reorganization: In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute said documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership and assessment later determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration.

ARTICLE IX

INSURANCE

Section 9.1 Authority to Purchase; Notice:

- (a) Except as otherwise provided in Section 9.4 hereof, all insurance policies relating to the Property shall be purchased by the Executive Board. The Executive Board, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Executive Board shall promptly furnish to each Lot owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association. Commencing not later than the time the first conveyance of a Lot to a person other than a Declarant, the Association shall maintain, to the extent reasonably available:
- (1) Property insurance on the common elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies;
 - (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the common elements insuring the Board, the Lot owners' Association, the management agent, and their respective employees, agents, and all person acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Lot Owner and Board member. The Lot Owners shall be included as additional insureds but only for claims and liabilities arising in connection with ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.
- (b) Each such policy shall provide that:
- (1) Each Lot Owner is an insured person under the policy with respect to liability arising out of such Lot Owner's membership in the Association;
 - (2) The insurer waives its rights to subrogation under the policy against any Lot Owner or member of his household;
 - (3) No act or omission by any Lot Owner, unless acting within the scope of such Lot Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
 - (4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
 - (5) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Executive Board, the managing agent, Owners and all Mortgagees.
- (c) The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for (or waive any rights with respect to) warranty claims.

- (d) All policies of insurance shall be written by reputable companies licensed to do business in the State of Colorado.
- (e) Deductibles: If, due to the act or neglect of an Owner or such Owner's Guests or family, loss or damage shall be caused to any person or property, including the Project or any Lot therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner, after notice and hearing, as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorney fees) shall be secured by a lien on the Lot of such Owner as provided hereinabove for the assessments or other charges.
- (f) If any Lot Owner or employee of the Association controls or disburses funds of the Common Interest Community for the purpose of managing the Common Interest Community, the Association shall obtain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the Association.
- (g) Any person employed as an independent contractor by the Association for the purposes of managing the Common Interest Community must obtain and maintain fidelity insurance in an amount not less than the amount specified in paragraph 9.3(f) above, unless the Association names such person as an insured employee in a contract of fidelity insurance, pursuant to paragraph 9.3(f) above.

Section 9.2 Physical Damage Insurance:

- (a) Each Lot Owner shall obtain and maintain at all times a blanket "all-risk" insurance policy against loss or damage by fire and such other hazards as are normally covered under "standard" coverage in an amount not less than the full replacement value of the improvements located on that Owner's Lot..
- (b) Such policy shall also provide:
 - (1) A waiver of any right of the insurer to repair, rebuild or repair any damage or destruction, if a decision is made not to do so;
 - (2) The following endorsements (or equivalent): (i) An endorsement with language to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Lot owner or their agents when such act or neglect is not within the control of the insured, or the Lot owners collectively; nor by any failure of the insured, or the Lot owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Lot owners collectively, have no control; (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes". (iv) "Increased cost of construction"; (v) "condominium replacement cost"; and (vi) "agreed amount" or elimination of coinsurance clause; and
 - (3) That any "no other insurance" clause expressly exclude individual Lot owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual Lot owner's policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Executive Board hereunder provide for or be brought into contribution with insurance purchased by individual Lot owners or their Mortgagees, unless otherwise required by law.

- (c) Each Owner, within thirty (30) days of request by another Owner or the Board, shall provide evidence of such insurance. Each Owner shall obtain a provision in their respective insurance policies providing that the policy cannot be canceled or modified unless thirty (30) days prior written notice is given to the other Owner.

Section 9.3 Other Insurance: The Executive Board shall obtain and maintain:

- (a) Adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the managing agent. Such fidelity bonds shall:
 - (1) Name the Association as an obligee;
 - (2) Be written in an amount not less than one-half the total annual Common Interest assessments for the year or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and
 - (3) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- (b) If required by any governmental or quasi-governmental agency, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;
- (c) Worker's Compensation Insurance – The Association shall maintain adequate Worker's Compensation Insurance to the extent necessary to meet the requirements of law (including a voluntary employers endorsement and an "all states" endorsement);
- (d) Director's and Officer's Liability Insurance - The Association shall maintain adequate liability coverage to protect against any negligent acts on the part of directors or officers of the Association.
- (e) Bodily Injury and Property Damage - Bodily injury and property damage liability insurance in such limits as the Board or Managing Agent may from time to time determine, but not in an amount less than \$50,000 per injury, per person, per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Property. All liability insurance shall name the Association, the Board, the Managing Agent, the Declarant, first Mortgagees, the Owners and the officers of the Association as insureds thereunder.
- (f) Miscellaneous - The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project including plate or other glass insurance and any personal property of the Association located thereon.
- (g)

Section 9.4 Other Insurance to be Maintained by Owners: An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, personal liability insurance coverage within each Lot shall be the responsibility of the Owner thereof. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

Insurance coverage on improvements and fixtures installed by an Owner and furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belonging to an Owner, and public liability coverage within each Lot shall be the sole and direct

responsibility of the Owner thereof, and the Executive Board, the Association and/or the Managing Agent shall have no responsibility therefor.

Section 9.5 General Requirements: All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Owners, first Mortgagees and the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first Mortgagees at least thirty (30) days prior to expiration of the then current policies.

ARTICLE X TAXATION

Section 10.1 Separate Taxation: Each Lot shall be deemed to be a parcel and shall be subject to separate assessment for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for taxes assessed against any Lot shall be recorded against that Lot. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot. In the event that such taxes or assessments for any year are not separately levied against the Lot of each Owner, but rather are levied against the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with the Allocated Expense Assessment and, in said event, such taxes or assessments shall be a Common Expense.

ARTICLE XI RESTRICTIONS

Section 11.1 General Plan: It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property which shall be binding on and inure to the benefit of the Owners of the Property, all thereof in order to enhance the value, desirability and attractiveness of the Property and promote the sale thereof.

Section 11.2 Restrictions Imposed: The Declarant hereby declares that all of the Property shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated upon and subject to the following provisions, conditions, limitations, restrictions, agreements and covenants.

Section 11.3 Animals. No animals, livestock, reptiles or birds shall be kept on any part of the Project, except that domesticated dogs whose weight does not exceed fifty-five (55) pounds, cats, birds or fish may be kept in a Lot, subject to all governmental animal ordinances and laws and subject to rules and regulations promulgated by the Association or Board in regard thereto, provided that they are not kept for any commercial purposes. An Owner is responsible for any damage caused by his animal(s) and shall be obligated to clean up after his animal(s) on the Project. No animals shall be allowed to remain tied or chained to any balconies, patios or other parts of the Project, and any such animal(s) so tied or chained may be removed by the Association or its agents.

Section 11.4 Property to be Maintained: Each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lots so that same are visible from any neighboring Lot or street, except as necessary during the period of construction. No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store any thing (except in designated storage areas) on or in any of the Common Elements; nor shall any Owner hang, erect, affix or place anything upon any of the Common Elements (except for decorative items within his Lot); and nothing shall be placed on or in windows or doors of Lots, which would or might create an unsightly appearance. Determination with respect to unsightly appearance shall be made by the Executive Board and shall be final.

Section 11.5 No Noxious, Offensive, Hazardous or Annoying Activities: No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare.

Section 11.6 Parking of Vehicles: Parking of any and all vehicles on the Project shall be subject to the rules and regulations of the Association.

Section 11.7 Restrictions on Parking and Storage: No part of the Project, including the public streets and private streets, drives, or parking areas, unless specifically designated by the Association therefor, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck, recreational vehicle, self-contained motorized vehicle, except as a temporary expedience for loading, delivery, emergency, etc. except that this restriction shall not restrict trucks or other commercial vehicles within the Project which are necessary for the construction or maintenance of the Common Elements.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation shall be made by the Executive Board and shall be final.

Section 11.8 Reservation of Special Declarant Rights: Declarant, its agents, employees and contractors hereby reserve the Special Declarant right to maintain during the period of any construction and/or sale of the Lots in the Project, upon such portion of the Project as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required or incidental to the construction, sale or rental of Lots, including without limitation, a business office, storage area, construction yards, signs, model Lots, sales office, construction office, rental office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots. At no time after construction is complete, will sales, business, or any other offices be permitted unless the plat is amended or the asbuilt plat depicts such buildings, which may affect open space calculations. In addition, Declarant, its agents, employees and contractors reserve the special Declarant right to ingress and egress over the Common Elements as in Declarant's discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees and contractors reserve the special Declarant right to ingress and egress in and through all Lots during the period of the construction and/or sale of the Lots for the purpose of any required or desired refurbishment, construction, maintenance or repair of such Lots or the Building, or any part thereof. The Declarant, its agents, employees and contractors reserve the following other special Declarant rights: the right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with this Declaration and the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration.

Section 11.9 Limitation on Special Declarant Rights: Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the period of time specified by the Act.

Section 11.10 Restriction on Signs: No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Lots therein and for the purposes of resale of Lots. So long as any Lot owned by Declarant in the Project remains unsold, no Owner shall be permitted to place any sign on the Project or on his Lot or on any Building advertising his Lot for sale or lease.

Section 11.11 No Violation of Rules: No Owner and no Owner's Guests shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Lots, the use of

general or limited Common Elements, or otherwise. The Board may impose a fine on any Owner for each violation of such rules and regulations by such Owner, his family, tenants or Guests.

Section 11.12 Exterior Appearance of Curtains in Lot: All curtains or blinds in each Lot shall be white or lined with white material so as to appear white from the Building exterior.

Section 11.13 Use of Charcoal or Gas Grills: The use of any barbecue cookers, whether charcoal or compressed gas, inside buildings, on roofs, or on balconies, above the first floor, attached to multiple family dwellings of three or more living Lots located one above the other, is prohibited. This prohibition shall not be applicable when:

- (a) a private balcony is served by an outside stairway, and only such stairway is used to transport the propane container;
- (b) the barbecue cooker is powered by electricity;
- (c) the total container capacity of the barbecue cooker is one pound or less of L.P. gas. Two extra one-pound L.P. gas containers may be stored on the balcony;
- (d) the barbecue cooker is properly installed and supplied by the building's natural gas system.

Outside corridors used to access dwelling Lots or common areas are not considered balconies and shall be kept clear at all times. This provision is intended to incorporate certain amendments to the 1994 Uniform Fire Code into this Declaration. Barbecue cookers that use L.P. gas containers larger than one pound or any charcoal barbecues that are located on roofs or balconies above the first floor, attached to multiple family dwellings of three or more living Lots located one above the other are a violation of the Uniform Fire Code and shall be removed immediately.

Section 11.14 Architectural Control: The Owners agree that the exteriors of the improvements on all the Lots shall be painted in the same color scheme. The Owners of the respective Lots shall be responsible for spot maintenance of the paint on their improvements at their own cost; however, in the event it becomes necessary to paint substantially all of the improvements, the cost shall be borne equally between the respective Owners of the Lots. If substantially all of the improvements are to be painted, the improvements shall be painted in a color scheme that is mutually agreed upon by the Owners. If, after a good faith attempt, the Owners cannot agree upon a color scheme, time being of the essence, the improvements shall be painted in the current color scheme or as near thereto as possible. If the Owners of the Lots cannot agree upon the necessity of painting substantially all of the improvements, the dispute shall be submitted to arbitration as described in **Paragraph 19** below. Each Owner shall, at its sole cost and expense, maintain, repair and replace all exterior components of the improvements on its Lot in a clean, attractive and sightly condition.

ARTICLE XII FIRST MORTGAGEES

Section 12.1 Member and First Mortgagee Approval: Subject to Sections 13.3 hereof, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

- (a) Unless it has obtained prior written consent of at least sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage held):
 - (1) Seek to abandon or terminate the Project, whether by act or omission, except:
 - (A) For abandonment or termination provided by law in the case of substantial destruction by fire or other casualty; or

- (B) In the case of a taking by condemnation or eminent domain, in which event the provisions of Section 8.2 of this Declaration shall control; or
 - (C) For amendments to the Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or improvements thereon;
- (2) Change the pro rata interest or obligations of any individual Lot for the purpose of:
 - (A) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - (B) determining the pro rata share of ownership or each Lot in the Common Elements;
 - (3) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the Project);
 - (4) Partition or subdivide any Lot; or
 - (5) Use hazard insurance proceeds for losses to any Common Interest Community property for other than repair, replacement or reconstruction of such Common Interest Community property in accordance with the procedures set forth in Section 8.1 hereof, except as may be provided by statute in the case of substantial loss to the Common Elements.
- (b) Unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Owners, and fifty-one percent (51%) of the First Mortgagees (based upon one vote for each First Mortgage owned), add or amend any material provisions of this Declaration, the Articles of incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for classification only:
- (1) Voting rights;
 - (2) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessments, assessments liens or the priority of such liens;
 - (3) Reserves for maintenance, repair or replacement of those elements of the Common Elements which must be maintained, repaired or replaced on a periodic basis;
 - (4) Responsibility for maintenance and repair, of any portion of the Project;
 - (5) Allocation of interests in the general or Limited Common Elements, or rights to their use;
 - (6) Boundaries of any Lot;
 - (7) Convertibility of Lots into Common Elements or of Common Elements into Lots;
 - (8) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

- (9) Insurance, including but not limited to fidelity bonds;
- (10) Leasing of Lots;
- (11) Imposition of any restriction on the right of any Owner to sell or transfer his Lots;
- (12) Any decision by the Association to assume self-management of the Association, when professional management has previously been required by any First Mortgagee or any insurer or guarantor of a First Mortgage;
- (13) Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of incorporation and the Bylaws of the Association;
- (14) Any action to terminate the legal status of the Project after substantial destruction or condemnation; or
- (15) Any provisions which are for the express benefit of First Mortgages, or insurers or guarantors of First Mortgages.

Section 12.2 Notice of Action: Upon written request therefore, a First Mortgagee, insurer or guarantor of a First Mortgage, shall be entitled to timely written notice of:

- (a) Any condemnation loss or casualty loss which affects a material portion of the Project or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;
- (b) Any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XII.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Leasing of a Lot: A Lot Owner may lease its Lot under the following conditions:

- (a) No Owner shall lease less than the entire premises of a Lot;
- (b) Such leases shall be in writing;
- (c) All leases shall provide that the terms of the lease and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles, bylaws and rules and regulations, and that any failure by the lessee to comply therewith shall be a default under the lease. Any Owner who leased his Lot shall, within ten (10) days after the execution of such lease, forward a copy of the same to the Board or the Managing Agent; and

- (d) Except for a first Mortgagee in possession of a Lot following a default under its Mortgage or in connection with foreclosure proceedings or any deed or other arrangement in lieu of foreclosure proceedings by such first Mortgagee, no Owner may lease his Lot for transient or hotel purposes or for a term of less than thirty (30) days.

Section 13.2 Duration of Declaration: All of the provisions contained in this Declaration shall continue and remain in full force and effect until Common Interest Community ownership of the Project and this Declaration are terminated, revoked, or amended as hereinafter provided.

Section 13.3 Amendment and Termination: Any provision contained in this Declaration may be amended, or additional provisions may be added to, this Declaration or this Declaration and Common Interest Community ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by the Owners, as shown by the records in the office of the Clerk and Recorder of the County of Grand, Colorado, of Lots in the Project representing sixty-seven percent (67%), or more, of the votes in the Association and all of the first Mortgagees in the Project; provided however, that in no event shall the undivided interest of an Owner in the Common Elements be decreased without the unanimous consent of each Owner and each first Mortgagee; and provided further, that so long as Declarant continues to own one or more Lots, which it is holding for rental or sale, no rights of Declarant contained in Section 11.9 of this Declaration may be amended or modified without the consent of Declarant. The consent(s) of any junior Mortgagees shall not be required under the provisions of this paragraph. The Association shall, at least ten (10) days prior to the effective date of any amendment to this Declaration, notify all first Mortgagees of record of such amendment.

The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Lot in the Project by Declarant to the first Owner thereof (other than Declarant) or seven (7) years from the date this Declaration is recorded in the County of Grand, Colorado, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning or any provisions of any of such documents.

To be effective, all amendments to or revocation or termination of this Declaration must be recorded in the office of the Clerk and Recorder of the County of Grand, Colorado, and must contain evidence of the required approval thereof. One method of satisfying the requirements of this Section shall be the recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Lots, and that the requisite percentage of First Mortgagees, have give notarized written consent to the amendment. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

Section 13.4 Effect of Provisions of Declaration: Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration shall:

- (a) Be deemed incorporated in each deed or other instrument by which any right, title or interest in the Project or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument;
- (b) By virtue of acceptance of any right, title or interest in the Project or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other non-aggrieved Owner;

- (c) Be deemed a real property covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Lot and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Lot; and
- (d) Be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Lot in favor of the Association.

Section 13.5 Protection of Encumbrancer: Subject to the provisions of Section 2.12, no violation or breach of or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any first Mortgage, or other lien on any Lot taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of the County of Grand such violation, breach, failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such first Mortgage, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such first Mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violation or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser and the coming into possession by such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

Section 13.6 Supplemental to Law: The provisions of this Declaration shall be in addition and supplemental to the Colorado Common Interest Ownership Act of the State of Colorado (C.R.S. 38-33.3-101 et. seq.) and to all other provisions of law. In the event that any provision of this Declaration shall conflict with any provision of the Act or any other applicable law, the provision of the Act or the particular law shall apply.

Section 13.7 Numbers and Genders: Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 13.8 Registration by Owner of Mailing Address: Each Owner shall register his mailing address with the Association and all monthly statements, routine notices and any other notices or demands intended to be served upon an Owner shall be delivered or sent by regular mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Executive Board of the Association or the Association shall be sent by certified mail, postage prepaid, to River Rocks Development, LLC, _____, **agents for Mountain Terrace Homeowners Association, LLC**, until such address is changed by a notice of address change duly recorded with the office of the Secretary of Colorado.

Section 13.9 Successors and Assigns: This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

Section 13.10 Severability: Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity of affordability of any other provision or any valid and enforceable part of a provision of this Declaration.

Section 13.11 Captions: The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

Section 13.12 No Waiver: Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 13.13 Conflict: In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 13.14 Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.15 Arbitration: In the event of any dispute arising concerning the described Common Walls or this Declaration, the dispute shall be arbitrated in accordance with the rules of the American Arbitration Association, its successor or any other arbitration or mediation organization mutually agreed upon by the Owners.

Section 13.16 Mutual Cooperation: In the event that any Owner shall need the cooperation of the other Owner for the purposes of obtaining a building permit or such other license as may be required from a governmental agency for the purpose of repairing or remodeling the improvements, the other Owner shall reasonably cooperate in obtaining such permit or license.

Section 13.17 County Approvals: No right of Declarant or Owner granted, reserved, or otherwise described in the declarations and covenants of this project, at the time of platting or thereafter amended, with regards to modifying the construction or use of a structure, or any portion thereof, shall exempt such person from compliance with the Grand County land use and building codes, including but not limited to the subdivision and zoning regulations, and receipt of all required approvals and permitting procedures.

IN WITNESS WHEREOF, Declarant has executed this Declaration this ____ day of _____ 2007.

By: _____
River Rocks Development, LLC

CITY AND COUNTY OF DENVER)
)SS.
STATE OF COLORADO)

The foregoing Declaration of Covenants Conditions and Restrictions of Mountain Terrace Town Homes was acknowledged to before me this _____ day of _____ 2007 by River Rocks Development, LLC.

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

Notary Public

MORTGAGEE'S CONSENT:

I, _____, as _____ of _____, do hereby consent to the Declaration of Covenants, Conditions and Restrictions of _____.

By: _____
Its: _____

COUNTY OF)
)SS.
STATE OF COLORADO)

The foregoing Mortgagee's Consent to the Declaration of Covenants Conditions and Restrictions of _____ was acknowledged to before me this _____ day of _____ 2007 by _____, as _____ of _____.

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

Notary Public

**EXHIBIT 1
SITE LEGAL DESCRIPTION**

A Replat of Lots 1 & 2, Block 2, Replat of Winter Park Ranch, Second Filing, Recorded at Rec # 103582, Located in the Southeast quarter of section 20, Township 1 South, Range 75 West of the 6th PM, County of Grand, State of Colorado

**EXHIBIT 2
ALLOCATED INTEREST
MOUNTAIN TERRACE TOWN HOMES**

The minimum undivided interests in the Common Elements have been calculated as follows:

(a)	<u>Lots 1-10</u>	<u>Undivided Interest In The Common Elements</u>
	Lot 1	10%
	Lot 2	10%
	Lot 3	10%
	Lot 4	10%
	Lot 5	10%
	Lot 6	10%
	Lot 7	10%
	Lot 8	10%
	Lot 9	10%
	Lot 10	10%
(b)	<u>Lots 1-10</u>	<u>Percentage Liability For Common Expenses</u>
	Lot 1	10%
	Lot 2	10%
	Lot 3	10%
	Lot 4	10%
	Lot 5	10%
	Lot 6	10%
	Lot 7	10%
	Lot 8	10%
	Lot 9	10%
	Lot 10	10%

EXHIBIT 3
PLAT LEGAL DESCRIPTIONS
MOUNTAIN TERRACE TOWNHOMES LOTS

The legal description of each Lot depicted on the Plat shall be as follows:

Lot 1, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 2, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 3, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 4, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 5, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 6, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 7, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 8, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 9, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

Lot 10, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a three bedroom Town Home Unit, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado

OUTLOT A, A Replat of Lots 1 and 2, Block 2, Replat of Winter Park Ranch Second filing, a Common Element Area, in Mountain Terrace TownHomes Planned Community, County of Grand, State of Colorado