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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TENDERFOOT

51 pages

THIS DECLARATION, made and entered as of the date shown below, by CHATFIELD COURT DEVELOPMENT, LLC, a Colorado limited liability company, hereinafter called "Declarant" for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described on Exhibit "A" attached hereto (hereinafter called the "Property"), and

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof.

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. The Declarant further declares that the Project shall be a Planned Community created pursuant to the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act.

ARTICLE I
DEFINITION

The terms used herein shall have the meanings stated in the Colorado Common Interest Ownership Act, except as otherwise provided herein:

Section 1.1 "Act" The act is the Colorado Common Interest Ownership Act, Article 3.33 of Title 38 of the Colorado Revised Statutes, as it may be amended from time to time.

Section 1.2 "Architectural Control Committee" shall mean the committee of three or more persons appointed by the Declarant or Association to review and approve the plans for all improvements constructed on the Property.

Section 1.3 "Association" shall mean and refer to the Tenderfoot Association, Inc., a Colorado Non-Profit Corporation, which has been or shall be organized under the laws of the State of Colorado prior to the conveyance of the first Townhouse Unit in the Project, its successors and assigns.

TOWN OF GYPSUM
PO BOX 130
GYPSUM CO 81637

Section 1.4 "Board" or "Executive Board" shall mean the Executive Board of the Association and shall also be the "executive board" as defined under the Colorado Common Interest ownership Act. Except as specified herein, or in the Association's Articles of Incorporation or Bylaws or C.R.S. 38-33.3-303(3), the Board may act on behalf of the Association without any vote or consent of the members.

Section 1.5 "Common Area" shall mean and refer to all of the Property, together with all improvements located thereon and all common property owned by the Association, but excluding the Townhouse Units, together with all improvements and property thereon. These terms shall have the same meaning as "common elements" under the Colorado Common Interest Ownership Act and may be reallocated pursuant to C.R.S. 38-33.3-206.

Section 1.6 "Declarant" shall mean and refer to Chatfield Court Development, LLC, a Colorado limited liability company, it agents, employees, contractors, successors and assigns to who it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. 38-33.3-304. The Declarant hereby reserves any and all "special declarant rights" and "development rights" as created or set forth in the Colorado Common Interest Ownership Act and any other rights as set forth herein. Any such rights shall apply to the Property and the Property marked on the Plat as the Expansion Property, and shall terminate upon the earlier of twenty-five (25) years from the date of recording hereof or as otherwise provided herein. The "Period of Declarant Control" means that period during which the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article IV hereof.

Section 1.7 "Declaration" means this Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of the Declarant executing the Declaration. A copy of the Declaration shall be delivered to the assessor of the county in which the Property is located, after recording.

Section 1.8 "Expansion Property" means the real property located in Eagle County, Colorado, more particularly described on the attached Exhibit B which Declarant may subject to this Declaration by one or more duly recorded Amendments or Supplemental Declarations.

Section 1.9 "First Mortgage" shall mean a Mortgage upon a Townhouse Unit having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage. Section 1.10 "Lot" shall mean and refer to any of the lots shown on any recorded plat of the Property, and subject to the Declaration. The boundaries of any Lot may be relocated pursuant to C.R.S. 38-33.3-212. The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

Section 1.10 "Lot" shall mean and refer to any of the lots shown on any recorded plat of the Property, and subject to the Declaration. The boundaries of any Lot may be relocated pursuant to C.R.S. 38-33.3-212. The boundaries of the Lots shall be shown on any recorded plat of the property which shall be incorporated herein by this reference.

Section 1.11 "Map", "Plat" or "Plans" shall mean the Plat or Map for Tenderfoot which meets the requirements of Section 38- 33.3-209 of the Act and which is recorded in the real estate records of Eagle County, Colorado contemporaneously with the recording of this instrument.

Section 1.12 "Member" shall mean and refer to every person or entity which holds membership in the Association or, following termination of the Project, of all former Owners entitled to distributions of proceeds under C.R.S. 38-33.3-218, or their heirs, personal representatives, successors or assigns.

Section 1.13 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the county in which the property is located, and by which a Townhouse Unit or any part hereof is encumbered. The term shall include a "security interest" as defined by the Colorado Common Interest Ownership Act.

Section 1.14 "Mortgagee" means any person or entity, or any successor or assignee thereof, which holds or owns a Mortgage.

Section 1.15 "Owner" means any person, corporation, partnership, association, contract sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Townhouse Units. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or the person or entity having an ownership interest in any Townhouse Unit merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as "Unit Owner" under the Colorado Common Interest Ownership Act.

Section 1.16 "Owner's Proportionate Share" or "Proportionate Interest" means that percentage of the total which is equal to such Owner's fractional or percentage interest as set forth in Exhibit "C" attached hereto and incorporated herein by this reference and which is subject to adjustment in the event that the Project is expanded as herein provided. The percentage shall be based upon the comparison of each Townhouse Unit and the total number of townhouse Units in the Project. Each Townhouse Unit shall have the same percentage interest as every other Townhouse Unit and the total of such percentaged shall at all times equal one hundred percent. The same formula is to the used in reallocating interests if Townhouse Units are added to the Common Interest Community pursuant to Article 4-3 hereunder. These terms

shall have the same meaning as "allocated interest" under the Colorado Common Interest Ownership Act.

Section 1.17 "Project" means all of the Property and the land which may be brought into the Common Interest Community from time to time pursuant to Article 4.3 hereunder, together with improvements located on such land, and all rights, easements and appurtenances belonging thereto. This term shall have the same meaning as "Common Interest Community" and "Planned Community" under the Colorado Common Interest Ownership Act.

Section 1.18 "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto, together with all appurtenances thereto and all improvements now or hereafter thereon.

Section 1.19 "Townhome" shall mean the residential dwelling improvement constructed and located upon a Lot.

Section 1.20 "Townhouse Unit" means a Lot together with all improvements thereon including a Townhome and all easements and rights of way appurtenant thereto which has been issued a temporary or conditional certificate of occupancy (however denominated) by the appropriate governmental authority having jurisdiction of the Townhouse Unit. Townhouse Unit shall have same meaning as Unit under the Act.

ARTICLE II
DESCRIPTION OF TOWNHOUSE UNITS

Section 2.1 Name. The name of the Project is Tenderfoot.

Section 2.2 Number of Townhouse Units. The number of Townhouse Units in the project is eight (8). Declarant reserves the right for itself and any successor Declarant to expand the number of Townhouse Units in the Project up to forty (40) and to expand the Common Area.

Section 2.3 Each Unit Inseparable. Each Townhouse Unit shall be inseparable and may be leased, devised or encumbered only as a residence.

Section 2.4 Title to Townhouse Unit. Title to a Townhouse Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Townhouse Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner, for each Townhouse Unit. The parties, if more than one, having the ownership of a Townhouse Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Townhouse Unit in which they own an interest.

Section 2.5 Description of a Townhouse Unit. Any contract of sale, deed, lease, mortgage, will or other instrument affecting a Townhouse Unit may describe it by its Townhouse Unit number, TENDERFOOT, County of Eagle, State of Colorado, according to the Plat thereof recorded at reception no._____ , and the Declaration recorded at reception no. _____, in the records of the Clerk and Recorder of Eagle County, Colorado.

Section 2.6 Separate Parcel. Each Townhouse Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed.

ARTICLE III
PROPERTY RIGHTS IN THE COMMON AREA

Section 3.1 Title to the Common Area. Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all encumbrances, by the Declarant to the Association, prior to the conveyance of the first Townhouse Unit.

Section 3.2 Non-Division of Common Area. The Common Area shall remain undivided and shall not be subject to partition. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the Owner damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Townhouse Unit between the Owners thereof, but such legal partition shall not affect any other Townhouse Unit, nor shall any such partition sever any part thereof from such Townhouse Unit as a whole.

Section 3.3 Owner's Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, including without limitation the right of ingress and egress to and from the Owner's Townhouse Unit, his parking area, any public street, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Townhouse Unit without the necessity of additional reference.

Section 3.4 Extent of Owner's Common Area Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained in Article VIII of this Declaration and to promulgate and publish rules and regulations which every owner, his family members, guests, tenants, and contractors shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(b) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to the use of the Common Area for the period during which such Owner is in default under this Declaration, including without limitation, the non-payment of any assessment levied by the Association, and to make such suspensions for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to the provisions of Article XI hereof and C.R.S. 38-33.3-312, and subject to such conditions as may be imposed by public entity; for example, if any interior streets are private an have not been built to city or county specifications and so might not be accepted by them;

(e) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and, subject to the provisions of Article XI and C.R.S. 38-33.3-312, to mortgage said property as security for any such loan;

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(g) The right of the Declarant (until termination of the Period of Declarant Control) or the Association's Board (after termination of the Period of Declarant Control) to assign any part of the Common Area for carports, garages, driveways, parking spaces or other limited common areas, for the exclusive use of particular Owners and/or for guests; such designation may be made by the recorded plat, deed or other document.

Section 3.5 Other Easements.

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television

antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the Association upon the termination of the period of Declarant Control and the rights of Declarant under Section 4.3, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association.

(b) Association Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Area and any Townhouse Unit as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation any maintenance, repair, replacement, construction or reconstruction of any facilities on the Common Areas; provided, however, that entry into any Townhome in non-emergency situations shall only be made after service of reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

(c) Emergency Easement. A non-exclusive easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties.

(d) Common Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Townhouse Units and in and upon adjacent townhomes for purposes of common wall repair or maintenance, in accordance with Section 6.5 of Article VI, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Townhouse Unit or improvements, including the Townhome, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

(e) Exterior Wall Easement. Each Owner, his agents and contractors are granted a non-exclusive easement in, over, under and upon the adjacent Common Area for the purpose of maintenance, construction, reconstruction and repair of any exterior wall on such Owner's Townhouse Unit, provided, however, that such Owner shall be liable for any damage to the Common Area, which shall be restored to its condition prior to such work.

(f) Easement for Encroachments. If any part of the Common Area or any Common Area improvement or structure encroaches upon a Townhouse Unit or Townhouse Units, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of any Townhouse Unit or other structure, driveway, or parking area related thereto encroaches upon the Common Area, or upon any adjoining Townhouse Unit or Townhouse Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Townhome or structure related thereto is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Townhome due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Townhome or related structure constructed on the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects of encumbrances either on the Common Area or on the Townhouse Units. In interpreting any and all provisions of this Declaration, subsequent deeds, Mortgages, or other security instruments relating to Townhouse Units, the actual location of a Townhome, and related structures, driveways and parking areas shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviation, either horizontally, vertically or laterally, from the location of such Townhouse Unit, and related structure, driveway or parking area as indicated on the Plat.

(g) Easement for Foundations. Owners of adjoining Townhouse Units shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their improvements rest, and similar easements for support from the Common Area, and for the benefit of the Common Area shall also exist.

(h) Easement for Ingress and Egress. Subject to the provisions of this Declaration, each Owner, his agents and guests are hereby granted a perpetual non-exclusive easement over any streets, roadways, driveways, and sidewalks, which are located upon the Common Area, for the purpose of vehicular and pedestrian ingress to an egress from such Owner's Townhouse Unit. If any of the streets or roadways upon the Property are private streets, Declarant shall have the right to relocate any portion of them, but only if it provides all Owners with reasonable access to their Townhouse Units, and Declarant may also dedicate any portion of any private street or roadway upon the

Property as a public right-of-way, in which case, if accepted by a public entity, the Association's obligations for repair and maintenance of the road shall cease. Further more, Declarant hereby reserves a non-exclusive easement across, over and under any such private streets or roadways for ingress, egress and the installation of utilities and over, under and through the Common Area for the exercise of any special Declarant right hereunder or under the Colorado Common Interest Ownership Act.

Section 3.6 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Townhouse Unit. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

Section 3.7 Non-Dedication of Common Area. Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 3.8 Recorded Easements. The property, and all portions thereof, shall be subject to all recorded licenses and easements including without limitation any as shown on any recorded plat affecting the Property, or any portion thereof, and additionally subject to those matters set forth on the attached Exhibit "D."

Section 3.9 Expansion. From time to time Declarant may, but shall not be obligated to, expand the Common Area by written instrument filed for record with the Clerk and Recorder of Eagle County, Colorado all as more fully set forth in Article IV below.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 4.1 Membership.

(a) The following shall be members of the Association: Declarant (so long as the Declarant is allowed to hereunder, or under the Act) and every Owner of a Townhouse Unit, which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse Unit. Ownership of such Townhouse Unit shall be the sole qualification for membership. Except as provided herein, each Townhouse Unit shall have voting rights based upon that Owner's Proportionate Interest. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint a Executive Board and to operate the Association until the Period of Declarant Control is terminated, and the Association shall

not begin to function through its other Members until such time, unless the Declarant otherwise consents in writing.

(b) All Owners, upon becoming Owners, shall also become members of The Chatfield Corners Owners Association ("Master Association") which was established Declaration of Covenants, Conditions and Restrictions and Easements for Chatfield Corners recorded on January 7, 2003, at Reception Number 819483 of the real property records of Eagle County, Colorado as the same may be amended and supplemented from time to time (the "Master Declaration") and shall become subject to the provisions of the Master Declaration, including the obligation to pay certain assessments to the Master Association. The Association may pay such assessments on behalf of each Owner, and in that event, each Owner shall pay to The Association as a part of such Owner's Assessment under this Declaration an amount equal to the Master Association's assessment for such Owner's Unit. The facilities of the Master Association, if any, shall be available to Owners as members of said Association for such fees subject to such regulations as the Master Association may prescribe.

Section 4.2 Declarant Control. The Association shall have one class of voting membership who shall be the Owners. The owners shall elect all the members of the board, following the termination of the Period of Declarant Control as set forth as follows:

(a) Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Executive Board and to control the Association as follows: During the period of Declarant Control, the Declarant, or persons designated by him or her, subject to certain limitations, may appoint and remove the officers and members of the Board. The Period of Declarant Control shall terminate no later than the earlier of: (1) Sixty days after conveyance of 75 percent of the Townhouse Units that may be created to Owners other than a Declarant; (2) Two years after Declarant has last conveyed a Townhouse Unit in the ordinary course of business; or (3) Two years after any right to add new Townhouse Units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than 60 days after conveyance of twenty-five percent (25%) of the Townhouse Units that may be created to Owners other than the Declarant, at least one member, and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than the Declarant. Not later than 60 days after conveyance of fifty percent (50%) of the Townhouse Units that may be created to Owners other than the Declarant, not less than one-third of the members of the Board must be elected by Owners other than a Declarant.

(c) Except as otherwise provided above, not later than the termination of any period of Declarant Control, the Owners shall; elect a Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(e) Within sixty days after the Owners other than Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C.R.S. 38-33.3-303(9).

(f) Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Development Right or Special Declarant Right without the prior written consent of the Declarant.

Section 4.3 Rights of Declarant.

(a) To subject all or any part of the Expansion Property to up to thirty eight (38) additional Townhouse Units and to expand the Common Area. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Eagle County, Colorado, one or more Supplemental Declarations and Supplemental Plats setting forth the Townhouse Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The new Townhouse Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration upon the filing of such Declaration of record. The expansion, which shall contain no more than thirty eight (38) additional Townhouse Units, may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion, determines. Declarant shall not be obligated to expand the Tenderfoot beyond the number of Townhouse Units initially submitted to this Declaration. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions. Upon the construction of additional Townhouse Units and their inclusion under this Declaration and the filing of Supplemental Declaration(s) and Supplemental Plat(s) thereof the Owner's Proportionate Share shall automatically be reallocated as set forth in Section 1.16 of this Declaration. Such reallocation of the Owners Proportionate Share shall be reflected and set forth in the Supplemental Declaration.

(b) Notwithstanding any inclusion of additional Townhouse Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Townhouse Unit shown on the original plat or is the owner of a Townhouse Unit constructed in the Expansion Property shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Townhouse Unit prior to such recording.

(c) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the Property for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property and to buildings and Improvements to be constructed on the Expansion Property. The Declarant also reserves the right to withdraw and grant licenses or easements to public utility companies and other entities providing services to the Common Interest Community and to convey Improvements within those easements anywhere in the Common Interest Community not occupied by Townhomes, for the purposes mentioned above.

(d) The right at any time and from time to time to withdraw from the provisions of this Declaration any real property subjected to this Declaration by a duly recorded Supplemental Declaration and Supplemental Plat prior to the time of a sale of a Townhouse Unit comprising a portion of the real property described in said Supplemental Declaration and Supplemental Plat.

(e) The Development Rights reserved in Section (1) are limited as follows:

(i) The Developers expansion rights set forth in paragraph 4.3 (a)(i) of this Declaration may be exercised at anytime, but not more than ten (10) years after the recording of the initial Declaration;

(ii) Not more than thirty eight (38) additional Units may be created under the Development Rights;

(iii) The quality of construction of any Townhome and improvements to be created on the Expansion Property shall be consistent with the quality of those constructed pursuant to this Declarant as initially recorded; and

(iv) All Townhouse Units and Common Areas created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Townhouse Units created under this Declaration as initially recorded.

(f) The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

(i) To complete Improvements indicated on the Plat and Plans filed with this Declaration;

(ii) To exercise a Development Right reserved in this Declaration;

(iii) To maintain sales offices, management offices, signs advertising the Common Interest Community and models;

(iv) To use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community; and

(v) To appoint or remove any officer of the Association or any Executive Board member during a period of Declarant control subject to the provisions of Section 4.2 of this Declaration.

(g) As long as the Declarant is a Townhouse Unit Owner, the Declarant, its duly authorized agents, representatives and employees may maintain any Townhome owned by the Declarant or any portion of the Common Areas as a model Townhome, sales office or management office.

(h) The Declarant reserves the right to perform warranty work, repairs and construction work in Townhomes and Common Areas, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities and the State, to fulfill the plan of development.

(i) The Declarant reserves the right to post signs and displays in the Common Areas in order to promote sales of Townhomes. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Townhouse Unit Owners.

(j) The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and (maintenance of the Property that has not been represented as property of the Association. The Declarant reserves the right to remove from the Property (promptly after the sale of the last Townhouse Unit)

any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 5.1 Creation of the Obligation for Assessments. Each Owner, for each Townhouse Unit owned within the Property, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a lien against his Townhouse Unit as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Townhouse Unit. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the Common Area or the facilities contained therein, by abandonment or leasing of his Townhouse Unit, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums, each Owner shall have the obligations to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Townhouse Unit, as well as all charges for separately metered utilities servicing his Townhouse Unit. The charges for any utilities which are master metered, if any, shall be included in the annual common expense assessments levied by the Association.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Area and the Townhouse Units as more specifically provided herein.

Section 5.3 Annual Assessments. The annual assessment shall specifically include, but shall not be limited to, all Common expenses as defined by the Colorado Common Interest Ownership Act and the following:

(a) expenses of management of the Association and its activities;

(b) taxes and special assessments upon the Association's real and personal property including, without limitation, the Common Area and any Limited Common Area;

(c) premiums for all insurance which the Association is required or permitted to maintain and any other expenses connected with such insurance;

(d) common lighting, water and other common utility and sewer service charges; and any other common expenses including, without limitation any common trash collection and snow removal approved by the Board;

(e) landscaping and care of the Common Area and any recreational or other Association facilities or improvements located thereon;

(f) such repairs and maintenance which are the responsibility of the Association;

(g) wages for Association employees;

(h) legal and accounting fees for the Association;

(i) any deficit remaining from a previous assessment year;

(j) a working capital fund;

(k) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;

(l) the creation of reasonable contingency reserves for any applicable insurance deductibles;

(m) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to this Project.

Section 5.4 Special Assessments. In addition to the annual Assessments authorized above, the Executive Board, if permitted under the Act, may at any time and from time to time determine, levy and assess in any fiscal year (without the vote of the members of the Association except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs fees, and expenses of any construction, reconstruction, repair, demolishing, replacement renovation or maintenance of the Common Area, any facilities located on the Common Area or any other improvements

maintained and operated by the Association, specifically including any related fixtures and personal property. Any amounts determined, levied and assessed pursuant to this Section shall be assessed to the Units in the same manner as described with respect to annual Assessments in Section 5.3 above; provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants Guests or Lessees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 5.7 provided that if necessary, the Association may adopt a new budget pursuant to Section 5.7 prior to levying a special Assessment. Such special Assessment shall be due and payable as determined by the Executive Board.

Section 5.5 Rate of Assessment. Except as provided herein, except for the costs of insurance which shall be assessed in proportion to risk, both annual and special assessments shall be set at the Owner's Proportionate Share as shown on Exhibit "B" attached, sufficient to meet the expected needs of the Association. If an Owner's Proportionate Share is reallocated, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Owner's Proportionate Share. The effective date for assigning the Proportionate Share to any Townhouse Units created pursuant to Article 4.3 shall be the date on which the amendment or supplement creating the Townhouse Units is recorded in the real property records of the County of Eagle, State of Colorado.

Section 5.6 Assessment Procedure.

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Executive Board of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the Owners of a majority of all votes entitled to be cast on Association matters reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote as provided herein no less frequently than annually. Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determined appropriate, which is not required to credit or pay it to the Owners. That annual assessment shall be payable in quarterly installments on the first day of each successive quarter, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The

first annual assessment upon the Townhouse Units hereunder shall commence upon the first day of the first month following conveyance of the Common Area from the Declarant to the Association. It shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall establish the annual assessment for the initial fiscal year of the Association without a vote of the Owners.

(b) Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his Townhouse Unit for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given.

Section 5.7 Certificate of Payment. The Association shall furnish to an Owner or such owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Townhouse Unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Townhouse Unit for unpaid assessments which were due as of the date of the request. Said certificates may be relied upon by all persons acting in good faith, as conclusive evidence of the payment of any assessments therein stated to have been paid.

Section 5.8 Effect of Nonpayment of Assessments-Remedies of the Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed Fifteen Dollars ($15.0) per delinquent monthly assessment. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Townhouse Unit, and/or may suspend the delinquent Owner's right to vote and the right to use any recreational facilities within the Common Area for any period during which any assessment against his Townhouse Unit remains unpaid. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the expenses, late charges, and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee, fine or penalty or other sums assessed against any Owner or his Townhouse Unit, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of Fifteen Dollars ($15.00) per unpaid monthly assessment or other sum, court costs and all other collection costs, and reasonable attorney's fees, shall be a charge on the land and

shall be a continuing lien, from and after the levy or assessment thereof, in favor of the Association, upon the Townhouse Unit against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due. To further evidence such lien upon a specific Townhouse Unit, The Association may enforce such lien by filing with the Clerk and Recorder of the county in which the property is located a statement of lien with respect to the Townhouse Unit, setting forth the name of the Owner, the legal description of the Townhouse Unit, the name of the Association and the amount of delinquent assessments then owning and any other information that the Association may deem proper. The lien statement shall be duly signed and acknowledged by a member of the Executive Board, an officer or authorized agent of the Association. The statement of lien shall be mailed to the Owner of the Townhouse Unit, at the address of the Townhouse Unit or at such other address as the Association may then have in its records for the Owner of the Townhouse Unit. Such a claim of lien shall also secure all assessments, charges, fees, fines and penalties and other sums which come due thereafter until the lien, together with all costs, attorney's fees, administrative charges an interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the lien of the Association in the manner of the foreclosure of mortgages in the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. In addition, the Association shall have the right to impose a statutory lien under C.R.S. 38-33.3-316.

(c) Authority. Each such Owner, by his acceptance of a deed to a Townhouse Unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in Paragraph 1b of this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

Section 5.9 Working Capital. The Association shall require an Owner who purchases a Townhouse Unit from Declarant to pay to the Association an amount equal to the amount of estimated quarterly assessment which sum shall be held by the Association as and for working capital. Such sum shall not be refundable to such Owner but shall be placed in a segregated

account for use by the Board to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold Townhouse Units in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

Section 5.10 Priority of Lien. The lien of the assessments provided for herein shall be prior to all other liens and encumbrances on a Townhouse Unit except as follows:

(a) Liens and encumbrances Recorded before the recordation of this Declaration;

(b) A security interest on the Lot or Unit which has priority over all other security interests on the Townhouse Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent. A lien of the assessments is prior to the security interest described in the preceding sentence to the extent of an amount equal to the regular assessments (based on a budged adopted by the Association) which would have become due, in the absence of any acceleration during the six months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article V of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;

(c) Liens for real estate taxes and other governmental assessments or charges against the Townhouse Unit; and

(d) As may otherwise be set forth in the Act. Nothing contained in this Section 5.10 shall relieve any Townhouse Unit from liability for any assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Townhouse Unit for assessments due during the period of his ownership.

Section 5.11 Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Townhouse Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 5.12 Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

ARTICLE VI
MAINTENANCE

Section 6.1 Association Maintenance. The Association shall provide such maintenance and repair as follows:

(a) Paint, repair, replace, maintain and care for roofs, gutters, downspouts, and exterior building surfaces (excluding glass surfaces, exterior light bulbs, doors, screens and windows which shall be the Owner's responsibility, except for the painting of the doors and windows). An Owner shall not paint or change the appearance of the exterior of his Townhome without the prior written approval of the Architectural Control Committee in accordance with Article VII of this Declaration. The Association shall paint or restain the exterior of all Townhomes as often as necessary to keep such exterior from having a weather-beaten or worn-down appearance.

(b) All repair, replacement, improvement and maintenance of the Common Area and all improvements, located thereon, including without limitation, any landscaping, sprinkler system, any roadways, driveways, utility lines (including any common utilities within a Townhouse Unit which also serve another Townhome and any lines located outside of the exterior walls of a Townhouse Unit but not including any maintenance which is the responsibility of any public or private utility company or entity), any drainage structures or facilities or public improvements to the extent applicable and set forth in C.R.S. 38-33.3-307(1.5), any light fixtures, any improvements located in an easement which is damaged by the entity entitled to the use of such easement, sidewalks, and pathways, except that each Owner shall be responsible for cleaning any sidewalk or pathway leading directly to his Townhome. The Association shall provide maintenance, at common expense, to any landscaping located within the boundaries of any Townhouse Unit, including any sprinklers, or other commonly metered improvements located within that area; provided, however, any Owner shall not change, alter, modify, expand, restrict or impair such landscaping or improvements without the approval of the Architectural Control Committee.

(c) Repair and replacement of any buildings or improvements upon the Lot insofar as the Association receives insurance proceeds or makes a special assessment to accomplish such repair or replacement.

(d) After the Declarant ceases to control the Association, the Association shall maintain the landscaping, drainage, and sprinkler systems in such a fashion that the soil surrounding the foundations of the buildings and other improvements shall not become so impregnated with water that they cause expansion of or shifting of the soils supporting the improvements or other damage to the improvements and do not impede the proper functioning of the drainage, landscaping, or sprinkler system as originally installed. Such maintenance shall include where necessary the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include

preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Owners from installing landscaping or using water on the Townhouse Units in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the townhome or the other improvements upon the Townhouse Units or Common Area. The Association shall indemnify the Declarant as to any breach of this provision. The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs, as the Board of Directors believes necessary to prevent imminent danger to life or property.

Section 6.2 Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 6.1 of this Article is caused, in the sole discretionary determination of the Executive Board, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligations of such Owner, shall be added to and become a part of the assessment to which the Townhouse Unit of such Owner is subject and shall become a lien against such Owner's Townhouse Unit as provided in Article V of this Declaration.

Section 6.3 Access to Reasonable Hours. For the purpose of performing the maintenance referred to in Section 6.1 of this Article and inspections related thereto, the Executive Board of the Association, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Townhouse Unit and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Executive Board or its agents, contractors or employees may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except on account of its gross negligence or willful misconduct.

Section 6.4 Owner Maintenance. Except as provided in Section 6.1 of this Article, the Owner shall be responsible for all other maintenance and repairs, including without limitation maintenance of his Townhome, any fixtures, furnishings, equipment and appliances located thereon, any patio or deck (except for the painting of the same). All utilities, fixtures and equipment installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Townhome, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Townhomes which shall be the Association's responsibility as provided in Section 6.1 of this Article. An Owner shall do no act nor any work that will impair any easement or utility service, not do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Townhouse Units or the provision of utility services to such Townhouse Units. No Owner shall, in whole or in part, change the landscaping adjacent to his Townhouse Unit by the addition or removal of any items thereon, including fences, without the prior written approval of the

Board. If Owner fails to fulfill his responsibilities under this Section, the Board, at its option, may take such action as it deems appropriate, including without limitation performing the Owner's obligations, after ten (10) days notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Townhouse Unit and shall be due and payable by the Owner thereof.

Section 6.5 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as part of the original construction of the townhomes and placed on or immediately adjacent to the dividing line between the Townhouse Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty and if the Association does not restore such wall with insurance proceeds or a special assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts of omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's Successors in title.

Section 6.6 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Furthermore, any contracts and leases during the Period of Declarant Control shall be subject to C.R.S. 38-33.3-305.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 7.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) persons appointed by the Executive Board of the Association, provided, however, that until the Period of Declarant Control terminates, Declarant shall have the right to appoint the Architectural Control Committee. A majority of the committee may designate a representative to act for it. It shall be the duty of the Architectural Control Committee, and it shall have the power, by the exercise of its best judgment, to determine that all structures, improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures. For convenience, the Architectural Control Committee shall hereinafter sometimes be referred to in this Article as the "Committee."

Section 7.2 Review by Committee. After the purchase of a Townhouse Unit from the Declarant, no structure, accessory building, tennis court, swimming pool, antennae, flag pole, fence, wall, house number, mail box, exterior lighting, or other improvement shall be constructed or maintained upon the Property; no alterations restaining, repainting to the exterior of a Townhome shall be made; no landscaping performed; and no Owner shall enclose, by means of screens or otherwise any balcony, port or patio, unless complete plans, specifications, and 25 Townhouse Unit plans therefor, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Committee, and a copy of such plans and specifications as finally approved shall be deposited with the Committee. The provisions of Sections 7.1, 7.2 and 7.3 of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

Section 7.3 Procedures.

(a) The Committee shall approve or disapprove all plans and requests within thirty (30) days after requests have been submitted. In the event the Committee fails take action within thirty (30) days after plans have been received by the Committee, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the members of the Committee is required for approval or disapproval of proposed improvements. The Committee shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the Committee shall take into consideration the design, style and construction of the proposed structure or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed structure is consistent with the general terrain, the architecture of other structures and Townhouse Units located upon the Property subject to this Declaration and whether or not the construction or alteration will adversely affect or decrease the value of other Townhouse Units because of its design,

location, height or type of material used in construction. The Committee may make reasonable requirements of the Owner, including the submission of additional plans, to ensure conformance of such structure or alteration when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations will conform to the approved plans and specifications. The Committee may require such changes as may be necessary to conform to the general purposes as herein expressed. The Committee shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Committee shall have authority to grant variances from the provisions of this Declaration in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not said hardship exists.

(c) Whenever the Committee disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Committee.

(d) All plans submitted to the Committee shall be left on file with the Committee.

(e) It is the intent of these Declarations that the Committee shall exercise broad discretionary powers hereunder and it-decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

(f) The Committee shall resolve all questions of interpretation under this Article. They shall be interpreted in accordance with their general purpose and intent as herein expressed.

ARTICLE VIII
RESTRICTIONS

Section 8.1 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, all thereof in order to enhance the value, desirability, and attractiveness of the Property and serve and promote the sale thereof.

Section 8.2 Leases. Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and a copy thereof shall be provided upon request to the Executive Board, which may require the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who

has repeatedly violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval ownership shall be permitted.

Section 8.3 Residential Use. Each Townhouse Unit shall be occupied and used as a private dwelling for the Owner, and members of his family, guests and tenants for residential purposes only, and the Executive Board may make rules which limit the maximum occupancy permitted upon Townhouse Units in the Project as determined by the Board in its sole discretion. No Townhouse Unit shall be used for any business, manufacturing or commercial purpose whatsoever; provided, however, if the appropriate zoning so allows and if prior written approval of the Board is obtained, an Owner may use a specifically designated portion of his Lot as a home business office, which approval may thereafter be withdrawn or terminated by the Board at any time.

Section 8.4 Animals. Any Owner may keep not more than two dogs and a reasonable number of other bona fide household pets, so long as such pets comply with the Board's rules and regulations, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any rules and regulations of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. All dogs shall be kept on leash and attended by their owners when present in the Common Area. The Board may institute such rules as it deems advisable for the control of pets, including without limitation prohibitions and restrictions, and may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

Section 8.5 Structures. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 8.6 Miscellaneous Structures. Except as permitted in writing by the Committee or pursuant to its rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Townhouse Unit other than a name plate of the occupant and a street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Owners' use of the Common Area until all Townhouse Units are sold by the Declarant. All types of refrigerating, cooling or heating apparatus shall be concealed or screened from view, except as installed by the Declarant. Notwithstanding anything to the contrary contained in this Section 8.6, (i) political signs shall be permitted to be placed on any Townhouse Unit not more than forty-five (45) days prior to any election or vote and such signs must be removed within seven (7) days after any such election or vote. As used in this Section 8.6 "political signs" shall mean a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue, (ii) the display of the American Flag shall be permitted

to be placed o any Townhouse Unit in a manner consistent with the Federal Flag Code, P.L. 94-344; 90 Stat. 810; 4 U.S.C. 4 to 10, (iii) the display of a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the United States during a time of war or armed conflict on the inside of a window or door of the Owner's Unit.

The Association may adopt rules that regulate the location and size of flags and flagpoles, and the size and manner of the display of service flags, except that the maximum dimensions allowed for service flags shall not be less than nine inches by sixteen inches.

Section 8.7 Townhouse Units to be Maintained. Each Townhouse Unit 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 Townhouse Unit so that same are visible from any neighboring Townhouse Unit or street, except as necessary during the period of construction by Declarant or subsequent reconstruction by an Owner. No condition shall be permitted within any Townhome, balcony, porch, patio or deck which is visible from other townhomes or the Common Area and which is inconsistent with the design r integrity of the Project as determined by the Board in its sole discretion; such conditions include, but are not limited to, window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Common Area or visible through a window.

Section 8.8 Townhouse Units Not to be Subdivided. No Townhouse Unit or Townhouse Units shall be subdivided, except for the purpose of combining portions with an adjoining Townhouse Unit, provided that no additional building site is created thereby.

Section 8.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Townhouse Unit nor shall anything be done or placed on any Townhouse Unit which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No electronic or radio transmitter of any kind shall be operated upon the Property. No aerials or antennae shall be installed upon the exterior of any Townhouse Unit or for the transmission of electronic signals, except for garage door openers.

Section 8.10 No Hazardous Activities. No activities shall be conducted on the Property and on improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace or except such campfire or picnic fires in an area designated for such by the Association.

Section 8.11 No Annoying Light, Sounds or Odors. No light shall be emitted from any Townhouse Unit which is unreasonably bright or causes unreasonable glare; no sound shall be

emitted on any Townhouse Unit which is unreasonably loud or annoying; and no odor shall be emitted on any Townhouse Unit which is noxious or offensive to others. Any exterior lighting installed on any Townhouse Unit shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of the neighboring Townhomes. Ornamental post lights must be approved by the Architectural Control Committee.

Section 8.12 Restrictions on Parking and Storage. Except as specifically authorized by the Executive Board, no part of the Property, including but not limited to streets, drives, or parking areas, and no part of the streets adjoining the Property shall be used 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 larger than one ton, bus, or self-contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties, which are necessary for the construction of Townhomes or the maintenance of the Common Area or Townhouse Units or making deliveries or performing services. No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the owner thereof cannot be reasonably ascertained), and if the unused vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, housetrailer or other similar vehicle which has not been moved for a period of five (5) days or longer. The Executive Board may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and requiring that all Owners park their vehicles inside their assigned spaces, rather than in driveways, streets or other parts of the Property. Neither Owners, tenants, guests, family, nor other invitees shall park within or obstruct any prohibited area, including without limitation any fire lane. Any vehicle or other item which is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents the expense of the owner of such vehicle. Notwithstanding anything to the contrary in this Section 8.12, the parking of a motor vehicle by a Owner on a street, driveway or guest parking area in the Project shall be permitted if the vehicle is required to be available at designated periods at the Owner's Unit as a condition of the Owner's employment and all of the following criteria are met, (i) the vehicle has a gross vehicle weight rating of ten thousand pounds or less, (ii) the unit owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider as defined in section 29-11-101 (1.6), C.R.S., (iii) the vehicle bears an official emblem or other visible designation of the emergency service provider, (iv) parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs or other Owners to use streets and driveways within the Project.

Section 8.13 Clotheslines and Storage. Outside clotheslines or basketball hoops and backboards, whether on buildings or freestanding, carports, patio covers or similar structures, and wood piles and storage areas shall not be allowed unless approved by the Architectural Control Committee in its sole discretion. All such approved structures shall be located out of view of the street or of any neighboring Townhouse Units and be so located as not to be visible from a street or road.

Section 8.14 Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street, on the Common Area, or on any Townhouse Units unless placed in an appropriate, clean container suitably located, solely for the purpose of garbage pickup. All trash and refuse containers, except when placed as noted above the sole purpose of garbage pickup, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, its being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

Section 8.15 Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Townhouse Unit unless it is done within completely enclosed structures located on the Townhouse Unit which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 8.16 Tanks. No tanks of any kind, elevated or buried, shall be erected, placed or permitted upon any Townhouse Unit.

Section 8.17 Use of Common Area.

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

(b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Common Area which will deny ingress and egress for a substantial period of time to those Owners having access to a public street, to their Townhouse Units, to their parking areas, or to any recreational facilities completed upon the Common Area.

Section 8.18 Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractor shall have all rights set forth in C.R.S. 38-33.3-215 and unless otherwise prohibited by the ordinances of the Town of Eagle, shall be permitted to maintain during the

period of any construction on and sale of the Townhouse Units, upon such portion of the Common Area as Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Townhouse Units, and to the development of the Project, including without limitation, storage of equipment and vehicles, a business office, storage area, construction yards, signs of any size and type, model Townhomes, sales offices, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Townhouse Units; the Declarant may promptly remove any of the above items if Declarant ceases to be a Townhouse Unit owner and the Rights of Declarant under Section 4.3 above have lapsed. In addition, Declarant, its agents, employees, financiers, any contractor involved in the construction or sale of said improvements and Townhouse Units, or in the development of the Property, shall have all rights set forth in C.R.S. 38-33.3-216, and shall have the right to ingress and egress over the Common Area as in Declarant's discretion may be necessary to complete the project. Notwithstanding any provision of this Section, no right under this Section shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any owner, his family members, guests, or invitees, to or of that Owner's Townhouse Unit, his parking area, any public street, or any recreational facility completed upon the Common Area.

ARTICLE IX
INSURANCE

Section 9.1 Common Insurance. Commencing not later than the time of the first conveyance of a Townhouse Unit to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the followings risks:

(a) Property Damage Insurance.

i. The Association shall obtain and maintain to the extent reasonably possible insurance providing broad form property damage insurance on the insurable improvements on the Common Area, on all property owned or maintained by the Association and on the portions of the Townhouse Units set forth below, including casualty and fire, for not less than the full insurable replacement cost of the insured property, less the applicable deductibles, as reasonably determined by the Association at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundation, and other items normally excluded from property insurance policies.

ii. With respect to individual Townhouse Units, such insurance shall only be required to include the exteriors of the Townhouse Units, all interior and exterior walls, roofs, roofing materials, all structural components, all windows and window frames, doorsteps, stoops, doors and door frames, any chimney, fireplace or stove hearth, facing brick, tile or fire box and all unfinished interior surfaces.

Such insurance shall also insure any heating and cooling elements, utility lines and outlets, pipes, electrical and plumbing fixtures and outlets and all other related equipment originally required to provide heating, air conditioning, hot and cold water, electrical, or other utility services to the Townhouse Unit, if located within the unfinished walls, ceilings and floors of the Townhouse Unit. Such insurance shall not be required to include the finished surfaces of perimeter and partition walls, floors and ceilings within a Townhouse Unit (i.e. paint, wallpaper paneling, other wall covering, tile, carpet and any floor covering) and shall not include fixtures and appliances. Such insurance shall not be required to include improvements and betterments installed by Owners, personal property of the Owners or liability for incidents occurring within the Townhouse Units or through the Owner's personal actions.

iii. Such insurance shall include a (a) "Replacement Cost Endorsement providing that any claim will be settled for one hundred percent of the current replacement costs, without deduction for depreciation or coinsurance; and (b) including, to the extent reasonably available, an "Agreed Amount" and Inflation guard Endorsement", a Demolition Costs Endorsement", a "Building Ordinance or Law Endorsement, Increased Cost of Construction Endorsement", and a "Contingent Liability from Operation of Building Laws Endorsement" or their equivalent, if applicable to the type of property insured. Such insurance shall afford protection against, at least, the following: Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement, including, without limitation, sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and all other perils customarily covered by this type of insurance for similar types of townhouse projects located in Eagle County, Colorado.

iv. If any insured casualty occurs as a result of any water running or leaking from, or originating from a source within a Townhouse Unit, and if the Association is required to pay all or a portion of the amount of the uninsured loss, the Association shall be entitled to recover that amount from the individual Unit Owner from whose Townhouse Unit the cause of the casualty originated.

(b) Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity and included as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as

the Executive Board of the Association may from time to time determine, but not in an amount less than $1,000,000.00 per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Area and the Townhouse Units by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(c) Workmen's Compensation. Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the sum required under C.R.S. 38-33.3-313(10), blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided however, any managing agent which handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including but not limited to, employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(e) Officer's and Directors Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(f) Flood. If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is lesser of the maximum amount of

insurance available under the Act or one hundred percent (100%) of the current replacement cost of all buildings and other insurable common and individual property owned in common by the Townhouse Unit Owners and located within the Property.

(g) Other Insurance. In addition, the Executive Board may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

(h) Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

Section 9.2 Annual Review. At least annually and prior to obtaining any insurance policy required under Section 9.1 of this Article, the Executive Board shall obtain an estimate of the full replacement value of all improvements on each Townhouse Unit, including all buildings, fixtures, improvements and service equipment located thereon, and of the Common Area improvements including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of thirty percent (30%) or more of the Townhouse Units that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M.A.I. appraiser and will conform the hazard insurance to the value indicated by that appraisal. In any event, each Owner of a Townhouse Unit is responsible for the adequacy of the insurance coverage carried for the protection of himself or his Townhouse Unit, and each Owner at his own expense, may have the amount or extent of his coverage increased.

Section 9.3 Form of Issuance.

(a) All insurance shall be carried in blanket policy form, shall name the Association (pursuant to Article IX, Section 9.1) as the insured, as trustee and attorney-in-fact pursuant to Article XI hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of an in trust for Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Areas.

(b) To the extent possible, all insurance policies shall:

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide;

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be cancelled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, cancelled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against other shall not become a lien on the Property superior to the First Mortgagee.

(c) On written request the Association shall furnish by certificate or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment or premiums. Further, an insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. The deductibles for an individual townhome should not exceed One Thousand Dollars ($1,000.00) unless a greater deductible is allowed by secondary lenders. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Declaration.

(e) The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Townhouse Unit is damaged by a loss, the Association in its reasonable discretion may assess each Townhouse Unit Owner a pro rata share of any deductible paid by the Association.

Section 9.4 Owner's Personal Property and Liability Insurance An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his expense, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his Townhouse Unit. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall not be affected of diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

ARTICLE X
DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

Section 10.1 Attorney-in-Fact. All of the Owners and irrevocably constitute and appoint the Association as insurance trustee under C.R.S. 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project from the termination of the Project, including without limitation the repair, replacement and improvement of any buildings, fixtures, improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal property installed by the Owners). Title to any Townhouse Unit is declared and expressly made subject to the terms and conditions thereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall

constitute appointment of the attorney-in-fact herein provided. As attorney-in- fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote of agreement of Owners of Townhouse Units to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgage of the Townhouse Unit pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

Section 10.2 Damage or Destruction of Common Area. Any portion of the Project for which insurance is required under C.R.S. 38.33-313 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to that statutory section.

Section 10.3 Damage to or Destruction of Townhomes.

(a) In the event of damage to or destruction of a Townhome due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements 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 improvements. The annual assessments set forth in Article V shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Townhomes, 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 only against the Owners of the damaged or destroyed Townhomes and their Townhouse Units. Such special assessment shall be made by the Executive Board without a vote of the Owners and shall be a debt of each such Owner and a lien on his Townhouse Unit and may be enforced and collected as is provided in Article V. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or

reconstruction of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment.

(c) Notwithstanding any provision to the contrary, but subject to C.R.S. 39-33.3-313(9) to the extent applicable, if by vote or agreement of Owners of Townhouse Units to which at least sixty-seven percent (67%) of the votes of the Association at a meeting duly called for that purpose, have given their prior written approval, the Association shall provide that the Owners of any or all of the destroyed or damaged Townhomes may agree that such Townhomes shall forthwith be demolished and all debris and rubble caused by such demolition removed from the Lot and the Lot regraded and landscaped to the satisfaction of the Board. The cost of such demolition work and landscaping, together with all taxes, liens and encumbrances and any cost in repairing any party walls, shall be paid for by any and all available insurance proceeds, with any deficiency thereof to be paid by the Owner(s) of the applicable Townhome. Any excess insurance proceeds shall then be disbursed to such Owner and his First Mortgagee jointly and said Owner shall convey merchantable title to his Lot to the Association, free and clear of all liens, encumbrances, assessments, and taxes (except as prorated), for its fair market value as determined by and M.A.I. appraisal, the cost of which shall be paid by the Owner of the applicable Townhome, with the appraiser thereof to be named by the Association. Upon the Association's acquisition of the Lot, said Lot shall become part of the Common Area.

Section 10.4 Condemnation. If a Townhouse Unit, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereon), as reasonably determined by the Association in excess of $5,000.00, the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Area or improvement thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished without giving all Owners at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be paid to the Association as provided by C.R.S. 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy-five percent (67%) or more of the Owners do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1)

equal share per Townhouse Unit, except that any award attributable to the acquisition of a limited common element shall be paid solely to the Owner thereof and that Owner's First Mortgagee.

Section 10.5 Repair and Reconstruction. Unless otherwise agreed by the vote or agreement of Owners of Townhouse Units to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and with the original plans and specifications and shall restore any Townhome or other improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage.

Section 10.6 Excess Insurance Proceeds. By vote or agreement of Owners of Townhouse Units to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstruction are completed shall be paid to each Owner and his First Mortgagee jointly at the rate of one equal share per Townhouse Unit. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

Section 10.7 Notice of Loss to First Mortgagees. Provided that a First Mortgagee has, in writing, requested the following information with respect to a Townhouse Unit upon which said First Mortgagee holds the First Mortgage and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of: (a) any improvement on the Lot on which such First Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars ($5,000.00) and/or (b) the Common Area which shall be in excess of Five Thousand Dollars ($5,000.00), or in the event of the condemnation of any part of the Common Area as described in Section 10.4 of this Article in excess of Five Thousand Dollars ($5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such First Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of insurance proceeds or condemnation awards for loss to or taking of Lots or Common Area, or both.

Section 10.8 Merger. The Association may merge with one or more homeowners' association in the surrounding area on such terms and condition as may be agreed to by vote or agreement of Owners of Townhouse Unit to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

ARTICLE XI

MOLD

Section 11.1 Mold Disclosure. Molds, mildew, fungi, bacteria and microbiologic organisms (collectively, "Molds") that may have adverse effects on human health are present in soil, air and elsewhere in the environment. There currently exists no state or federal standards regarding acceptable levels of exposure to Molds. The key to controlling Mold growth is to control moisture. Buyer agrees to maintain the Unit in such a manner as to reduce the potential for Mold formation or growth, including, without limitation keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Buyer agrees to make periodic inspections of the Unit for the presence of Molds or conditions which may increase the ability of Molds to propagate within the Unit, and to monitor the Unit on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the Unit, Buyer should immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of the moisture could result in addition damage and the growth of Mold. Plumbing leaks and water penetrations that are covered by the Limited Warranty during the term of the Limited Warranty must be reported to Seller immediately. If the Limited Warranty has expired or the Limited Warranty does not cover the specific problem, Buyer should not delay in having professionals address the problem. Seller will not be responsible for damages, Buyer hereby waives all rights to damages and subrogation of damages and Buyer agrees to indemnify Seller and hold Seller harmless from damages, including in all cases personal injury or property damage, caused by the presence of Mold and/or water or moisture in the Unit to the extent the damages are caused by (i) Buyer's negligence or failure to properly maintain and monitor the Unit; (ii) Buyer's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professional); or (iii) Buyer's failure to promptly notify Seller of the water or moisture problem and to provide Seller with an opportunity to dry the water or moisture, correct the source of the problem, and remediate, if necessary, any moisture conditions resulting from defects in workmanship and materials covered by the Limited Warranty.

ARTICLE XII
DISPUTES

Section 12.1 Enforcement/Arbitration.

(a) Subject to the provisions of Sections 12.1.1(b) and (c) regarding the mediation, arbitration and resolution of certain disputes, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. Subject to the provisions of Sections 12.1(b) and (c), the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings,

and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

(b) For the purposes of this 12.1(b), "Dispute" shall mean any dispute, action, claim or controversy, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury) between the Declarant, the Association and/or any one or more Owners that: (i) concerns or requires the application of any provision of this Declaration, the Bylaws, or any related agreements or documents (collectively the "Arbitration Documents"); (ii) concerns or requires the application of any provision of the Act; (iii) arises from any act, omission, transaction or occurrence in any Unit or in or on any Common Element; or (iv) concerns any Townhouse Unit or Common Element or any improvement or item of tangible personal property in or on a Unit or Common Element, but shall expressly exclude: (a) any action by any party to seek or obtain a temporary restraining order, preliminary injunction or similar equitable order or decree; (b) any action by any party to compel arbitration or enforce a temporary restraining order, preliminary injunction, permanent injunction or similar equitable order or decree, or any award or decision of any arbitration conducted pursuant to this Section 12.1(b); (c) any action by the Association to asses or collect any Assessments or to enforce or foreclose any lien for such Assessments; (d) any action by the Association to enforce the provisions of this Declaration concerning use restrictions; or (e) any action pursuant to the provisions of this Declaration concerning mechanics liens. Upon the written demand of any Owner, Declarant or the Association (for purposes of this Section 12.1(b), each of which is called a "party" and any two (2) or more of which are called "parties"), any Dispute shall be resolved by mediation, or if mediation is not successful, by binding arbitration in accordance with the terms of this Section 12.1(b), but in the case of a Construction Dispute (as defined below), only after compliance with the requirements of subsection (j) of this Section 12.1.

(c) A Written demand for mediation shall be made within a reasonable time after the Dispute has arisen, or in the case of a Construction Dispute, within sixty (60) days after the party becomes entitled to submit the Construction Dispute to mediation. The Dispute shall be mediated by a mutually acceptable mediator to be chosen by the parties within thirty (30) days after the demand for mediation. No party may unreasonably withhold consent to the selection of a mediator, and each party shall share the cost of mediation equally. If the parties are unable to resolve the Dispute by mediation within one hundred twenty (120) days after the demand for mediation, then any party may make a demand for the resolution of the Dispute by arbitration in accordance with the terms of this Section.

(d) No proceedings for arbitration of a Dispute, or a Construction Dispute as hereinafter defined (or litigation of the same in the event that any judicial proceeding is allowed or had) shall be commenced by the Association unless prior to the initiation of the arbitration,

such action is approved by the vote of Owners holding at least eighty percent (80%) of the voting power of the Owners entitled to vote.

(e) A demand for the resolution of a Dispute by arbitration must be made in writing within a reasonable time after the party becomes entitled to submit the Dispute to arbitration. The demand for arbitration shall be delivered to the other party(ies) and the American Arbitration Association (the "AAA") before the date when commencement of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations. In no event shall the demand for arbitration of a Dispute be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. Any party who fails to submit to binding arbitration regarding a Dispute following a lawful demand by the opposing party shall bear all costs and expenses, including reasonable attorneys' fees, incurred by the opposing party in compelling arbitration of such Dispute. Except as otherwise provided in this Section 12.1 or by the express written agreement of the parties, the AAA shall administer all aspects of arbitrations conducted pursuant to this Section 12.1, including selection of arbitrators, pursuant to the AAA's Commercial Arbitration Rules. Except as provided below with respect to enforcing the decision of the arbitrator(s), once a Dispute is submitted to arbitration, the claims involved cannot later be brought, filed or pursued in any court.

(f) All arbitration of Disputes shall be conducted in the greater Denver, Colorado metropolitan area. Except with respect to any Dispute involving, in the aggregate, claims and counterclaims of less than Ten Thousand Dollars ($10,000), arbitration hereunder shall be before a three (3) person panel of neutral arbitrators consisting of persons from either of the following categories, but at least one (1) from each category: (i) an attorney who has practiced in the area of real estate transactional law for at least ten (10) years or a retired judge at the district court or an appellate court level; or (ii) a person with at least ten (10) years experience in the residential construction industry. Any Dispute involving, in the aggregate, claims of less than Ten Thousand Dollars ($10,000) shall be resolved before a single arbitrator meeting the qualifications set forth in clause (i) of the preceding sentence. The AAA shall submit a list of persons meeting the criteria outlined above for each category of arbitrator, and the parties shall select one (1) person from each category in the manner established by the AAA. Arbitrations conducted pursuant to the terms of this Section 12.1 will be governed by Colorado law.

(g) Multiple Disputes or party claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually pursuant to the terms of, this Section 12.1, provided that the arbitrator(s) shall (i) consolidate in a single arbitration proceeding any multiple Disputes or party claims that are substantially identical; and (ii) arbitrate multiple Disputes as a class action in accordance with Rule 23 of the Colorado Rules of Civil Procedure. A party will state as a counterclaim any claim that relates in any way to a Dispute and does not require the presence of a third party who could not be joined as a party in the proceeding. The orders of the arbitrator(s) shall be in writing and shall specify the factual and legal basis for the decision. Except as provided below with regard to awards of attorneys' fees and expenses, no party shall be entitled to receive any award of damages in connection with the arbitration of a Dispute, other than such party's actual damages, and

Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages in a Dispute, other than actual damages, including without limitation special damages, consequential damages and punitive or exemplary damages.

(h) BY TAKING TITLE TO A UNIT OR CLUB ESTATE EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARDS OF DAMAGES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE, OTHER THAN OWNER'S ACTUAL DAMAGES.

(i) The arbitrator(s) shall make an award of attorneys' fees and expenses, including the fees and expenses of the arbitrator(s) to the prevailing party; provided, however, if the decision of the arbitrator(s) is not wholly in favor of one party, the arbitrator(s) shall allocate such fees and expenses between the parties. The results of any arbitration conducted pursuant to this Section 12.1 shall be binding and final, and the decision of the arbitrator(s) may be filed, converted and enforced as a judgment, order or decree in the District Court of the County.

(j) Any Dispute which relates to or arises out of the physical condition of the Common Elements or the Townhouse Units and involves the Declarant in a position adverse to the Association and/or any Owner(s) shall be deemed a "Construction Dispute," and shall be subject to the provisions of this subsection (j), in addition to the provisions of subsection (b) of this Section 12.1 above. Prior to invoking binding arbitration under subsection (c) above, the Association or the Owner, as applicable (the "Initiating Party") shall deliver written notice (a "Dispute Notice") to the Declarant specifying the particular defects that are the subject of the Construction Dispute, together with copies of all studies, surveys, reports and other documents relating thereto. The Dispute Notice shall contain the current mailing address for the Initiating Party.

(k) Within forty-five (45) days after receiving the Dispute Notice, the Declarant may deliver to the Initiating Party a written notice (the "Response Notice") designating a time and place for a meeting between the Declarant and the Initiating Party to discuss the Construction Dispute; provided, however, that such meeting shall take place within the Project or at the Declarant's principal place of business, and shall occur not less than seven (7) nor more than thirty (30) days after delivery of the Response Notice. The Declarant may make on-site inspections of the Project, including investigative testing of those areas and components identified in the Notice. Upon delivery of the Response Notice, all statutes of limitations applicable to the claim against the Declarant shall be tolled. If the Declarant does not deliver the Response Notice within the forty-five (45) day period, as provided in this subsection (k) of this Section 12.1, the Initiating Party may institute mediation and then binding arbitration, if necessary, pursuant to subsection (b) above. Within thirty (30) days after receipt of the Response Notice, the Association and the Owners shall make available for inspection and testing all Common Elements and Townhouse Units identified in the Dispute Notice. The Declarant shall pay all costs to restore any portions of the Project damaged by Declarant's inspection and/or testing to its original condition and shall indemnify the Association for any damages arising from the inspection and/or testing. All inspections and testing shall be completed within

one hundred fifty (150) days after delivery of the Response Notice, unless otherwise mutually agreed upon by the parties.

(l) Within two-hundred ten (210) days after delivery of the Response Notice, the Declarant may submit a written statement to the Association setting forth the Declarant's proposed settlement of the Construction Dispute (an "Offer") and stating whether the Declarant proposes to repair or replace the work at issue, to pay the Initiating Party a cash sum in connection therewith, or a combination thereof, or to repurchase the Townhouse Unit(s). If the Offer is accepted, the Declarant and its agents, employees and subcontractors shall be provided in full access to the Project, including the Townhouse Units, to take and complete the corrective action set forth in the Offer. If the Declarant does not deliver an Offer within two-hundred ten (210) days after delivery of the Response Notice or if the Offer is rejected, the Initiating Party may proceed to Binding Arbitrator pursuant to subsection (c) of this Section 12.1.

(m) At any time after delivering the Response Notice the Declarant may terminate the tolling of the statute of limitations provided in this Section12.1 by delivery of thirty (30) days prior written notice thereof (the "Termination Notice") to the Initiating Party.

(n) Upon delivery of the Termination Notice, the Initiating Party shall be relieved of all further obligations to satisfy the conditions of this 12.1 and may initiate Arbitration pursuant to subsection (b) of this Section 12.1. Notwithstanding the provisions of this 12.1, the tolling of any statute of limitations pursuant to this Section 12.1 shall automatically cease two hundred forty (240) days following the delivery of the Response Notice. If the Initiating Party desires to assert another Dispute not set forth in any prior Dispute Notice delivered to the Declarant by the Initiating Party, the Initiating Party shall be required to satisfy all of the conditions and requirements of this 12.1 with respect thereto.

ARTICLE XIII
GENERAL PROVISIONS

Section 13.1 Acceptance of Provisions of all Documents. The conveyance or encumbrance of a Lot or the improvements thereon shall be deemed to include the acceptance of all provisions of this Declaration, the Articles of Incorporation of the Association and the Association's Bylaws and rules and regulations, all of which shall be binding upon each Owner, his heirs, personal representatives, family guests, tenants, successors and assigns, and everyone having an interest in the Townhouse Unit without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance. The Association and the Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Declaration.

Section 13.2 Enforcement. The Board, the Declarant 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 board or by the Declarant 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. The Board

shall have the right to promulgate rules and regulations to enforce or apply this Declaration, and all Owners and other parties subject thereto shall strictly comply therewith. In addition to all other remedies, the Executive Board shall have the right, after notice and an opportunity of hearing, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and regulations. All rights and remedies provided in this Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity, and may be exercised concurrently, independently or successively.

Section 13.3 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 13.4 Cumulative. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 13.5 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.6 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 13.7 Duration and Amendment. The provisions of this Declaration shall run with the land in perpetuity, subject to the termination provisions of the Act and this Declaration. Except as is otherwise provided herein, this Declaration shall not be revoked or terminated unless all of the Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. 38-33.3-218. This Declaration may be amended or modified by vote or agreement of Owners of Townhouse Units to which at least fifty-one percent (51%) of the votes in the Association are attached; provided, however, (a) that any section in this Declaration which requires a particular percentage of Owners may be amended only by written consent of that percentage of those Owners, (b) that this section may be amended by an instrument signed by Owners owning not less than ninety percent (90%) of the Townhouse Units, and (c) that the Declarant hereby reserves the right, until the Period of Declarant Control is terminated, but without the vote of the Owners, to make such amendments to this Declaration, the Articles of Incorporation and/or the Bylaws, as may be permitted by the Colorado Common Interest Ownership Act and each Owner and Mortgagee by accepting a deed, Mortgage or other instrument affecting a Lot appoints

Declarant as his attorney-in-fact for purposes of executing in said Owner's and/or Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Townhouse Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of an a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. In determining whether the appropriate percentage of First Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the grantees index, in the name of the Project and the Association and in the grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the persons or parties as set forth in C.R.S. 38-33.3-217(6). The Association shall notify any First Mortgagee who has requested notice in writing of any proposed action under this Declaration which would require the consent of a specified percentage of First Mortgagees.

Section 13.8 Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statement and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified 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 the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at his registered address.

Section 13.9 Assignment of Declarant's Rights. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written agreement, duly recorded.

Section 13.10 Number and Gender. 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 13.11 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provisions hereof.

Section 13.12 Governing Law. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

Section 13.13 Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Common Interest Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of this 6th day of January, 2005.

DECLARANT

Chatfield Court Development LLC
a Colorado limited liability company

By: M. Dietz Enterprises, Inc, a Colorado corporation, Manager

By: _____
Matthew A. Dietz, President

STATE OF COLORADO)
) §
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 6th day of January, 2005 by Matthew A. Dietz as President of M. Dietz Enterprises, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires on: 7/25/2009

_____
Notary Public

JEREMY D. BEHLING NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 07/25/2009

JOINDER OF LIENOR

The undersigned, beneficiary under the Deeds of Trust recorded at Reception Nos._____ in the office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Declaration of Covenants, Conditions and Restriction affecting a portion of the property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration.

Alpine Bank

By: _____

Title: Senior Vice President

STATE OF COLORADO)

) §

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 6TH day of January, 2006 by Michael Gibbs as Senior Vice President of Alpine Bank.

Witness my hand and official seal.

My commission expires on: 7/25/2009

Notary Public

JEREMY D. BEHLING NOTARY PUBLIC STATE OF COLORADO

My Commission Expires 07/25/2009

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TENDERFOOT

LEGAL DESCRIPTION

Units 14-A, 14-B, 15-A, 15-B, 16-A, 16-B, 17-A, 17-B, and the Common Area set forth on the Final Plat Tenderfoot Phase 1, A Resubdivision of Tract B Tenderfoot, Town of Gypsum, Eagle County, Colorado Recorded at Reception No._____, in the office of the Clerk and Recorder of Eagle County, Colorado.

EXHIBIT "B"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TENDERFOOT

EXPANSION PROPERTY

The property set forth as Tact A and Parcel A on the Final Plat Tenderfoot recorded at Reception No. 929952 in the office of the Clerk and Recorder of Eagle County Colorado and the property set forth as Tract B-1, Future Development on the Final Plat Tenderfoot Phase 1, A Resubdivision Tract B Tenderfoot, Town of Gypsum, Eagle County, Colorado Recorded at Reception No._____, in the office of the Clerk and Recorder of Eagle County, Colorado.

EXHIBIT "C"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TENDERFOOT

Townhouse Unit	Owner's Proportionate Share and Assessment Percentage
14-A	12.5
14-B	12.5
15-A	12.5
15-B	12.5
16-A	12.5
16-B	12.5
17-A	12.5
17-B	12.5

*Minor variations due to the rounding of percentages in order to equal one hundred percent pursuant to Article 38-33.3-207 of the Act, and for all purposes hereunder shall be deemed to be equal.

EXHIBIT "D"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TENDERFOOT

Matters to which Title to the Property is Subject

1. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENTS RECORDED MAY 22, 1918, IN BOOK 93 AT PAGE 12, JANUARY 19, 1918 IN BOOK 48 AT PAGE 365 AND MAY 22, 1918 IN BOOK 48 AT PAGE 363

2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATNETS RECORDED MAY 22, 1918, IN BOOK 48 AT PAGE 365.

3. TERMS, CONDITIONS AND PROVISIONS OF RIGHT OF WAY EASEMENT RECORDED JUNE 25, 1936 IN BOOK 116 AT PAGE 407.

4. TERMS, CONDITIONS AND PROVISIONS OF ORDER OF INCLUSION OF LAND RECORDED DECEMBER 22, 1989 IN BOOK 520 AT PAGE 156.

5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF 1 K BAR RANCHES RECORDED APRIL 5, 1995 IN BOOK 664 AT PAGE 744 AND AMENDED PLAT OF 1 K BAR RANCHES RECORDED APRIL 5, 1995 IN BOOK 664 AT PAGE 744 AND AMENDED PLAT OF 1 K BAR RANCHES RECORDED NOVEMBER 1, 1995 IN BOOK 679 AT PAGE 869.

6. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE EXEMPTION PLAT OF 1 K BAR RANCH/EAGLE COUNTY SCHOOLS RECORDED NOVEMBER 6, 2000 AT RECEPTION NO. 743408 AND ANNEXATION PLAT OF 1 K BAR RANCHES ADDITION TO THE TOWN OF GYPSUM RECORDED AUGUST 17, 2001, AT RECEPTION NO. 765176.

7. TERMS, CONDITIONS AND PROVISIONS OF ANNEXATION AGREEMENT RECORDED OCTOBER 17, 2001 AT RECEPTION NO. 770071.

8. TERMS, CONDITIONS AND PROVISIONS OF SUBDIVISION IMPROVEMENT AGREEMENT RECORDED MAY 30, 2002 AT RECEPTION NO. 797169.

9. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF CHATFIELD CORNERS RECORDED MAY 30, 2002 AT RECEPTION NO. 797170.

10. TERMS, CONDITIONS AND PROVISIONS OF ORDER AND DECREE CREATING DISTRICT RECORDED JULY 05, 2002 AT RECEPTION NO. 800618.

11. TERMS, CONDITIONS AND PROVISIONS OF HOLY CROSS ENERGY RIGHT OF WAY EASEMENT RECORDED AUGUST 14, 2002 AT RECEPTION NO. 804454.

12. EASEMENTS, CONDITIONS, AND COVENANTS, RESRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF CHATFIELD CORNERS, FILING NO. II RECORDED JANUARY 27, 2003 AT RECEPTION NO. 821515.

13, RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXENT THAT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMAINATE AGAINST HANDICAPPED PERSONS, AS CONTAINED IN INSTRUMENT RECORDED JANUARY 07, 2003, UNDER RECEPTION NO. 819483.

14. TERMS, CONDITIONS AND PROVISIONS OF AMENDMENT TO DESIGN REVIEW GUIDELINES RECORDED APRIL 09, 2003 AT RECEPTION NO. 829463.

17. THE FINAL PLAT TENDERFOOT, A RESUBDIVISION OF TRACT B TENDERFOOT, TOWN OF GYPSUM, EAGLE COUNTY, COLORADO RECORDED ON _____, 2005 AT RECEPTION NUMBER_____.

18. THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TENDERFOOT RECORDED ON _____, 2005 AT RECEPTION NUMBER_____.