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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

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**Exhibit "A" – Legal Description of Real Estate**

**Exhibit "B" – Easements and Licenses**

**Exhibit "C" – Assessment Percentages**

**Exhibit "D" – Certificate of Completion**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE VALLEY BROOK TOWNHOMES (this "Declaration") is made this 4th day of January, 2011 by SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation ("Declarant"), whose address is P.O. Box 188, Breckenridge, Colorado 80424.

**RECITALS**

A. Declarant is the owner of the real estate in the County of Summit, Colorado described in **Exhibit A** (the "Real Estate"), upon which Declarant desires to create a planned community known as the "Valley Brook Townhomes" (the "Community").

B. Declarant has caused the "Valley Brook Townhomes Association", a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado as an owners' association for the purpose of exercising the functions as herein set forth.

**ARTICLE 1**

**GENERAL**

Section 1.1 Planned Community.

(a) Declarant intends to develop the Real Estate as a residential planned community in accordance with the terms and provisions of the Colorado Common Interest Ownership Act.

(b) This Declaration is executed: (i) in furtherance of a common and general plan for the development of the Community; (ii) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Community; (iii) to set forth the Valley Brook Townhomes Association's responsibilities and authority to govern and manage the Community; (iv) to define certain duties, powers, and rights of the Owners; and (v) to define certain duties, powers, and rights of Declarant.

Section 1.2 Submission of Real Estate. Declarant declares that all of the Real Estate shall be held and/or conveyed subject to this Declaration. The Real Property shall also be held and/or conveyed subject to the rights of Declarant under Article 15 hereof, and further subject to the Development Rights and/or Special Declarant Rights set forth therein. This Declaration is made for the purpose of protecting the value and desirability of the Real Estate.

Section 1.3 Covenants Running with Real Estate. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Real Estate.

Section 1.4 Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, the Association, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assignees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity, in accordance with the provisions of the Act.

## ARTICLE 2

### DEFINITIONS

Capitalized terms not otherwise defined in this Declaration have the meanings set forth in this Article 2.

Section 2.1 "Act" means the Colorado Common Interest Ownership Act, codified as amended at C.R.S. § 38-33.3-101 *et seq.*

Section 2.2 "Allocated Interests" means the number of votes and liability for the Common Expenses (expressed as a percentage) that are allocated to each Unit as set forth in Section 3.9 below.

Section 2.3 "Articles of Incorporation" means the Articles of Incorporation of the Valley Brook Townhomes Association filed with the Colorado Secretary of State, as they may be amended from time to time.

Section 2.4 "Assessment" means all assessments for Common Expenses levied by the Association against a Unit pursuant to this Declaration or the Act.

Section 2.5 "Assessment Percentage" means each Unit's liability for Common Expenses, which is determined by dividing a Townhome's floor area, in square feet, by the total floor area of all Townhomes.

Section 2.6 "Association" means Valley Brook Townhomes Association, a Colorado nonprofit corporation, and its successors and assignees.

Section 2.7 "Association Maintenance Area" means: (i) the exterior of the buildings containing the Units, as well as the exterior of the Units themselves, including, without limitation, roofs, decks, patios, exterior walls and doors, windows, driveways, private sidewalks, exterior lighting, and the fencing that encloses the rear patios and front porches of the Townhomes; (ii) the structural components of the building containing the Units, as well as the structural components of the Units themselves, including, without limitation, foundations, structural walls, party walls, and the floor, roof, and ceiling systems as delineated on the plat or the Map; (iii) all chutes, flues, wires, conduits, service lines, fixtures, glycol tubing, and utilities serving the Units; and (iv) all Common Elements, both General Common Elements and Limited Common Elements. The PV Systems are not included within the Association Maintenance Area,

although the Association will keep the PV Systems free from snow and ice accumulation as provided in Section 5.1(e) of this Declaration.

Section 2.8 "Bylaws" means the bylaws of the Association, as they may be amended from time to time.

Section 2.9 "Common Elements" means those portions of the Real Estate, and all improvements now or hereafter made thereto, owned by the Association, and any other property, real or personal, owned from time to time by the Association including, without limitation, all perimeter fences installed by the Declarant, and landscaping/hardscaping installed on the open space tracts located within the Community. The term, "Common Element" is synonymous with the term "common element" as defined at Section 103(5)(b) of the Act.

Section 2.10 "Common Expense" means any expenditure made or liability incurred by, or on behalf of, the Association, together with any allocations to reserves.

Section 2.11 "Community" means the Valley Brook Townhomes, a "planned community," as defined at Section 103(22) of the Act.

Section 2.12 "Construction Defect Claim" means a claim, asserted by the Association on its own behalf or on behalf of the Owners of two or more Units, for damages or other relief arising out of any alleged defect in the design or construction of any Improvement that constitutes part of the Community at any time while this Declaration is in force.

Section 2.13 "Declarant" means Summit Housing Development Corporation, a Colorado nonprofit corporation, and its successors and assignees, if such successors and assignees are designated by the then-Declarant to serve as a Declarant for any specified purposes or for all purposes under this Declaration in a written instrument duly executed by Declarant and its designated successor or assignee and recorded in the Office of the Clerk and Recorder of the County of Summit, Colorado.

Section 2.14 "Declarant Control Period" means the period from and after the date of recording of this Declaration during which Declarant controls the Executive Board as more fully set forth in Section 4.3 below.

Section 2.15 "Declaration" means this Declaration of Covenants, Conditions, and Restrictions of the Valley Brook Townhomes, as it may be amended or supplemented from time to time.

Section 2.16 "Deed Restrictions" means the "Residential Housing Restriction and Notice of Lien for Valley Brook Townhomes, Town of Breckenridge, Summit County, Colorado" recorded August 6, 2010 at Reception No. 944064 of the real property records of the County of Summit, Colorado, together with any amendments thereto (the "Deed Restrictions"). The Deed Restrictions apply to all Townhomes within the Community and limit any Owner's ability to re-sell his or her Townhome in the Community to certain income-eligible buyers, as more particularly described in the Deed Restrictions, although, as set forth in Article 9 of the Deed Restrictions, such restrictions on re-sale do not apply to the First Mortgagees who have acquired title to a Townhome by foreclosure or acceptance of a deed-in-lieu of foreclosure.



Section 2.17 "Development Rights" means those rights set forth in Article 15 of this Declaration and all "development rights" set forth in Section 103(14) of the Act.

Section 2.18 "Eligible Holder" means a First Mortgagee or insurer or guarantor of a First Mortgage who has made written request to the Association for notification of certain matters and actions in accordance with the provisions of Section 14.2.

Section 2.19 "Executive Board" means the board of directors of the Association.

Section 2.20 "First Mortgage" means a Security Interest in a Unit that has priority over all other Security Interests in the Unit.

Section 2.21 "First Mortgagee" means any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.22 "Garage" means the portion of a Townhome designed and intended for parking and storage of motor vehicles, and designated as a Garage.

Section 2.23 "General Common Elements" means all of the Common Elements except the Limited Common Elements including, without limitation, all Community perimeter fencing, and the retaining and sound walls installed within the Community by Declarant.

Section 2.24 "Governing Documents" means the Articles of Incorporation, the Bylaws, the Map, the Rules and Regulations, and this Declaration as any of the same may be supplemented or amended from time to time.

Section 2.25 "Improvement" means all structures and improvements located upon the Real Estate and any appurtenances thereto of every type or kind including, but not limited to, patio covers, awnings, the painting of any exterior surfaces of any visible structure, roofing, trash containers, mailboxes, satellite dishes, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, parking spaces, garages, driveways, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, plantings, trees and shrubs, poles, signs, exterior tanks, solar equipment, grading, filling, or similar disturbance to the surface of the land, exterior air conditioning, and utility lines and facilities – all as the same may be constructed, repaired, renovated, or replaced from time to time.

Section 2.26 "Judicial Proceeding" has the meaning assigned to it in Section 5.6 below.

Section 2.27 "Limited Common Elements" means those parts of the Common Elements that are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units, including without limitation the driveways. The Limited Common Elements are shown on the Map, or are otherwise allocated in accordance with this Declaration and the Act.

Section 2.28 "Map" means the Map of Valley Brook Townhomes recorded with the Clerk and Recorder of the County of Summit, depicting a plan and elevation schedule for the entire Community subject to this Declaration, and any supplements and amendments thereto. The Map and supplements are hereby incorporated herein by reference as if set forth in their entireties. Declarant certifies that all information required by Section 209 of the Act is contained in the Declaration, the Map or plat, or some combination of all three.

Section 2.29 "Member" means a member of the Association, each of whom is and must be an Owner.

Section 2.30 "Mortgage Agencies" means and collectively refers to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), the Colorado Housing and Finance Authority (CHFA), or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity that performs (or may perform in the future) functions similar to those currently performed by any of such entities.

Section 2.31 "Owner" means any record owner (including a Declarant and including a contract vendor), whether one or more persons or entities, of a fee simple title interest to any Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

Section 2.32 "Real Estate" means the real property and all interests therein legally described in Exhibit A.

Section 2.33 "Rules and Regulations" has the meaning set forth in Section 5.8 below.

Section 2.34 "Security Interest" means an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.35 "Special Declarant Rights" means those rights set forth in Article 15 of this Declaration, and all "special declarant rights" set forth at Section 103(29) of the Act.

Section 2.36 "Townhome" means the building comprising a Unit designed and intended for occupancy as a residence, together with all fixtures and improvements contained therein including the Garage.

Section 2.37 "Two-Family Townhome Unit" has the meaning set forth in Section 9.9 of this Declaration.

Section 2.38 "Unit" means the physical portion of the Community, designated for separate ownership and designated as a Unit on the Map. The term "Unit," as used herein, also refers to a "unit" as that term is defined at Section 103(30) of the Act.

### **ARTICLE 3**

#### **COMMON ELEMENTS, UNITS, AND ALLOCATED INTERESTS**

Section 3.1 Rights of Ingress and Egress. Declarant and every Owner, tenant, and their respective family members, guests, invitees, and licensees shall have a perpetual right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to such Owner's Unit, for the purpose of entering and exiting such Owner's Unit, the appurtenant Garage, parking areas, any recreational facilities, and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties, and obligations contained in this Declaration and the Deed Restrictions;

(b) The right of the Association to suspend the voting rights and any and all rights of any Owner to the use of any recreational or other facilities for any period permitted by law during which any Assessment against such Owner's Unit remains unpaid and for any period of time that the Association may deem to be appropriate for such Owner's infraction of this Declaration, the Articles of Incorporation, the Bylaws, or any written rule or regulation of the Association, or any such infraction by such Owner's tenant, any member of such Owner's or tenant's family, or such Owner's or tenant's guests, licensees, or invitees;

(c) The right of the Association to adopt, from time to time, rules and regulations concerning the Units, Common Elements, and/or any other property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent; and

(d) The right of Declarant, during the period of its Development Rights, and the right of the Association, at any time, to grant permits, licenses, and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community.

Section 3.2 Conveyance of Common Elements. The Common Elements may not be conveyed or encumbered except as permitted under the Act. Notwithstanding the foregoing, the granting of permits, licenses, and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed to be a conveyance. The Association may convey or grant a security interest in portions of the Common Elements

only in accordance with the provisions of Section 312 of the Act and Section 14.1(a)(iii) of this Declaration.

Section 3.3 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his or her Unit. When a Limited Common Element is appurtenant to more than one Unit, the Owners of the Units to which it is appurtenant shall share the exclusive right to use and enjoy such Limited Common Element.

Section 3.4 Party Walls.

(a) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply to each Townhome and its Owner.

(b) Ownership, Maintenance, and Repair. The party walls shall be owned equally by the Owners of the adjoining Townhomes as tenants-in-common. However, the party walls shall be an Association Maintenance Area; and the cost of reasonable repair, maintenance, and restoration of such party walls shall be the responsibility of the Association as provided in Article 5, except to the extent that such repair, maintenance, or restoration results from the negligence or willful misconduct of an Owner, in which case, that Owner shall be solely responsible for such costs. If either Owner reasonably believes that repair, restoration, or maintenance of a party wall is needed, such Owner shall provide 30 days' written notice to the other Owner and to the Association, except in an emergency, in which case such other Owner and the Association shall be provided prompt verbal notice in addition to written notice as soon as practicable thereafter. If the Association fails to object within 30 days after receipt of said notice, it shall be deemed approved. The Association may undertake such maintenance, repair, or restoration of a party wall as approved or deemed approved under this subsection (b).

(c) Destruction by Fire, Flood, or Other Casualty. If a party wall is destroyed or damaged by fire, flood, or other casualty, the Association shall restore it, subject to the provisions of Article 5.

(d) Weatherproofing. An Owner who, by his or her 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) Perpetual Easement for Maintenance and Restoration. A perpetual easement of access to the party wall is granted to the Association for the exclusive purpose of maintaining and/or restoring all party walls.

Section 3.5 Number of Units. The number of Units initially included in the Community is thirteen (13). Declarant reserves the right to create and add up to the maximum total number of forty-two (42) Units for the property subject to this Declaration.

Section 3.6 Identification of Units/Unit Descriptions. The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, Security Interest, shall, or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, with reference to the Map and subject to the easements and licenses of record including, without limitation, this Declaration. An illustrative description is as follows:

Unit \_\_\_\_, Valley Brook Townhomes, according to the map thereof recorded or to be recorded in the records of the Clerk and Recorder of the County of Summit, Colorado and as defined and described in the Valley Brook Townhomes Declaration to be recorded in the Records, subject to the rules and regulations of the Association (as hereinafter defined), together with any "Common Elements" of the Townhomes, in each case that are appurtenant to such Unit (all of the foregoing property and rights are hereinafter collectively referred to as the "Townhome Unit").

Reference to this Declaration, and/or Map shall be deemed to include any supplement(s) or amendment(s) to this Declaration, or Map without specific references thereto.

Section 3.7 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will, and every other instrument affecting title to a Unit that legally describes said Unit substantially in the manner set forth in Section 3.6 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Unit, all other appurtenant properties and property rights, and incorporate all of the rights, limitations, and burdens incidental to ownership of a Unit as described in this Declaration. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Unit and the use of all the General Common Elements, as well as all of the Limited Common Elements appurtenant to said Unit, all as more fully provided in this Declaration.

Section 3.8 Taxation. Each Unit shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority in accordance with Section 105 of the Act. For the purpose of such taxes and assessments, the valuation of the General Common Elements shall not be separately assessed, but shall be apportioned among the Units in proportion to the Common Expenses liability appurtenant thereto and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned to the individual Unit or Units to which such Limited Common Elements are allocated. The Common Elements and other property owned by the Association, if any, shall be appraised and valued pursuant to the provisions of Section 105 of the Act. The Association shall furnish to the Tax Assessor of the County of Summit, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 3.9 Allocated Interests. The Allocated Interests appurtenant to each Unit are as follows:

(a) Each Unit's liability for Common Expenses is equal to its Assessment Percentage, which shall be determined by dividing a Townhome's floor area, in square feet, by the total floor area of all Townhomes;

(b) In all instances, the floor area of the Townhomes has been determined in good faith by Declarant and consistently applied to all Townhomes. The Assessment Percentages for the Units are set forth on **Exhibit C** attached hereto and incorporated herein by this reference. If Units are added to or withdrawn from the Community pursuant to the provisions of this Declaration, the Assessment Percentages of each Unit shall be recomputed for purposes of reallocating the Allocated Interests. Declarant shall record a supplement to this Declaration setting forth the revised Allocated Interests of all Units in the Community each time Units are added or withdrawn; and

(c) Subject to the restrictions contained within this Declaration, each Unit shall have one vote in the Association's affairs.

Section 3.10 Inseparability. Each Unit and all appurtenances, rights, and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered, or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance, or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance, or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration. A Garage may not be conveyed separately from the Townhome to which it is appurtenant.

## ARTICLE 4

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 4.1 Membership. Every Owner of a Unit shall be a Member and shall remain a Member for the period of his or her ownership of a Unit. Membership in the Association is appurtenant to ownership of a Unit and may not be separated therefrom. Each Unit shall be entitled to one vote to be exercised by the Owner or Owners thereof.

Section 4.2 Executive Board.

(a) The affairs of the Association shall be managed by the Executive Board consisting of the number of members set forth in the Articles of Incorporation, as amended, or the Bylaws, as amended, from time to time. The Executive Board may create committees for the purpose of carrying out some of its management responsibilities, provided that the delegation by the Executive Board of any of its responsibilities to a committee shall not be deemed to relieve the Executive Board of such responsibilities.

(b) If any contract, decision, or other action taken by or on behalf of the Executive Board would financially benefit any member of the Executive Board or anyone who is an immediate family member of a member of the Executive Board, that member

or the Executive Board shall declare a conflict of interest on that issue. Such member shall declare the conflict in an open meeting prior to any discussion or action on that issue. Notwithstanding the foregoing, matters pertaining to Declarant's rights reserved herein shall not be deemed a conflict of interest for the purpose of this Subsection (b).

(c) The Executive Board may authorize and pay for as a Common Expense the reimbursement of Executive Board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado and shall make reference to the applicable sections of the Act.

(d) From the date of formation of the Association until the termination of the Declarant Control Period as provided below, Declarant shall have the right to appoint and remove the members of the Executive Board as set forth in Section 4.3 and all officers of the Association.

**Section 4.3 Declarant Control Period.** The "Declarant Control Period" shall terminate upon the first to occur of: (a) 60 days after conveyance to Owners other than a Declarant of 75% of the Units that may be created in the Community; (b) two years after the last conveyance of a Unit by a Declarant in the ordinary course of business; or (c) two years after Declarant's right to add Units to the Community was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Declarant Control Period, but in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than 60 days after conveyance to Owners other than a Declarant of 25% of the Units that may be created in the Community, at least one member and not less than 25% of the members of the Executive Board shall be elected by Owners of Units other than a Declarant. Not later than 60 days after the conveyance to Owners other than a Declarant of 50% of the Units that may be created in the Community, not less than 33.3% of the members of the Executive Board shall be elected by Owners of Units other than a Declarant. Not later than the termination of the Declarant Control Period, the Owners of Units shall elect to the Executive Board no less than three members, a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant. Within 60 days after the Owners of Units other than Declarant elect a majority of the Executive Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Act.

## **ARTICLE 5**

### **THE ASSOCIATION**

**Section 5.1 Association Management and Maintenance Duties.** Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:

(a) Be responsible for the management, control, maintenance, repair, replacement, and improvement of: (i) all of the Association Maintenance Area; (ii) the landscaping and hardscaping of open space tracts; (iii) the irrigation of any landscaping comprising a part of the Common Elements; (iv) entry features (including, but not limited to, front doors); (v) the perimeter fencing around the Community; (vi) the concrete sidewalks, driveways, and graveled areas; and (vii) the Limited Common Elements assigned or appurtenant to or providing exclusive service to individual Units.

(b) Subject to Owners' responsibilities to keep their Townhomes maintained and clean as set forth in Section 10.2(a), perform all required maintenance, repair and replacement of Association Maintenance Area including, but not limited to, bulb replacement for all exterior ground level lighting.

(c) Irrigate, maintain, and replace, as needed, the front and side yard landscaping appurtenant to each Townhome and Unit.

(d) Arrange for a garbage collection service to remove garbage deposited by Owners in receptacles provided through the Association.

(e) Remove snow and ice from driveways, walkways, roofs, and photovoltaic (PV) panels according to the standards established by the Executive Board.

(f) Hire a professional inspector(s) or engineer(s) ("Inspectors") to inspect, monitor, and test, once annually, any structure, improvement, or condition which may exist on any portion of the Association Maintenance Area and for the mechanical systems installed in by the Developer in each Unit and sold by the Declarant, including but not limited to the heat systems in each Unit, the radon mitigation systems installed by the Declarant in each Unit, and the heat tape installed by the Declarant in Units 1, 4, 13, and 26, and heat tape installed in the project by the direction of the Executive Board. The Inspector shall generate and deliver to Association a report of any item or condition that the Inspector determines must be repaired or replaced (if worn out, damaged, destroyed, or otherwise obsolete). Subject to Section 5.2(a) below, the Association shall be solely responsible for the payment of such repairs, replacements, and inspections of any structure, improvement, or condition which may exist on any portion of the Association Maintenance Area, all of which costs shall be deemed a Common Expense. Subject to Section 10.2, the Unit Owner shall be solely responsible for the payment of such repairs and replacements as necessary to avoid damaging any other Unit, Association Maintenance Area, or Common Element.

(g) Maintain and pay the utility costs for the heat tape that is installed on the exterior of the buildings throughout the Community.

(h) Recharge glycol in mechanical systems on a regular schedule adopted by the Executive Board.

#### Section 5.2    Common Expenses.



(a) The expenses, costs, and fees of such management, operation, maintenance, repair, replacement, and improvement of the Association Maintenance Area incurred by the Association pursuant to Section 5.1 are Common Expenses that shall be recovered by the Association by the "Regular Assessment" (hereafter defined) levied by the Association. Except for the Owners' right to reject a budget as described in Section 6.3, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association, in its reasonable discretion, may levy the costs and expenses associated with any of the following as an "Individual Purpose Assessment" (hereafter defined) against the Owner of the Unit involved: expenses of maintaining, repairing, and replacing all, decks, fixtures, equipment, utilities, and other Limited Common Elements that are appurtenant to such Owner's Unit or provide exclusive service to such Owner's Unit and any service lines from such equipment to the Unit, including without limitation all irrigation lines, utility, heating, plumbing, air conditioning, and domestic hot water equipment and appurtenances.

(b) Notwithstanding anything to the contrary contained in this Declaration, if the need for maintenance, repair, or replacement of the Association Maintenance Area, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant, or by any member of an Owner's or tenant's family or by an Owner's or tenant's guests, contractors, agents, invitees, or licensees, or as a result of any improvement constructed by or on behalf of an Owner in or upon the Association Maintenance Area, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten days after the Association gives notice to the Owner of the total amount of such expenses, costs, and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a "Default Assessment" (hereafter defined) determined and levied against such Unit.

Section 5.3 Management Agreements. The Association may have professional management of its business affairs. Any agreement for professional management of the Association's business or any other contract providing for services of a Declarant shall have a maximum term of three years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than 90 days' prior written notice. Any management agreement may be renewed or extended at the discretion of the Executive Board.

Section 5.4 Other Contracts, Licenses, and Agreements. The Association, through the Executive Board, shall have the right to enter into, make, perform, or enforce: (a) contracts, leases, licenses, agreements, easements, and/or rights-of-way for the use by Owners, other persons, their family members, guests, and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking, for on-site residential management, or for recreational use, all of which shall be terminable by either party to the contract with or without cause upon 90 days' prior written notice; and (b) contracts, licenses, leases, or other agreements for the provision of cable or satellite telecommunication service to the Community, or any portion thereof. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Executive Board, and may include provisions by which the

Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, providing such cable or satellite telecommunication service, or other amounts which the Executive Board determines are necessary to secure such contracts, licenses, and agreements. The Association shall treat any such costs and expenses as Common Expenses.

**Section 5.5 Acquiring and Disposing of Real and Personal Property.** The Association may acquire, lease, own, and hold for the use and benefit of all Owners, tangible and intangible personal property and real property (including the purchase or lease of a Unit that may be used as a manager's office and/or residence) for such uses and purposes as the Executive Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Executive Board in its reasonable discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

**Section 5.6 Judicial Proceedings.** Except as otherwise set forth in Section 17.7, the Association shall have no authority to initiate, maintain, or prosecute any legal or equitable proceeding ("Judicial Proceeding"), except to enforce the provisions of this Declaration and to collect Assessments due and payable under Article 6 hereof, unless the Owners approve such proceeding by a vote of at least 67% of all of the eligible votes in the Association cast in person, not by proxy, at a special meeting of the Association called for that purpose.

**Section 5.7 New Additions to Common Elements.** The Association shall have the right to construct new additions to the Common Elements. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Units as provided in Section 6.2 hereof.

**Section 5.8 Governance Policies.**

(a) The Executive Board may promulgate and enforce, including, without limitation, enforcement by levying and collecting charges and fines for the violation thereof after affording an Owner a reasonable opportunity to be heard, reasonable rules and regulations governing the use of the Units, Common Elements, and any property owned by the Association or the Owners in common ("Rules and Regulations"), which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. In the event of any conflict between the Rules and Regulations and this Declaration, the terms of this Declaration shall control.

(b) The Association shall adopt such additional Rules and Regulations as may be required by the Act from time to time and as set forth more specifically in the Bylaws. The Rules and Regulations may contain restrictions on use of parking spaces, storage of vehicles, snow removal, the use of Common Areas, and other matters pertaining to the governance of the Association.

Section 5.9 Books and Records of the Association. The Association shall keep its books and records in the manner set forth in the Bylaws and as required by the Act.

Section 5.10 Association Powers.

(a) The Association shall have all of the powers, authority, and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act necessary and proper to manage the business and affairs of the Community including, without limitation, the powers to adopt a budget and levy Assessments as set forth in Article 6 below.

(b) The Association may assign its future income, including its rights to receive Assessments, only by the affirmative vote of the Owners of Units to which at least 51% of the votes in the Association are allocated at a meeting called for that purpose.

## ARTICLE 6

### ASSESSMENTS

Section 6.1 Personal Obligation for Assessments. All Owners covenant and agree, and shall be personally obligated to pay to the Association, all of the following Assessments: (a) Regular Assessments imposed by the Association to recover the Common Expenses anticipated by the annual budget and to meet the reserve requirements of the Association; (b) Special Assessments, pursuant to Section 6.7 below; (c) Individual Purpose Assessments, pursuant to Section 6.8 below; and (d) other charges, costs, interest, fees, and Assessments, including without limitation Assessments relating to defaults, acts, errors, or omissions of an Owner or an Owner's family, tenants, guests, or invitees ("Default Assessments"). All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments, charges, costs, interest, and fees attributable to their Unit. The payment of any and all Assessments is an independent covenant, with all Assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The personal obligation for delinquent Assessments shall not pass to an Owner's successor in title or interest unless assumed by such successor. No Owner may waive or otherwise escape personal liability for the payment of the Assessments, charges, and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his or her Townhome. In addition to the foregoing Assessments, charges, and fees, each Owner shall have the obligation to pay real property *ad valorem* taxes and special assessments imposed by Colorado governmental subdivisions against his or her Unit, as well as all charges for separately metered utilities servicing his or her Unit. The charges for utilities that are not separately metered to an individual Unit by the applicable utility company may be collected by the Association as part of the Regular Assessments; however, the charges for such utilities shall be allocated among such Units based on actual usage, if such is measured.

Section 6.2 Allocation of Common Expenses. Except as otherwise expressly provided in this Declaration, all Assessments (including Special Assessments but excluding

Individual Purpose Assessments and Default Assessments as hereinafter provided) shall be allocated among the Units in accordance with the Assessment Percentages for each Unit set forth in Section 3.9 above.

Section 6.3 Regular Assessments; Budgets.

(a) Until the Association makes an Assessment, Declarant shall pay all Common Expenses. The initial Assessments shall commence not later than 180 days after the first sale of a Unit to a purchaser other than Declarant. After any Assessment has been made by the Association, an Assessment shall be payable periodically, but no less frequently than annually (the "Regular Assessment"), with the amount of the Regular Assessment to be determined by the Executive Board from time to time based on a budget adopted from time to time by the Association (but no less frequently than annually).

(b) The Executive Board shall prepare each proposed budget, assuming the Association's books and records are maintained on an accrual basis, to provide for the payment of all estimated expenses, costs, and fees for the duties described in Section 5.1 of this Declaration, and for other costs, fees, and expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration, and improvement of the Association Maintenance Area, any real or personal property owned by the Association, and any other obligations that may be undertaken by the Association. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the common grounds; common lighting and heating; maintenance, repair, replacement and renovation of the Association Maintenance Area; wages; charges for common utilities; taxes, legal fees, and accounting fees; management fees; costs, expenses, and liabilities incurred by the Executive Board on behalf of the Owners or otherwise arising under or by reason of this Declaration, the Articles of Incorporation, or the Bylaws; the creation of reasonable reserves and working capital; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Association Maintenance Area, any real or personal property owned by the Association, and/or any other obligations undertaken by the Association.

(a) Within 30 days after adoption of any proposed budget, 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 of Owners to consider ratification of the budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

Section 6.4 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of those Association Maintenance Area that must be periodically maintained, repaired, or replaced and for payment of insurance deductibles. Such reserves shall be included in the budget and funded through the Regular Assessments.

Section 6.5 Date of Payment of Regular Assessments. The Regular Assessments shall be due and payable on the first day of each month, in advance, or on such other dates as may be set by the Executive Board from time to time.

Section 6.6 Rate of Assessment. Both Regular Assessments and Special Assessments shall be fixed at such rates as shall be sufficient to meet the advance budget of the Association, as provided in Section 6.3 and Section 6.7 hereof.

Section 6.7 Special Assessments. In addition to the Regular Assessments authorized above, the Executive Board may at any time, from time to time, determine, levy and assess a special Assessment ("Special Assessment") for the purpose of defraying, in whole or in part, payments for any operating deficit, loss, or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Association Maintenance Area including, without limitation, any fixtures and personal property related thereto. Special Assessments shall be based on a budget adopted in accordance with Section 6.3; provided, that if necessary the Association may adopt a new budget pursuant to Section 6.3 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Executive Board, with at least 30 days' prior written notice provided to the Owners.

Section 6.8 Individual Purpose Assessments.

(a) In addition to the Regular and Special Assessments, the Executive Board may at any time levy and collect Assessments against any one or more, but fewer than all, of the Units, for any matters applicable only to such Units. Such "Individual Purpose Assessments" may be levied against Units to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration, maintenance, repair, replacement, and improvement, or any other purpose, or with respect to any matter pertaining to the Unit(s) against which such Individual Purpose Assessment is levied.

(b) The amounts determined, levied, and assessed pursuant to this Section 6.8 shall be due and payable as determined by the Executive Board provided that written notice setting forth the amount of such Individual Purpose Assessment for each Unit and the due date(s) for payment thereof and a reasonable opportunity to be heard by the Executive Board shall be given to the Owners of the affected Unit not less than 30 days prior to the due date.

Section 6.9 Lien for Assessments.

(a) Under the Act and subject to its limitations, the Association has a statutory lien on a Unit for any Assessments levied against that Unit and for fines imposed against its Owner from the time each Assessment or fine becomes due, but not on the Community as a whole. In addition, fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Declaration or the Act are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the

Assessment is a lien from the time the first installment thereof becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration, including, without limitation, the Deed Restrictions; (ii) a lien of a First Mortgage that was recorded before the date on which the Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

(c) Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association pursuant to Section 6.3 that would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or a non-judicial foreclosure either to enforce or extinguish the statutory lien.

(d) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or Assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and his Unit as a Default Assessment.

(e) Any Assessments, charges, costs, or fees provided for in this Declaration, including, without limitation, any Default Assessment arising under any provision of this Declaration, that are not fully paid within ten days after the due date thereof, shall bear interest from the due date at the rate of 21% per annum, or at such other rate as may be set by the Association from time to time (subject to any limits imposed by law), and the Association may assess a one-time late charge thereon in addition to such interest. Further, the Association may bring an action at law and/or in equity against any Owner personally obligated to pay such overdue Assessments, charges, costs, or fees, and may also proceed to foreclose its lien against such Owner's Unit in the manner of a mortgage upon such property. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges, costs, or fees may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor.

(f) If any such Assessment, charge, cost, or fee is not fully paid when due, and the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against an Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then: (i) all unpaid Assessments, charges, and fees; (ii) any and all late charges and accrued interest under Section 6.9(d); (iii) the Association's costs, expenses and reasonable attorney's fees incurred in collection efforts; (iv) the Association's costs of suit, expenses, and reasonable attorney's and other professional fees incurred for any such action and/or foreclosure proceedings; and (v) any other costs that may be authorized by a court of competent jurisdiction, shall be taxed by

the court as a part of the costs of any such action or foreclosure proceeding and shall be recovered by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges, costs, or fees that are not fully paid when due.

(g) The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey, or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect Assessments or to foreclose a lien for unpaid Assessments, the Association shall be entitled to have a receiver appointed for the Owner's Unit to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The receiver shall have the right to collect any rents paid in connection with the use of such Owner's Unit. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

Section 6.10 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Unit shall not affect the lien for Assessments, charges, costs, or fees levied hereunder, except that sale or transfer of a Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Assessments, but not the personal obligation of the Owner for the payment of Assessments that became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, except to the extent the lien of the Association has priority over the First Mortgage under Section 6.9. Any such Assessments, charges, costs, or fees that are extinguished as provided herein may be reallocated and assessed to all Units. A First Mortgagee may be personally liable for any unpaid Assessments, charges, costs, or fees, or portion thereof, accruing against a Unit prior to the time a First Mortgagee takes title to such Unit, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 6.9 above. No sale, transfer, foreclosure, or any proceeding in lieu thereof shall relieve any Owner from liability for any Assessments, charges, costs or fees, or any portion thereof, accrued during the period of such Owner's ownership of the Unit. No Owner shall have personal liability for Assessments assessed with respect to a Unit that become due prior to the time he acquired title to such Unit.

Section 6.11 Homestead Waiver. The Association's lien on a Unit for Assessments, charges, costs, and fees shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Unit shall constitute a waiver of the homestead exemption against all such Assessments, charges, costs, and fees.

Section 6.12 Working Capital Fund. The Association may require each Owner, other than Declarant, to make a one-time, non-refundable payment to the Association in an amount determined necessary and appropriate in the reasonable discretion of the Executive

Board (not to exceed an amount equal to 25% of the annual Assessment against that Owner's Unit), which sum shall be held by the Association as a working capital fund (the "Working Capital Fund"). Interest on such funds shall accrue to the benefit of the Association. If required by the Association, the Working Capital Fund shall be collected and held by the Association, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Assessments as the same become due. Funds in the Working Capital Fund shall be segregated with other such working capital funds for the use and benefit of the Association, including without limitation to meet unforeseen expenditures or to purchase additional equipment, property, or services. Notwithstanding the foregoing, no mortgagee who becomes an Owner through foreclosure or acceptance of a deed in lieu thereof shall be required to make a payment to the Association for the Working Capital Fund, and no Owner whose Unit has been foreclosed upon or transferred to a Mortgagee by a deed in lieu of foreclosure shall be entitled to a credit from the Mortgagee for any unused portion of the Working Capital Fund. A Declarant shall not use the Working Capital Fund to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

Section 6.13 First Mortgagees May Pay Assessments and Cure Defaults. If an Owner fails to pay any Assessment on his or her Unit within 30 days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles of Incorporation, or the Bylaws is not cured within 30 days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such Assessment, together with any other amounts secured by the Association's lien created by this Article 6, and may (but shall not be required to) cure any such default.

Section 6.14 Administrative Fee. The Association may charge an administrative fee to each Owner upon the initial conveyance of a Unit to such Owner for the purposes of paying any cost or expense incurred by the Association to its management company for the purpose of setting up such Owner's membership records.

Section 6.15 Statement Regarding Assessments. 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 requested to the Association's registered agent, a statement setting forth the amount of any unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, Executive 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 priority lien upon the Unit for unpaid Assessments that were due as of the date of the request. The Executive Board may establish a reasonable fee to be paid in connection with the furnishing of a statement regarding Assessments, which fee shall be paid at the time such statement is provided to the party requesting the statement.

## **ARTICLE 7**

### **INSURANCE**



**Section 7.1 General Insurance Provisions.** Not later than the time of the first conveyance of a Unit by Declarant to a purchaser, the Association shall acquire and pay for, out of the Assessments levied under Article 6 above, the following insurance policies carried with reputable insurance companies authorized to do business and licensed to provide insurance in Colorado:

(a) **Property Insurance Coverage.** Property insurance, with extended coverage, including boiler and machinery, fire, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), special townhome/condominium, building ordinance and inflation guard endorsements (when they can be obtained), in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the Common Elements and the Units, including any fixtures, equipment or other property within the Units when originally sold by Declarant to an Owner, but excluding: (i) any betterments and improvements made by Owner (after the transfer of title to the Unit by Declarant); (ii) building excavations and foundations; and (iii) the finished interior surface of the walls, floors and ceilings of the Units. Maximum deductible amounts for such policy shall be determined by the Executive Board; provided, however, that if a Mortgage Agency requires specific deductibles, the Executive Board shall follow such Mortgage Agency's requirements. The Association shall obtain insurance covering the specifications of each Unit as originally sold by Declarant to an Owner. Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his or her Unit (after the transfer of title to the Unit by Declarant). In the event that satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 7.2 below in the event the Association pays such premium for an Owner. Subject to Section 7.2 below, such property insurance policy must be written by an insurance carrier that has an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition, or such other insurance carrier approved by the Executive Board and acceptable to applicable Mortgage Agencies.

(b) **Comprehensive Liability.** Comprehensive commercial general liability and property damage insurance in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of the Common Elements including a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to townhomes similar to the Community in the Breckenridge, Colorado area, including automobile liability insurance, if appropriate. The Executive Board shall not

enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

Section 7.2 Form. The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in a Unit and in the Common Elements or membership in the Association. Each First Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Allocated Interests for the Unit that the Mortgage encumbers. Declarant shall be an additional insured under the Association Property insurance policy. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss wider than an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Section 7.3 Owners' Insurance. An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings, and on the finished interior surface of the walls, floors and ceilings of the Unit, and other items of personal property belonging to an Owner and any additions and alterations to a Unit., casualty and public liability insurance coverage for each Unit and the work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. Each Owner shall carry an HO-6 Insurance Policy.

Section 7.4 Certificates of Insurance; Cancellation. Certificates of insurance shall be issued by the Association to each Owner, First Mortgagee and Declarant upon written request to the Association. All policies required to be carried under this Article 7 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company and the insurance company cannot refuse to renew the policy without at least 30 days' prior written notice to the Association and each First Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last know addresses. If the Association's insurance described in this Article 7 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association shall promptly cause notice of that fact to be hand delivered, sent via electronic delivery, or sent prepaid by United States mail to all Owners and to all First Mortgagees.

Section 7.5 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 7.1 shall be subject to the provisions of Section 11.2 below.

Section 7.6 Insurer Obligation. An Insurer that has issued an insurance policy for the insurance described in Section 7.1, Section 7.9 and Section 7.10, or its agent, shall issue

certificates or memoranda of insurance to the Association and, upon request, to any Owner or First Mortgagee and to Declarant. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and First Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of any other Mortgage.

Section 7.7 Repair and Replacement. The repair or replacement of any portion of the Common Elements or the Association Maintenance Area that is damaged or destroyed by an insured casualty loss shall be subject to Section 11.2.

Section 7.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses; provided, however, that if the Association's property and extended coverage insurance covers Limited Common Elements, fixtures, equipment or other property within or associated with some but not all of the Units (as required by any Mortgage Agency), or other insurance attributable to some but not all of the Units, the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Association.

Section 7.9 Fidelity Insurance. Fidelity insurance or fidelity bonds shall be maintained by the Association as required by Section 313(10) of the Act to protect against acts and inaction on the part of its officers, directors, trustees and employees, and on the part of all others, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount determined by the Executive Board; provided, that the coverage shall not be less in the aggregate than two months' current assessments plus reserves, as calculated from the current budget of the Association.

Section 7.10 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees and contractors (if applicable), in the amounts and forms as may now or hereafter be required by law.

Section 7.11 Other Insurance. The Association shall maintain flood insurance if any part of the Community is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of one hundred percent of the insurable value of the Community or the maximum coverage available under the appropriate National Flood Insurance Program. The Association shall also maintain Directors' and Officers' insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board and its officers against any liability asserted against a member of the Executive Board or an officer of the Association or incurred by him or her in his or her capacity of or arising out of his or her status as a member of the Executive Board or an officer of the Association. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by a Mortgage Agency.

## ARTICLE 8

### MECHANICS' LIENS

Section 8.1 Mechanics' Liens. No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof or his or her agent, contractor, or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or for materials furnished in work on the first Owner's Unit.

Section 8.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association shall enforce the indemnity provided by Section 8.1 hereof by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. If the Owner of the Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven days after the Association gives written notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 8.2, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit.

Section 8.3 Effect of Part Payment. If a lien attributable to labor performed and/or materials furnished on the Community, or any portion thereof, is recorded against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit, and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of his or her Unit from any such lien shall be equal to the quotient of (a) the amount of the lien, divided by (b) the total number of Units affected by the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing his or her rights against any Unit for which payment has not been received.

## ARTICLE 9

### EASEMENTS AND LICENSES

Section 9.1 Recorded Easements. In addition to all easements, licenses, and rights-of-way of record set forth in this Declaration, the Real Estate, and all portions thereof, shall be subject to the Deed Restrictions and the easements, licenses, obligations, and rights-of-way of record and as shown on the Map. Further, the Real Estate, or portions thereof, is, now, or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on Exhibit B attached hereto and incorporated herein by this reference.

Section 9.2 Encroachments. If any portion of the Common Elements encroaches upon any Unit(s), or if any portion of a Townhome encroaches upon any other Unit(s), or any portion of the Common Elements, or if any encroachment occurs in the future as a result of: (a) shifting, settling, or other movement of any part of a building; (b) alteration, reconstruction, or repair to the Common Elements; or (c) repair or restoration of part of a building after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same, as long as the encroachment exists, as long as the physical boundaries of the Units after the construction, reconstruction, rebuilding, alteration, or repair, shall be in substantial accord with the description of those boundaries that appears in the Map. If any one or more of the Units, any building, or other improvements comprising part of the Community, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof encroaches as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust, or other security instruments relating to Units, the actual location of a Townhome shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered.

Section 9.3 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

Section 9.4 Utilities. There is hereby created a blanket easement for the benefit of the Owners over, under, upon, in, across, in and through the Common Elements and each Unit for the installation, replacement, repair, and maintenance of utilities including, but not limited to, water, sewer, gas, storm water drainage, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment, and appurtenances on the Common Elements and Units necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits, and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Elements and Units without conflicting with the terms hereof; provided, however, that such right and authority of Declarant shall cease and terminate upon the earliest of seven years after recordation of this Declaration in the County of Summit, Colorado, conveyance by a Declarant of all Units (after Declarant has added all Units to the Community that it has a right to add pursuant to its development rights hereunder) to Owners other than a Declarant, or when Declarant elects to surrender such right, at which time said reserved right shall vest in the Association. The easement provided for in this Section 9.4 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Common Elements or Units.

**Section 9.5 Maintenance Easement.** An easement is hereby granted to the Association and its officers, directors, agents, employees, contractors, and assignees upon, across, over, in, and under the Association Maintenance Area (including the Common Elements), and a right to make such use of the Association Maintenance Area (and the Common Elements) as may be necessary or appropriate to perform the duties and functions that the Association is obligated or permitted to perform pursuant to this Declaration, as the case may be, including the right of the Association to construct and maintain on the Association Maintenance Area maintenance and storage facilities for use by the Association.

**Section 9.6 Drainage Easement.** An easement is hereby granted to the Association, its officers, agents, employees, successors, and assignees to enter upon, across, over, in, and under any portion of the Real Estate for the purpose of changing, correcting, or otherwise modifying the grade or drainage Improvements to improve the drainage of water on the Real Estate including, without limitation, any drain pans, pipes, inlets, or other drainage Improvements that may be installed on a Unit.

**Section 9.7 Easements of Access for Repair.** Some of the Common Elements and Association Maintenance Areas are or may be located within a Unit(s) or may be conveniently accessible only through a Unit(s), including, but not limited to, Community perimeter fences and retaining walls. The Owners of other Unit(s) and the Association shall have the irrevocable right, to be exercised by the Association for itself and as agent of such Owners, to have access to each Unit and to all Common Elements and Association Maintenance Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements, any Association Maintenance Area, or any utility lines or pipes (whether or not Common Elements or Association Maintenance Areas) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements, any Association Maintenance Area, or to any Unit. Subject to the provisions of Section 5.1, Section 5.2, and Section 6.8 hereof, damage to a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements, any Association Maintenance Area, or as a result of emergency repairs within any Unit at the initiative of the Association, shall be a Common Expense allocated in accordance with Section 6.2 or Section 6.8. Damage to a Unit resulting from the installation, movement, repair, emergency repair, removal, or replacement of any utility lines or pipes not servicing more than one Unit shall be the expense of the Owner whose Unit such utility lines and pipes serve and such expense may be reimbursed through an Individual Purpose Assessment. Non-emergency repairs shall be made only during regular business hours on business days after 24 hours' notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies, the occupants of the affected Unit shall be notified of impending entry as early as is reasonably possible.

**Section 9.8 Remodeling Easement.** Each Owner shall have an easement in, upon, under, and across the Common Elements for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of his or her Unit. Each Owner shall further have an easement and right to repair and maintain any utility lines and pipes serving only such Owner's Unit (and therefore not a Common Element) that are located within another Owner's

Unit. Prior to repairing or maintaining any such utility lines or pipes, the Owner in whose Unit the lines or pipes are located shall be given at least ten days' prior notice of the repair or maintenance.

Section 9.9 Two-Family Townhome Units. As depicted on the Map, Units 1, 2, 3, 4, 12, 13, 25, and 26 (each, a "Two-Family Townhome Unit" and collectively, the "Two Family Townhome Units") include both ground and air space. For the purposes of this Declaration, the horizontal partition between the Two Family Townhome Units shall be considered a party wall and shall be maintained in accordance with Section 3.4; provided, however, in addition to those rights and obligations of each Owner pursuant to Section 3.4, Declarant hereby reserves and grants unto each Owner of a Two Family Townhome Unit and the Association a non-exclusive reciprocal easement for the use, maintenance, and replacement of all common utility lines installed within the Horizontal Partition, which includes, but is not limited to, water, sewer, gas, telephone, electricity, computer or cable, if any.

Section 9.10 Declarant's Rights to Complete the Community. Declarant, for itself and its successors and assignees, shall have and hereby reserves a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Community, the sale of the Units, the exercise of the Development Rights and Special Declarant Rights set forth herein; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner or such Owner's family members, guests, or invitees, to or of such Owner's Unit or the Common Elements. The rights under this Section 9.10 shall terminate upon conveyance by Declarant of all Units (after Declarant has added all Units to the Community that it has a right to add pursuant to its Development Rights) to Owners other than a Declarant or seven years after the recording of this Declaration, whichever occurs first.

Section 9.11 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

Section 9.12 Photovoltaic Panels (PV) Easement. Declarant, for itself and its successors and assigns, hereby reserves and conveys to the each Owner whose photovoltaic system ("PV System") is installed on the roof of an adjacent Townhome, as an easement appurtenant to such Owner's Unit, an easement for the continued placement of the panels, wires, circuits, conduits and meters ancillary to such Owner's PV System. The granted easement applies only for those initial PV Systems installed by the Declarant, and does not apply to PV Systems installed or replaced by a Unit Owner after the initial conveyance by the Declarant of a Unit to a Unit Owner. The easement granted by this Section 9.12 may only be used by to replace, repair, and maintain the Owner's PV System, including, but not limited to, the Owner's PV panels, and the associated wires, circuits, conduits, meters and other appurtenances associated with the Owner's PV System.

## ARTICLE 10

### RESTRICTIVE COVENANTS

Section 10.1 Residential and Limited Non-Residential Use. Each Unit is subject to the Deed Restrictions. Subject to Sections 9.10 and Section 10.3, and Article 15 hereof, Units shall be used for residential purposes only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his or her Unit for a professional or home occupation as long as the applicable zoning ordinances permit such use; there is no external evidence thereof; and no unreasonable inconvenience to other residents of the Community is created thereby. Garages shall be used solely for parking motor vehicles and for storage incidental to residential use provided such storage does not prevent the simultaneous parking of motor vehicles.

Section 10.2 Owner's Maintenance Obligations; Prohibition of Certain Activities.

(a) Except as provided in Section 5.1, each Owner shall be responsible for maintenance, repair, and replacement of the interior of his or her own Townhome, including the fixtures therein, to the extent that maintenance, repair, and replacement is necessary in order to avoid damaging any Association Maintenance Area, other Units, or Common Element. All fixtures and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. This includes, but is not limited to, the radon mitigation equipment and fan, boiler, hot water tank, appliances, interior light fixtures, etc. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of his or her Unit, and the surface materials upon walls, ceilings, and floors within his or her Unit, including, but not limited to, plaster, drywall, paint, tile, carpeting, and flooring materials, and all personal property comprising or located on his or her Unit. The Association has the right to assign further maintenance responsibility to an Owner for certain areas of each Unit and of other Limited Common Elements allocated to the Owner's Unit, and such Owner shall accept and perform said maintenance responsibility, provided that such assignment is done in a uniform and nondiscriminatory manner.

(b) Each Owner shall keep the front decks and rear patios of his or her Unit free from snow and ice. Each Owner shall further keep his or her Townhome exteriors broom-clean; shall be responsible for his or her own interior window-washing; and shall keep his or her Unit free of litter and debris including, without limitation, seasonal removal of fallen leaves. If an Owner fails to perform any cleaning, maintenance, repair, or replacement that is his or her responsibility under this Declaration, and such failure has not been cured within 30 days after written notice has been given to such Owner by the Association, the Association may perform the cleaning, maintenance, repair, or replacement, and all charges incurred by the Association in connection therewith, together with an administrative fee in the amount of 25% of such cost, shall be the personal obligation of the Owner and may be levied as a Default Assessment against such Owner and such Owner's Unit. The Association and its officers, contractors, and



representatives shall have an easement for access to each Unit and the Association Maintenance Area (including all Common Elements) for the purpose of exercising its rights under this Section 10.2(a).

(c) Except as provided in Section 5.1, each Owner shall be responsible for maintaining the interior of the Garage that is part of Unit in an attractive, clean condition, free of debris and unsightly articles of any kind and shall maintain, at such Owner's cost, the garage door opener of such Owner's Garage. Owner's of Units 1, 4, 13, and 26 shall pay the utility charges necessary to operate the heat tape installed by the Declarant in the garages for water lines. The storage of gasoline and other flammable materials or noxious or hazardous wastes or materials of any kind within the Townhome or other storage space is strictly prohibited, except that gasoline and motor oil used as fuel for an Owner's lawn maintenance equipment may be stored within such Owner's Garage.

(d) Each Owner shall maintain the front porches and rear patios of his or her Unit in an attractive and clean condition, free of debris and unsightly articles of any kind. No charcoal grills or open fires are permitted anywhere in the Community. Each Owner is limited to a maximum of three motor vehicles per Unit. All vehicles must be parked in the Garage. The driveway appurtenant to the Unit may be used for an Owner's car or for temporary visitor parking subject to the Rules and Regulations. Parking is prohibited at all times in the right of way or in front of the Units, except in the driveway pursuant to a revocable license agreement with the Town of Breckenridge ("Town"). Designated visitor spots are for temporary use by visitors.

(e) Each Owner shall dispose of his or her garbage by placing it into containers of such dimensions and at such locations as the Association shall from time to time designate. The garbage shall be removed by a garbage collection service provided by the Association.

(f) Each Owner shall repair or replace the PV System for his or her Townhome as required to keep the PV System in good working condition.

(g) Nothing shall be done or kept on any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee, or contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by his or her tenant, or the members of such tenant's family, such tenant's guests, invitees, licensees, or contract purchasers, that is in violation of this Section 10.2. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), after affording an Owner a reasonable opportunity to be heard by the Executive Board, the amounts to be indemnified shall be and constitute a Default Assessment determined and levied against the Owner's Unit.

(h) No modifications may be made to any of the Common Elements by an Owner, other than Declarant, without the prior written consent of the Executive Board.

(i) In order to maintain adequate acoustic separation between Units, in-wall speakers, or any installation of any fixtures or appliances that requires removal of drywall and/or insulation is not permitted in any Party Wall or in any wall adjacent to another Unit.

(j) Garages may only be used for the parking and storage of motor vehicles and the storage of personal property. No portion of a Garage may be converted to or used as livable space

Section 10.3 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, and its employees, agents, and contractors, to perform such reasonable activities and to maintain upon portions of the Community such facilities as a Declarant deems reasonably necessary or incidental to the completion and sale of Units and the exercise of Special Declarant Rights and Development Rights, specifically including without limiting the generality of the foregoing, maintaining business offices, storage spaces, signs, model units, sales offices, parking areas, construction offices, and lighting facilities. Declarant reserves the right to relocate any sales office, model, or management office to any other Unit then owned by Declarant. The rights retained by Declarant in this Section 10.3 shall terminate upon conveyance by a Declarant of all Units to Owners other than a Declarant, or seven years after the recording of this Declaration, whichever occurs first.

Section 10.4 Household Pets. No animals, livestock, poultry, or insects of any kind shall be raised, bred, kept, or boarded in or on the Community, except that domesticated dogs, cats, birds, or fish may be kept on any Unit, subject to all governmental ordinances, laws, and regulations and subject to rules and regulations that may be adopted by the Executive Board, in its reasonable discretion, with regard to pets, and provided that no pets may be kept for commercial purposes or be permitted to become a nuisance, as reasonably determined by the Executive Board. The Association shall have, and is hereby given, the right and authority to determine in its reasonable discretion that dogs, cats, or other household pets permitted herein are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 10.4, and to take such action or actions as it deems reasonably necessary to correct the same, including prohibiting the pet(s) from being kept on a Unit. An Owner's license to keep household pets granted under this Section is revocable by the Executive Board for violation of the terms hereof and shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the Association as a result of such pet(s), and any such amounts shall be and constitute a Default Assessment subject to and enforceable by the Association in accordance with this Declaration. Each Owner is responsible for cleaning up his or her pet's waste from his or her Unit, the Common Elements, and adjacent public ways. Each Owner must comply at all times with applicable ordinances, laws, and regulations governing pets. No animals shall be allowed to be tied or chained to any balconies, patios, porches, or other parts of the Community, and any animals so tied or chained may be removed by the Association or its agents.

Section 10.5 Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Except for those improvements erected or installed by a Declarant in its completion of the Community, and except as provided in Section 10.3 and Article 15 hereof, nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Executive Board. The Executive Board may require the Owner who requests the approval to submit plans for the alteration to the Executive Board for review, obtain insurance as reasonably required by the Executive Board, and post adequate surety. In reviewing any plans, the Executive Board may engage the services of architects, attorneys, and engineers, and the reasonable cost of such services shall be paid by the Owner requesting approval.

Section 10.6 Exterior Changes. Except for those improvements erected, constructed, or installed by a Declarant in its completion of the Community, no exterior additions to, alterations, or decoration of any Townhome, including but not limited to any structural alterations to any Unit or Common Element, any change to drainage, any changes in walls or other structures, nor installation of window mounted air conditioning units or awnings, or any exterior improvement of any type, or any interior improvements visible from the exterior shall be commenced, erected, placed, or maintained without the prior written approval of the Executive Board as provided in Article 12, subject to the applicable laws, ordinances, regulations, and restrictions, if any, limiting or precluding alteration of the exterior of any Townhome. In addition to the requirements described in Article 12, the Executive Board may require the Owner who requests the approval to: (a) submit plans for the alteration to the Executive Board for review; (b) obtain insurance as reasonably required by the Executive Board; and (c) post adequate surety. In reviewing any plans, the Executive Board may engage the services of architects, attorneys, and engineers, and the reasonable cost of such services shall be paid by the Owner requesting approval.

Section 10.7 Signs and Advertising.

(a) No signs, including political signs, posters, billboards, advertising devices, or displays of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view, except: (i) signs that may be approved in writing by the Executive Board; or (ii) signs, posters, billboards, or any other type of advertising device or display erected by Declarant pursuant to Special Declarant Rights. An Owner, or Owner's agent, may place a single sign advertising a Unit for sale or for lease may be placed on a Unit, but the standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Executive Board. No signage shall be allowed upon any Unit or Common Element that may detract from the aesthetic value of the Community or that may detract from the property value of the Units, as determined by the Executive Board in its reasonable discretion.

(b) Notwithstanding the forgoing, as long as state law requires, the Association shall not prohibit:

(i) the display of the American flag

(ii) by an Owner on such Owner's Unit, in a window of the Owner's Unit, or on a balcony adjoining the Owner's Unit if the flag is displayed in a manner consistent with federal law, provided that the Association may adopt reasonable Rules and Regulations regarding the placement and manner of display of the flag, and the Rules and Regulations may regulate the location and size of flags and flagpoles, but shall not prohibit installation of the same;

(iii) the display by an Owner 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, provided that the Association may adopt reasonable Rules and Regulations regarding the size and manner of display of service flags, except that the maximum dimensions allowed shall not be less than nine inches by 16 inches; or

(iv) the display of a political sign by an Owner on that Owner's Unit, within the boundaries of the Unit, or in a window of that Owner's Unit, except the Association may prohibit the display of political signs earlier than 45 days before the day of an election and later than seven days after election day, and provided that the Association may regulate the size and number of political signs that may be placed on a Unit if the Rules and Regulations are no more restrictive than any applicable Town ordinance. If an applicable Town ordinance does not regulate the size and number of political signs on residential property, the Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election with the maximum dimensions of 36 inches by 48 inches. As used in this subsection (iii), "political sign" means 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.

(v) the parking of a motor vehicle by the occupant of a Unit on a street, driveway, or guest parking area in the common interest Community if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(A) the vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(B) the occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(C) the vehicle bears an official emblem or other visible designation of the emergency service provider; and

(D) parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Unit owners or occupants to use streets, driveways, and guest parking spaces within the Community.

(vi) the removal by a Unit Owner of trees, shrubs, or other vegetation to create defensible space around a Unit for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by the Town to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the Unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations. The work shall also comply with any applicable land use restrictions and permit requirements of the Town.

(vii) reasonable modifications to a Unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the Unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604(f)(3)(A).

(viii) the right of a Unit Owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) the permissible sale price, rental rate, or lease rate of the Unit; or

(B) occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the Town.

Section 10.8 Leases. The term "lease" as used herein shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease his or her Unit under the following conditions, subject at all times to the terms and conditions contained in the Deed Restrictions:

(a) All leases shall be in writing and a copy of the lease or lease form shall be delivered to the Executive Board or the Association's managing agent (with the economic terms of such lease deleted by the Owner, if so desired) prior to the effective date of the lease.

(b) All leases permitted by the Deed Restrictions shall provide that the terms of the lease and lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and Rules and

Regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. Any lease or lessee that violates the provisions of this Declaration or rules and regulations adopted by the Executive Board shall be deemed in default, and the Association may bring an action to terminate such lease and the lessee's occupancy of the premises.

(c) No lease shall be for less than 30 days.

Section 10.9 Nuisances. No nuisance shall be allowed on the Community, nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful enjoyment or possession and proper use of the Community by its residents, as reasonably determined by the Executive Board. As used herein, the term "nuisance" shall not include any activities of a Declarant in regard to the completion of the Community or any uses of Unit permitted in this Declaration. All parts of the Community shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no activities reasonably deemed by the Executive Board as offensive and no unlawful use shall be permitted or made of the Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 10.10 Restriction on Exterior Electronic Devices. Subject to applicable law, and subject to reasonable Rules and Regulations adopted by the Executive Board, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type ("Electronic Device") shall be erected, installed, or maintained on the Common Elements. All costs associated with the installation or maintenance of any Electronic Device by an Owner, including costs of repair, replacement, removal, improvement, and maintenance of the structure on which the Electronic Device is affixed, erected, and/or installed, shall be the sole responsibility of that Owner.

Section 10.11 Hazardous Activities. No activity shall be conducted, and no improvement shall be constructed, on any property within the Community that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Community, and no open fires shall be lighted or permitted within the Community except within barbeque grills properly operated. No part of the Community may be used for storage of explosives, gasoline, combustible material, or other volatile and/or incendiary materials or devices, except that gasoline and oil products used in yard maintenance equipment not to exceed five gallons may be stored by Owners in the Garages, and a reasonable quantity of household paints and thinners may be allowed if authorized by the Rules and Regulations.

## ARTICLE 11

### DAMAGE, DESTRUCTION, TERMINATION, OR CONDEMNATION

Section 11.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Community in the event of its destruction, damage, obsolescence, or condemnation, including the repair,

renovation, and replacement of any Common Elements or Units that have been destroyed, damaged, condemned, or become obsolete. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Common Elements or Units upon their damage, destruction, obsolescence, or condemnation as hereinafter provided. If the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within 30 days after either such event. At such meeting a new attorney-in-fact shall be appointed to deal with the Common Elements or Units upon their destruction, damage, obsolescence, or condemnation. Such appointment must be approved by the Owners representing an aggregate of at least 67% of the eligible votes in the Association and at least 67% of the Eligible Holders (based upon one vote for each First Mortgage held).

Section 11.2 Damage or Destruction.

(a) Repair and Reconstruction of the Improvements, as used in the succeeding subsections, means restoring the Common Elements or Units to substantially the same condition in which they existed prior to their damage or destruction, with each Unit and the Common Elements having substantially the same boundaries as before, and all Improvements being Repaired and Reconstructed in substantial conformance with the Community's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of Repair and Reconstruction in accordance with the provisions hereinafter set forth.

(b) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds shall be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest (a "lienholder"). The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and the lienholders, as their interest may appear. Subject to the provisions of Section 11.2(c) below, the proceeds must be disbursed first to the Repair and Reconstruction of the damaged Common Elements or Units. The Association, Owners, and lienholders shall not be entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely Repaired and Reconstructed, or the Community is terminated in accordance with the provisions of the Act. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and such other matters of claims adjustment. The Association shall have full authority, right, and power as attorney-in-fact to cause the Repair and Reconstruction of the Common Elements or Units. Assessments shall not be abated during the period of insurance adjustment and Repair and Reconstruction. In addition, to the extent that the Association settles claims for damages to any real property, the Association shall have authority to assess negligent Owners or their tenants causing such loss and benefiting from such Repair and Reconstruction all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of Repair and Reconstruction.

(c) Any portion of the Community for which insurance is required to be maintained by the Association under this Declaration must be Repaired and

Reconstructed promptly by the Association unless: (i) the Community is terminated in accordance with the provisions of the Act; (ii) Repair and Reconstruction would be illegal under any state or local statute or ordinance governing health or safety; or (iii) the Owners who hold 67% of the votes in the Association vote not to rebuild, and every Owner of an assigned Limited Common Element or Unit that will not be rebuilt concurs.

(d) If the insurance proceeds are insufficient to Repair and Reconstruct the Common Elements or Units, 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. Such Special Assessment shall be assessed against all Units in accordance with Section 6.7 hereof, but without the requirement of complying with the budget approval process set forth in Section 6.3 above. The Association shall have full authority, right, and power, as attorney-in-fact, to cause Repair and Reconstruction of the Common Elements or Units, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Special Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of Repair and Reconstruction.

(e) Except with respect to Repair and Reconstruction costs for which any Owner is responsible by reason of his or her negligent act or otherwise, the cost of Repair and Reconstruction of any portion of the Common Elements or Units in excess of insurance proceeds and reserves shall be a Common Expense. If all of the Common Elements are not Repaired and Reconstructed, the insurance proceeds attributable to the damaged Common Elements or Units must be used to Repair and Reconstruct the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other persons will be distributees, the insurance proceeds attributable Limited Common Elements that are not Repaired and Reconstructed must be distributed to the Owners of the Units to which those Limited Common Elements were appurtenant or to lienholders, as their interests may appear.

### Section 11.3 Condemnation.

(a) If a Unit is acquired, in whole or in part, by eminent domain leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award shall consist of compensation to the Owner for that Unit. The Owner thereof shall automatically cease to be a Member, and shall execute any and all documents necessary to accomplish the same. Upon acquisition, unless the decree otherwise provides, the Common Expenses liability allocated to that Unit is automatically reallocated to the remaining Units in accordance with Section 3.9 above. Any remnant of a Unit remaining after a part of a Unit is taken pursuant to this Section 11.3(a) is thereafter a Common Element. If part of a Unit is acquired by eminent domain, and the remainder may practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Owner for the reduction in value of the Unit. In that case, unless the eminent domain decree otherwise provides, the Unit



shall retain its one vote in the Association and its equal share of the Common Expenses liability.

(b) Except as provided in Section 11.3(a) above, in the event of destruction, condemnation, or partial condemnation of the any portion of the Community, proceeds from any sale of the Real Estate and the assets of the Association, as applicable, shall be held and distributed by the Association as trustee for the Owners and the holders of Security Interests on the Units as their interests may appear.

## ARTICLE 12

### ARCHITECTURAL CONTROL AND DESIGN REVIEW

Section 12.1 Alterations. Except for the rights reserved to Declarant in this Declaration and/or in the Act, no alteration or additions to the Common Elements or to the exterior of a Unit of any kind shall be made unless first approved in writing by the Executive Board, including, without limitation, structural, textural and color changes to walls, doors, windows and balconies. The Executive Board shall exercise reasonable judgment to insure that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes that the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

Section 12.2 Architectural Review. The Executive Board may establish and administer Alteration Guidelines (“Alteration Guidelines”) to carry out the purposes and intent of this Declaration. The Executive Board may seek the advice of design professionals or other professionals if the need should arise. The Executive Board may adopt, establish, and publish from time to time the Alteration Guidelines for the Community and such Alteration Guidelines shall be an Association Document, the terms of which shall be complied with by all Owners. The Alteration Guidelines, if any, shall not be inconsistent with this Declaration or the Deed Restrictions, but shall more specifically define and describe the design standards for the Community including, but not limited to, items such as color, texture, structure, size, design, appearance, window coverings, antennae, landscaping and site improvement standards. The Alteration Guidelines, if created, may be modified or amended from time to time by majority approval of the Executive Board and shall be made available to all Owners and their representatives for review. Further, in the event Alteration Guidelines are created, the Executive Board, in its sole discretion may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Community’s design review process and design standards is not a substitute for compliance with applicable Town building, zoning, and subdivision regulations and requirements in the Deed Restrictions, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Alteration Guidelines, the terms of this Declaration shall control.

Section 12.3 Requirement for Approval. Except for Declarant's reserved rights as herein described or as provided in the Act, no improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Common Elements, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Common Elements until plans and specifications with respect thereto satisfactory to the Executive Board showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within 60 days of submission by the Owner of all information requested by the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Non-structural improvements and alterations that are completely within an existing Unit may be undertaken without such approval, by and at the cost of the Owner. All such improvements shall be insured by and at the cost of the Owner. An Owner undertaking such improvements shall indemnify the Association and the other Owners against any and all costs or damages attributable to the construction or existence of such improvements.

Section 12.4 Violation. The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal. Failure to timely reimburse the Association shall be deemed a Default Assessment with payment thereof subject to the provisions of Article 6 above.

Section 12.5 Criteria for Approval. The Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that: (a) the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community as a whole; (b) the appearance of the proposed improvement will be in harmony with the surrounding areas of the Community; and (c) the upkeep and maintenance of the proposed improvement will not become a burden on the Association, and (d) the improvements are in conformance with the Deed Restrictions. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, easements and utilities, and such other information as may be requested by the Executive Board have been submitted to and approved in writing by the Executive Board.

Section 12.6 Fees. An Owner seeking architectural review approval shall promptly pay to the Association any fees set by the Executive Board in connection with the review process, and shall reimburse the Association for all of its costs relating to review and on-going monitoring of construction, including the costs of staff and independent consultant review and assistance, as determined by the Association. The Association may assess these fees and

costs against the Owner as a Default Assessment in the event the Owner fails to timely pay these fees and costs.

Section 12.7 Exemption for Declarant. Until the completion of construction of all Units that may be created under this Declaration, and any and all Common Elements, Declarant shall be exempt from the provisions of this Article 12.

## ARTICLE 13

### AMENDMENT OF DECLARATION

#### Section 13.1 Amendment.

(a) Except for amendments that may be executed by a Declarant or by the Association under the provisions of this Declaration or the Act, and subject to the applicable requirements of Article 14, with respect to approval by Eligible Holders, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners of Units holding at least 67% of the votes in the Association, and Declarant, provided that Declarant's right to consent under this Section 13.1 shall expire on the first to occur of the conveyance by a Declarant of all Units to Owners (other than a Declarant) or seven years after the date this Declaration is recorded in the real property records of the County of Summit, Colorado.

(b) Article 16 of this Declaration may not be amended without the prior written consent of the Town of Breckenridge and the Board of County Commissioners of Summit County, all as more fully set forth in Section 16.1(e).

(c) The Association shall comply with any other notice or voting requirements for amendments as may be set forth in the Bylaws or the Act from time to time.

(d) Every amendment to the Declaration must be recorded in the Office of the Clerk and Recorder of the County of Summit, and is effective only upon recording. Except to the extent expressly permitted by this Declaration and Act, no amendment may create or increase any Special Declarant Rights, increase the number of Units in the Community, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. Amendments to the Declaration required by this Article 13 to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 13.2 Technical Amendment. Declarant hereby reserves and is granted the right and power to adopt and record amendments to this Declaration, the Articles of Incorporation, and/or the Bylaws without the approval or consent of any Owner, First Mortgagee, or any other person or entity for the purpose of: (a) making non-material changes (such as for correction of technical, typographical, or clerical errors); (b) clarifying any statement that is ambiguous, confusing, or subject to differing interpretations; or (c) conforming the

provisions of the Governing Documents to the requirements of the Act as it may be amended from time to time. Declarant may unilaterally execute and record such amendments at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant) or seven years after the date this Declaration is recorded in the County of Summit, Colorado, whichever occurs first.

Section 13.3 Special Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to execute and record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles of Incorporation, and/or the Bylaws, at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant) or seven years after the date this Declaration is recorded in the County of Summit, Colorado, whichever occurs first, in order to comply with any requirements of any of the Mortgage Agencies or to induce any of the Mortgage Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

Section 13.4 Recording of Amendments. To be effective, all amendments to or revocation or termination of this Declaration must be recorded in the Office of the Clerk and Recorder of the County of Summit, Colorado, and must contain evidence of the required approval thereof. The recording of a certificate of the secretary of the Association, certifying that Owners representing the requisite percentage of the Units, and Eligible Holders representing the requisite percentage of Eligible Holders, if required, have given notarized, written consent to the amendment, shall satisfy the requirement of evidence of the required approval. The secretary of the Association must further certify that originals of such written consents by Owners and Eligible Holders, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

## **ARTICLE 14**

### **FIRST MORTGAGEES**

Section 14.1 Member and First Mortgagee Approval. Subject to Article 15 hereof and the other rights of Declarant reserved herein, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) Unless it has obtained the prior written consent of Owners holding at least 67% of the votes in the Association and 67% of the Eligible Holders (based on one vote for each First Mortgage held, or two votes for each First Mortgage held on a combined Unit):

(i) seek to abandon or terminate the Community, whether by act or omission, except:

(A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or

(B) in the case of a taking by condemnation or eminent domain, in which event the provisions of Section 11.3 of this Declaration shall control, or

(C) for amendments to this Declaration, the Articles of Incorporation, or Bylaws made as a result of destruction, damage, or condemnation of the Real Estate or improvements thereon.

(ii) except as permitted by Article 11 and Article 15, change the *pro rata* interest or obligations of any individual Unit for the purpose of levying Assessments or charges or allocating distributions of property insurance proceeds or condemnation awards;

(iii) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community), except in accordance with Section 3.2 above and upon at least 67% of the votes in the Association, including 67% of the votes allocated to Units not owned by Declarant;

(iv) partition or subdivide any Unit; or

(v) use property insurance proceeds for losses to any part of the Community (whether to Units or Common Elements) for other than the repair, replacement, or reconstruction of such property in accordance with the procedures set forth in Section 11.2 hereof, except as may be provided by statute in the case of substantial loss to such Units and/or Common Elements.

(b) Unless it has obtained the prior written consent of at least 67% of the total allocated votes in the Association, and 51% of the total allocated votes of the Eligible Holders (based upon one vote for each First Mortgage owned or two votes for each First Mortgage owned on a combined Unit), add or amend any material provisions of this Declaration, the Articles of Incorporation, or the Bylaws that establish, provide for, govern, or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

(i) voting rights;

(ii) reductions in reserves for maintenance, repair, and replacement of the Common Elements;

(iii) responsibility for maintenance and repair of any portion of the Community;

(iv) reallocation of rights to use of the Common Elements, except as contemplated under Section 11.3 and Article 15 hereof;

(v) convertibility of Units into Common Elements or Common Elements into Units;

(vi) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Community;

(vii) insurance, including, but not limited to, fidelity bonds;

(viii) imposition of any restrictions on leasing of Units;

(ix) imposition of any restriction on the right of any Owner to use his or her Unit or the Common Elements or to sell or transfer his or her Unit;

(x) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any Eligible Holder or any insurer or guarantor of a First Mortgage;

(xi) any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of Incorporation, and the Bylaws;

(xii) any action to terminate the legal status of the Community; or

(xiii) any provisions that are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages.

Section 14.2 Notice of Action. Upon written request to the Association, stating both its name and address and the Unit number on which it holds (or insures or guarantees) an Eligible Holder shall be entitled to timely written notice of:

(a) Any condemnation loss or casualty loss that affects either a material portion of the Community or any Unit subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed to the Association by the Owner of the Unit subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder or any default by such Owner in any obligation under the Declaration, Articles of Incorporation, or Bylaws if the Executive Board has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Holders as provided in this Article 14.

Section 14.3 Notice of Objection. Unless an Eligible Holder or an insurer or guarantor of a First Mortgagee entitled to consent to certain amendments or actions as provided in this Article 14 provides the secretary of the Association with written notice of its objection, if any, to the proposed amendment or action within 60 days after it is given notice of the proposal by certified or registered mail, return receipt requested, the Eligible Holder or other party shall be deemed conclusively to have approved of the proposed amendment or action and the secretary of the Association may so state in any document.

## **ARTICLE 15**

### **DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

Section 15.1 Development Rights. In addition to the rights reserved in Section 9.10 and Section 10.3 above, Declarant hereby reserves the following Development Rights, which Development Rights are appurtenant to, benefit, and burden all of the Real Estate that is subject to this Declaration:

(a) The right to create or construct additional Townhomes, Garages, Common Elements, and Limited Common Elements and to convert Units, Townhomes, and Garages into Common Elements.

(b) The right to withdraw all or any part of the Common Elements from the provisions of this Declaration and the right to withdraw Units from the provisions of this Declaration if such Units are owned by Declarant.

Section 15.2 Special Declarant Rights. In addition to the rights reserved in Section 9.9, Section 9.10 and Section 10.3 above, Declarant hereby reserves the following Special Declarant Rights, which Special Declarant Rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration:

(a) the right to maintain sales offices, management offices, and models in the Units owned by Declarant or on the Common Elements;

(b) the right to maintain signs and advertising in the Community to advertise the Community or other communities developed or managed by, or affiliated with the Declarant;

(c) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking and/or recreational facilities and/or Common Elements that may or may not be a part of the Community;

(d) the right to merge or consolidate the Community with another "common interest community" as that term is defined in the Act;

(e) the right to appoint or remove any officer of the Association or any member of the Executive Board during the Declarant Control Period;

(f) the right to exercise any additional reserved right created by any other provision of this Declaration; and

(g) the right to exercise any "development rights" reserved or allowed in the Act.

Section 15.3 Additional Rights Reserved by Declarant. Declarant hereby reserves the following additional rights, which additional reserved rights are appurtenant to, benefit, and burden all of the Real Estate that is now or hereafter subject to this Declaration:

(a) The right to repair any portion of the Community, the right to perform construction work, and the right to store materials in secure areas, in Units owned by Declarant and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or First Mortgagee. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in or assigned under this Declaration. Declarant also has a reserved easement for access and utilities to any properties which Declarant may have the right to add, even if not added to the Community. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the real estate.

(b) The right to allocate areas that constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of the Units to which those specified areas shall become appurtenant. The Declarant may allocate or assign Limited Common Elements: (i) by making such an allocation in a recorded instrument; (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant; or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be made as a matter of reserved right.

(c) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary.

(d) The right to amend the Declaration and/or any Map in connection with the exercise of any Development Right.

(e) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions.

Section 15.4 Exercise of Declarant Rights. Declarant or its assignee may exercise any reserved rights on all or any portion of the Real Estate in whatever order determined. Declarant or its assignee shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted. Notwithstanding any other provision of this Declaration to the contrary, Declarant shall not exercise any Development



Right or Special Declarant right if prohibited by the approval guidelines of any Mortgage Agency holding, insuring or guaranteeing a First Mortgage.

Section 15.5 Term of Reservation of Reserved Rights. All rights reserved herein by Declarant for the benefit of Declarant shall expire in accordance with the provisions reserving the right in question, or if no such expiration is identified, then such right shall expire seven years from the date this Declaration is recorded. Any such unexpired rights may be transferred by Declarant to any person by an instrument executed by Declarant and its transferee, describing the rights transferred and recorded in the Office of the Clerk and Recorder for the County of Summit in compliance with Section 304 of the Act.

## ARTICLE 16

### RIGHT OF FIRST OFFER AS TO UNITS 12, 18 AND 20

#### Section 16.1 Right of First Offer As to Units 12, 18 and 28.

(a) Definitions. In addition to the terms defined elsewhere in this Declaration, as used in this Section the following words shall have the following meanings:

“Accepting Party” means either the Board of County Commissioners or a County Employee, whichever is applicable, who elects to accept an Offer to purchase either Unit 12, 18, or 28 in accordance with this Section.

“Board of County Commissioners” means the Board of County Commissioners of Summit County, Colorado

“County Employee” means a then-current employee of any department, agency, board or elected official of the Summit County, Colorado government as of the date of an Offer.

“Offer” means an offer to sell Unit 12, 18 or 28 of the Valley Brook Townhomes made pursuant to and in accordance with this Section.

“Offering Owner” means the Owner of Unit 12, 18 or 28 of the Valley Brook Townhomes who makes an Offer to sell his or her Unit pursuant to and in accordance with this Section.

“Units 12, 18 and 28” and “Units 12, 18 or 28” both mean Unit 12, 18 or 28 of the Valley Brook Townhomes as described in this Declaration.

(b) Right of First Offer. The Owners of Unit 12, Unit 18 and Unit 28 each agree not to sell their Unit without first offering such Unit to the Board of County Commissioners and to the County Employees as provided in this Section. This Section creates a specifically enforceable right of first offer to purchase Unit 12, Unit 18 and Unit 28 according to the terms of this Section.

(c) Procedure to Comply With Right of First Offer. The right of first offer created by this Section 16.1 shall be honored by the applicable Owner(s) of Unit 12, Unit 18 and Unit 28 and exercised by the Board of County Commissioners and the County Employees in the following manner:

(i) If the Owner of either Unit 12, Unit 18 or Unit 28 desires to sell his or her Unit, such Owner shall first send a written Offer to the Board of County Commissioners by certified mail, return receipt requested, addressed to P.O. Box 68, Breckenridge, Colorado 80424, or at any other mailing address for the Board of County Commissioners then shown on the Summit County website (<http://www.co.summit.co.us>). Alternatively, the Offer may be personally delivered to the County Manager of Summit County government. The Offer shall be deemed to have been properly served on the Board of County Commissioners in accordance with this Section when the Offer is delivered to the County Manager, or upon the County's receipt of the Offer if the Offer is served by mail, whichever is applicable.

(ii) An Offer shall describe the Unit proposed to be sold, and shall state a specified price and all principal terms and conditions of the proposed sale. The Offer shall also set forth the Owner's mailing address to which any notice of acceptance of the Offer may be delivered.

(iii) The Offer may be accepted by either the Board of County Commissioners or by any County Employee. If either the Board of County Commissioners or a County Employee desires to accept the Offer, the Accepting Party shall notify the Offering Owner in writing of such acceptance within 30 calendar days of the date of service of the Offer upon the County pursuant to this Section. Notice of acceptance of the Offer must either be personally delivered to the Offering Owner, or sent by certified mail, return receipt requested, to the Offering Owner at the mailing address set forth in the Offer. A notice of acceptance is valid and effective when personally delivered to the Offering Owner, or when mailed to the Offering Owner at the mailing address set forth in the Offer, whichever is applicable.

(iv) It is the Board of County Commissioner's responsibility to notify potentially interested County Employees of the Offer, and to determine a method of determining which County Employee is to be allowed to accept the Offer if more than one County Employee desires to accept the Offer. No County Employee may complain that he or she did not receive the Offer so long as the Offer is properly given to the Board of County Commissioners in accordance with this Section.

(v) If neither the Board of County Commissioners nor any County Employee gives timely written notice of acceptance of the Offer within the 30 calendar day period, the Unit Owner may, within 180 days after the expiration of the 30 calendar day period described in Subsection 16.1(c)(iii) sell the Unit to any party upon terms and conditions that are substantially similar to those in the Offer,

but not for a price that is less than 90 percent of the sale price described in the Offer. Such sale may be made free and clear of the right of first offer provided for in this section. If the Unit is not sold within such 180 day period, any subsequent sale of the Unit is subject to the requirement that a new Offer be given to the County and the County Employees in accordance with this section

(vi) If an Accepting Party accepts the Offer the Offering Owner and the Accepting Party shall in negotiate good faith and attempt to reach a commercially reasonable contract for the purchase and sale of the Unit that was the subject of the Offer. If the Accepting Party and the Offering Owner sign a contract for the purchase and sale of the Unit that was the subject of the Offer, the rights and responsibilities of such parties shall be as set forth in the contract. If the Unit Owner and the Accepting Party have not signed a bona fide contract for the sale and purchase of the Unit within 30 calendar days after the giving of timely notice of acceptance of the Offer by the Accepting Party, the Unit Owner may sell the Unit to any party upon terms and conditions that are substantially similar to those in the Offer, but not for a price that is less than 90 percent of the Offer. Such sale may be made free and clear of the right of first offer provided for in this section.

(d) Right of First Offer Inapplicable to Other Units. The right of first offer established by this section applies only to Units 12, 18 and 28, and does not apply to any other Unit that is subject to this Declaration.

(e) Consent Required to amend Article 16. Notwithstanding anything contained in this Declaration to the contrary, this Article 16 may not be amended without the prior, written consent of both the Town of Breckenridge, Colorado and the Board of County Commissioners of Summit County, Colorado, which consent may be granted, withheld or conditionally approved in the sole and absolute discretion of the Town of Breckenridge, Colorado and the Board of County Commissioners of Summit County, Colorado.

## ARTICLE 17

### MISCELLANEOUS

Section 17.1 Period of the Community. The Community created by this Declaration shall continue as a "planned community" pursuant to the Act until this Declaration is terminated in any manner provided in this Declaration or by law.

Section 17.2 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law. If there is a conflict between this Declaration and the mandatory provisions of the Act, the Act shall control.

Section 17.3 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants,

conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

Section 17.4 Enforcement of Governing Documents.

(a) Self-Help. Declarant, the Association, or any authorized agent of either of them may enforce by self-help any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in the Governing Documents to the fullest extent permitted by this Declaration and the law.

(b) Mediation. If a dispute arises between the Owners, between an Owner and the Association, or between Declarant and the Association or any Owner relating to any provision of the Governing Documents (a "Dispute") that is not otherwise resolved informally or by a notice and hearing procedure specified in the Rules and Regulations, the parties thereto shall proceed in good faith to resolve the matter by mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the Dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the Dispute must agree before any settlement is binding. The parties shall jointly appoint an acceptable mediator and shall share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the entire Dispute is not resolved within 30 days after the date written notice requesting mediation is sent by one party to the other(s) (the "Mediation Period").

(c) Arbitration. Any Dispute that is not settled prior to the expiration of the Mediation Period shall be settled by binding arbitration administered by an arbitrator (such as the Judicial Arbitrator Group or similar arbitration organization) mutually agreed upon by the parties in accordance with the American Arbitration Association Commercial Arbitration Rules and shall be held in Breckenridge, Colorado. If a Dispute involves Declarant or the Association, no one shall file a memorandum of *lis pendens* or similar instrument that would encumber or create a lien upon the land owned either by Declarant or the Association. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. The initiating party shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the Dispute, the amount involved and the remedy sought. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including attorney's fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.) The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. Declarant, the Association, and each Owner expressly consent to arbitration as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any Dispute with Declarant as contemplated by this Article in any court of law or equity, and any right to trial by judge or jury.

(d) Foreclosure of Assessment Lien. Notwithstanding the foregoing Subsection (c), the Association's power to foreclose an Assessment lien is not subject to arbitration, and the Association may proceed directly to any court of competent jurisdiction, or if all parties to a dispute agree, by binding arbitration. In any Judicial Proceeding, the prevailing party shall recover its costs to initiate and prosecute such a foreclosure.

(e) Costs and Fees of Collecting Past Due Assessments. Notwithstanding the foregoing, if an Owner fails to pay Assessments or any other sums due to the Association in a timely manner, the Association may require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure without the necessity of commencing formal legal proceedings.

Section 17.5 Remedies Cumulative. Each remedy provided for the enforcement of the terms this Declaration is cumulative and not exclusive.

Section 17.6 Limitation on an Owner's Liability.

(a) No Owner shall be liable to the Association or other Owners for the expenses, costs, and fees incurred by the Association or other Owners for maintenance, repair, or replacement of the Common Elements or any Unit caused by the negligent or willful act or omission of that Owner to the extent that the Association or the other Owners would be reimbursed for such expenses, costs, and fees by such the insurance required to be carried pursuant to Article 7.

(b) The Association and each Owner hereby waive any and all rights to recover against the other, and against their respective officers, directors, stockholders, partners, employees, agents, representatives for damage to such waiving party or loss of its property or the property of others under its control arising from any cause covered by any property insurance required to be carried by such waiving party hereunder or actually carried by such waiving party, to the extent of the limits of such property insurance. The foregoing waiver shall be effective only as long as it does not invalidate any insurance coverage carried by the waiving party and only as long as it is permitted by such party's insurance carrier without payment of an additional premium.

Section 17.7 Construction Defect Claims. In addition to the requirements for initiating Judicial Proceedings set forth in Section 5.6 above, the Executive Board shall not initiate a Judicial Proceeding with respect to a Construction Defect Claim, unless it proposes that the Association act on behalf of at least two Owners, and without first: (i) distributing to all Owners a written description of the basis for the Construction Defect Claim, including a good faith estimate of the range of probable costs for legal fees and other expenses that the Association may incur in pursuing the Construction Defect Claim; and (ii) obtaining the written approval of Owners to which at least 67% of all of the eligible votes in the Association are allocated. In addition, the following procedures shall govern all Construction Defect Claims whether by the Association or by any Owner:

(a) Notice. If any Owner or the Association, on behalf of more than one Owner (hereafter "Claimant"), alleges a construction defect in any Units or Common Elements, Claimant shall notify each Declarant and any contractor against whom such Construction Defect Claim is targeted (hereafter "Respondent(s)") in writing stating plainly and concisely (i) the nature of the Construction Defect Claim, including the persons involved and Respondent's role in the Construction Defect Claim; (ii) the legal basis of the Construction Defect Claim (i.e., the legal theory or authority out of which the Construction Defect Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant shall meet with Respondent to discuss in good faith ways to resolve the Construction Defect Claim (the "Construction Defect Notice"). A Construction Defect Notice that is sent by a Claimant in conformity with the "notice of claim" requirements of C.R.S. § 13-20-803.5, as amended from time to time (also known as the Colorado "Construction Defect Action Reform Act") shall be deemed to qualify as a Construction Defect Notice under this Section 17.7.

(b) Negotiation and Mediation.

(i) In addition to satisfying the process described in the Construction Defect Action Reform Act, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Construction Defect Notice, the Executive Board may appoint a representative to assist the parties in negotiation.

(ii) If the parties do not resolve the Construction Defect Claim within 30 days after the date of the Construction Defect Notice (or within such other period as may be agreed upon by the parties), Claimant shall have 30 additional days to submit the Construction Defect Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the parties otherwise agree, to an independent agency providing dispute resolution services in the Breckenridge, Colorado area.

(iii) If Claimant does not submit the Construction Defect Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Construction Defect Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.

(iv) Any settlement of the Construction Defect Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Construction Defect Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(c) Final and Binding Arbitration.

(i) If the parties do not agree in writing to a settlement of the Construction Defect Claim within 15 days of the Termination of Mediation, Claimant shall have 15 additional days to submit the Construction Defect Claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This Section 17.7(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this Section 17.7 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in C.R.S. § 13-20-802.5(1). The arbitration decision and the award, if any (the "Decision"), shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims. Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under Section 123 of the Act), from any other party. **BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 123 OF THE ACT) IN CONNECTION WITH THE ARBITRATION OF A CLAIM UNDER THIS SECTION 17.7.** The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Section 17.7(f) below.

(e) Limitation on Damages. Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a Construction Defect Claim other than such its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages, including, without limitation, attorneys' fees and expenses (except as specifically provided under Section 123 of the Act), special damages, consequential damages, and punitive or exemplary damages. **BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER**

**KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER SECTION 17.7(c), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.**

(f) Enforcement of Resolution. If the parties agree to a resolution of any Construction Defect Claim through negotiation or mediation in accordance with Section 17.7(b) above, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Section 17.7. Notwithstanding the terms of Section 17.7(d), in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties *pro rata*) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

(g) No Amendment; Enforcement by Declarant. The terms and provisions of this Section 17.7 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant, without regard to whether Declarant owns any portion of the Real Estate at the time of such amendment. **BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 17.7 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION 17.7, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 17.7 LIMIT HIS, HER OR ITS RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING THE COMMUNITY OR ANY PORTION THEREOF, INCLUDING ANY UNIT.**

Section 17.8 Notices; Registration of Mailing Address. Each Owner and each First Mortgagee, insurer or guarantor of a First Mortgage, shall register his or her mailing address with the Association, and notices or demands intended to be served upon the Association, any such Owner, First Mortgagee, insurer, or guarantor shall be delivered by



messenger or sent by first class mail, postage prepaid, addressed in the name of such person or entity, at such registered address. If any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit.

Section 17.9 Non-Waiver. Failure by a Declarant, the Association, any Owner, First Mortgagee, or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 17.10 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

Section 17.11 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 17.12 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration 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 this Declaration or the intent of any provision hereof.


Section 17.13 Conflicts in Documents. In case of any conflict between this Declaration and the Deed Restrictions, the Deed Restrictions shall control. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 17.14 Rule Against Perpetuities. Unless exempted from the application of the rule against perpetuities under the provisions of the Act or other applicable law, any interest in property granted under this Declaration shall vest, if at all, within the period measured by the life of the survivor of the great grandchildren of Barack Obama, the 44<sup>th</sup> President of the United States of America, who are living on the date of recording of this Declaration in the office of the Clerk and Recorder of the County of Summit, Colorado, plus 21 years.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of the date first written above.

**DECLARANT:**

**SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit corporation**


By:   
Timothy J. Gagen, Town Manager of the Town of Breckenridge, Colorado, its attorney-in-fact

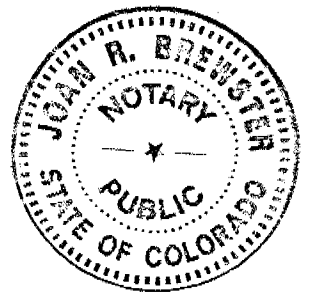
STATE OF COLORADO            )  
  ) ss.  
COUNTY OF SUMMIT            )

The above and foregoing Declaration of Covenants, Conditions, and Restrictions of the Valley Brook Townhomes was acknowledged before me this 4<sup>th</sup> day of January, 2011, by Timothy J. Gagen, Town Manager of the Town of Breckenridge, Colorado, as attorney-in-fact for Summit Housing Development Corporation, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

My commission expires: 5/3/2011

  
Notary Public



My commission expires: **May 3, 2011**

**EXHIBIT A  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

Legal Description of the Real Estate

Tracts 1, 2, and 3, Valley Brook Subdivision, according to the plat recorded August 5, 2010 under Reception No. 943931 of the records of the Clerk and Recorder of Summit County, Colorado

**EXHIBIT B  
TO  
THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

Easements and Licenses

1. Easements, notes and dedications as shown and reserved on the recorded plat of Breckenridge Airport Subdivision recorded November 24, 1981 under Reception No. 232254 and an Amended Replat of the Breckenridge Airport Subdivision recorded December 21, 1990 under Reception No. 397666, all of the records of the Clerk and Recorder of Summit County, Colorado.
2. Terms, conditions and provisions of amendment to Parking Lease recorded December 14, 2009 at Reception No. 928308 of the records of the Clerk and Recorder of Summit County, Colorado.
3. Notes, dedications, and easements set forth on the plat for Valley Brook Subdivision recorded August 05, 2010 under Reception No. 943931 of the records of the Clerk and Recorder of Summit County, Colorado.
4. Notes, dedications, and easements set forth on the map/plat for Valley Brook Townhomes Filing No. 1, recorded January 4, 2011 under Reception No. 955147 of the records of the Clerk and Recorder of Summit County, Colorado.

**EXHIBIT C  
TO  
THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

Assessment Percentages

(To be completed prior to recording)

<b>Unit</b>	<b>Square Footage</b>	<b>Unit's Assessment Percentage</b>
1	1147	7.33 %
2	1154	7.36 %
3	1154	7.36 %
4	1147	7.33 %
5	1154	7.36 %
6	1384	8.83 %
7	1384	8.83 %
8	1154	7.36 %
9	1154	7.36 %
10	1154	7.36 %
11	1384	8.83 %
12	1154	7.36 %
13	1147	7.33 %
<b>TOTAL</b>	<b>15,671 Square Feet</b>	<b>100 %</b>

**EXHIBIT D  
TO  
THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
VALLEY BROOK TOWNHOMES**

Certificate of Completion

In accordance with Section 201(2) of the Colorado Common Interest Ownership Act, codified as amended at C.R.S. § 38-33.3-101 *et seq.*, the undersigned certifies that all structural components of all buildings containing or comprising the Units (as defined in this Declaration) are substantially completed.



[Signature of independent licensed or registered  
engineer, surveyor or architect]

