

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

*The Cascades At Eagle Ridge*

**May 6, 1996**



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Kay Weinland Routt County Clerk & Recorder  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**

*The Cascades At Eagle Ridge*

**THIS DECLARATION** is made on the 6th day of May, 1996, by **CASCADES AT STEAMBOAT, LLC**, a Colorado Limited Liability Company, hereinafter referred to as "Declarant".

**WHEREAS**, Declarant is the owner of certain real property situated in Routt County, Colorado, as more particularly described in Exhibits A, B and C hereto and incorporated herein by this reference;

**WHEREAS**, Declarant intends to construct a residential townhome community on the real property;

**WHEREAS**, Declarant will convey the townhomes and the real property, subject to the Declaration of Covenants, Conditions and Restrictions contained herein (the "Declaration"); and

**WHEREAS**, Declarant intends to subdivide the real estate into fee simple townhome lots and common elements and create a common interest planned community pursuant to and subject to the Colorado Common Interest Ownership Act;

**NOW THEREFORE**, Declarant hereby submits the real property described in Exhibits A and B (the "Property"), together with all easements, rights, and appurtenances thereto and improvements thereon to the provisions of Colorado Common Interest Ownership Act as the same may be amended from time to time (C.R.S. §§ 38-33.3-101 through 38-33.3-319). In the event said Act is repealed, the Act as it exists on the date of its repeal shall remain applicable. Declarant hereby declares that the real property described in Exhibits A and B, together with all easements, rights, and appurtenances thereto and improvements thereon shall be held, sold and conveyed subject to that certain Plat recorded on May 10, 1996 in the office of the Clerk and Recorder of Routt County, Colorado at Reception Number 462673 File 12327, and incorporated herein by this reference, and, subject to the protective covenants, restrictions, reservations and obligations as hereinafter set forth, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of any person having any right, title or interest in the Property and which shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, successors, heirs, legal representatives and assigns.

**1. DEFINITIONS**

a. "Act" means the Colorado Common Interest Ownership Act as the same may be amended from time to time. In the event said Act is repealed, the Act as it exists on

the date of its repeal shall remain applicable and continue to be referred to as the "Act" hereunder.

b. "**Assessment**" means collectively the Common Assessments, Special Assessments, and Reimbursement Assessments.

c. "**Association**" means The Cascades at EagleRidge Townhome Association, Inc., a Colorado nonprofit corporation formed to govern and manage the Townhome Project. The members of the Association shall be all of the Owners.

d. "**Budget**" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration.

e. "**Common Assessment**" means the assessment fixed annually by the Executive Board based on the annual Budget for the Common Expenses.

f. "**Common Elements**" means the real estate, appurtenances and improvements thereto, and any easements owned by the Association and designated in the Plat and Exhibit B hereto.

g. "**Common Expenses**" means the expenditures made or liabilities incurred by or on behalf of the Association together with any allocations or reserves in connection with the administration, operation, management, and repair or replacement of the Common Elements and maintenance of the Townhome roofs and exterior surfaces.

h. "**Declarant**" means **CASCADES AT STEAMBOAT, LLC**, a Colorado Limited Liability Company, its heirs, personal representatives, successors or assigns, if such heirs, personal representatives, successors or assigns shall acquire any portion of the Property for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant for the purpose hereof by a duly recorded written instrument. Any such designation by the Declarant or a successor Declarant may include the right of redesignation by such successor or further successors.

i. "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for **THE CASCADES AT EAGLERIDGE**, which shall be recorded in the office of the Clerk and Recorder of Routt County, Colorado and any amendments adopted from time to time and recorded in the office of the Clerk and Recorder of Routt County, Colorado.

j. "**Development Rights**" means the rights reserved by the Declarant to add real estate, Townhome Lots and Common Elements to the terms of this Declaration and the common interest ownership community created hereby.

k. "**Executive Board**" means the body of members appointed by Declarant or elected by the members of the Association to serve and act on behalf of the Association, in accordance with the Bylaws of the Association.

l. "**First Mortgagee**" means any person, corporation, partnership, trust, company, association, or other legal entity which owns, holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering a Townhome Lot within the Property.



m. "**Guest**" means any agent, short-term renter, long-term renter, tenant, guest, licensee, contract purchaser, or invitee of an Owner and the members of such Owner's household.

n. "**Managing Agent**" means a company or individual employed by the Association to administer and manage the affairs of the Association.

o. "**Owner**" means the Declarant or any other person, company, corporation, partnership, trust, association or any other legal entity or combination thereof that owns one or more Townhome Lots and thereby is a member of the Association.

p. "**Party Walls**". means the common walls between Townhomes.

q. "**Plat**" means the land survey depicting the Townhome Lots and Common Elements dated May 10 1994 and recorded in the office of the Clerk and Recorder of Routt County, Colorado, at Reception Number 462678 <sup>File #</sup> 12327, and incorporated herein by reference. Said Plat defines the dimensions of each Townhome and Townhome Lot. Said Plat may be supplemented by additional plats covering real estate described in Exhibit C hereto for which Declarant has reserved the right to add at a future date.

r. "**Project**" means the Property, the Townhome Lots, the fourplex buildings, the Townhomes, the Common Elements, all improvements and structures on any of the foregoing, and all rights, easements, and appurtenances belonging thereto comprising and located on the Property.

s. "**Property**" means such real property and the improvements located thereon which constitute or shall constitute the Townhomes, Townhome Lots, and any Common Elements that are included in this Declaration and the Plat. Initially the Property shall include the real property described in Exhibits A and B hereto but Declarant reserves the right to subsequently include the real property described in Exhibit C hereto to these Declarations. At the time of any such inclusion the term Property shall be expanded to include such additions.

t. "**Supplemental Declaration Amendment**" means a written instrument containing covenants, conditions, restrictions, reservations, easements and other provisions, or any combination thereof, which is recorded, annexing a portion of the real property described on Exhibit C hereof to the Property.

u. "**Townhome**" means any one of the townhomes, constructed within the Property and any replacement thereof, including, but not limited to, any patios, decks, and garages. Initially twelve (12) townhomes will be constructed and included within this Declarations on the real property described in Exhibit A. Declarant reserves the right to subsequently construct an additional sixteen (16) townhomes, on the real property described in Exhibit C hereto, and include said townhomes and real property under these Declarations.

v. "**Townhome Lot**" or "**Lot**" means any of the defined plots of real estate included within this Declaration and designated on the Plat. Townhome Lot shall include any Townhome and other improvements constructed on said Townhome Lot.

w. "Townhome Lot Owner" or "Owner" means the Declarant or any other person, company, corporation, partnership, trust, association or any other legal entity or combination thereof that owns one or more Townhome Lots and thereby is a member of the Association.

## 2. SCOPE OF DECLARATION

a. **Property Subject to Declaration.** Declarant, as the owner of fee simple title to the Property, as more fully described in Exhibits A and B hereto, by recording this Declaration, does hereby subject the Property to the provisions of this Declaration and the Act. Declarant intends to construct three (3) fourplex buildings on the Property and subdivide the Property into twelve (12) Townhome Lots and certain Common Elements. Declarant reserves the right, but not the obligation, for a period of three years from the date this Declaration is executed, to annex the real property described in Exhibit C hereto into the Property and create sixteen (16) additional Townhome Lots and additional Common Elements. Should Declarant exercise this right of annexation and expansion it will do so by a Supplemental Declaration Amendment filed with the Clerk and Recorder of Routt County, Colorado.

b. **Conveyance Subject to Declaration.** All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration and the Plat shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Property shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

c. **Plat.** The Townhomes Plat Map, recorded in the records of the clerk and recorder for Routt County, Colorado, identifies the individual Townhome Lots and Common Elements and establishes their boundaries.

d. **Form of Ownership.** Each Owner shall own his or her Townhome Lot and Townhome in fee simple for residential use, subject to the provisions of this Declaration.

e. **Separate Assessment and Taxation of Townhomes.** Declarant shall give written notice and a copy of this Declaration to the Assessor of Routt County, Colorado, notifying the Assessor of the creation of townhome real property ownership interests in the Property so that each Townhome Lot shall be deemed to be a parcel subject to separate assessment and taxation by each assessing unit and special district for all types of taxes assessed by law including, without limitation, ad valorem levies and special assessments. Neither the Property nor any use of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Townhome Lot shall be confined to that Townhome Lot. No forfeiture or sale of any Townhome Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Townhome Lot.

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**f. Compliance With the Provisions of This Declaration.** Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration, as the same may be amended from time to time. Each Owner is fully responsible for the actions of his or her Guests. Failure to comply with any of the provisions of this Declaration by an Owner or his or her Guests shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by an aggrieved Owner, Declarant, or the Association.

**g. Legal Descriptions.** Every contract, deed, lease, mortgage, trust deed, will, or other instrument may legally describe a Townhome Lot in substantially the same form as the following:

\_\_\_\_\_ Building \_\_\_\_\_ Townhome according to The Cascades at EagleRidge Phase I Plat, recorded \_\_\_\_\_, 1996 at Reception No. \_\_\_\_\_ in the records of the Clerk and Recorder of Routt County, Colorado and according to the Declaration of Covenants, Conditions and Restrictions for The Cascades at EagleRidge recorded \_\_\_\_\_, 1996 at Reception No. \_\_\_\_\_ in the records of the Clerk and Recorder of Routt County, Colorado.

### 3. THE COMMON ELEMENTS

**a. Common Element Dedication.** The Declarant in recording the Plat has designated certain areas of the Property as Common Elements, which are more fully described on Exhibit B attached hereto. The designated Common Elements are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of the Owners and Owners' Guests.

**b. Title to the Common Elements.** The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Elements prior to the conveyance of the first Lot within the Property to an Owner other than Declarant.

**c. Duty to Accept Common Elements Transferred by Declarant.** The Association shall accept title to said Common Elements and agrees to own and maintain any property, including all improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Elements. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances other than the lien of real estate taxes not then due and payable.

**d. Duty to Manage and Care for the Common Elements.** The Association shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Elements and the improvements located thereon and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and for any through public traffic on the pedestrian and bike path system.

**e. Owner's Easements.** Every Owner and Owners' Guests shall have the right and easement of use and enjoyment in and to the Common Elements.

#### 4. THE ASSOCIATION

a. **General Purposes and Powers.** The Association through its Executive Board shall perform functions and hold title to and manage real and personal property as provided in this Declaration so as to further the interests of Owners in the Property. The Association, the Executive Board and/or the Managing Agent, shall have all powers necessary or desirable to effectuate such purposes including, but not limited to the right, power and obligation to: (i) operate, regulate, manage, maintain, alter, repair, and charge Assessments in connection with the operation and use of the Property; (ii) represent the Owners' interests under this Declaration; (iii) enforce all terms, covenants, restrictions, conditions, uses, and limitations set forth herein; and (iv) exercise and perform all rights and obligations granted to the Association under the Articles of Incorporation, the Bylaws, and the Act.

b. **Articles of Incorporation and Bylaws.** The purposes and powers of the Association, the Executive Board, and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by the provisos of the Articles of Incorporation and the Bylaws of the Association. In the event of a conflict between the terms and provisions of the Articles of Incorporation and the Bylaws, the terms and provisions of the Articles of Incorporation shall control. In the event of a conflict between the terms and provisions of the Articles of Incorporation and the Bylaws and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall control.

c. **Membership and Voting Rights.** Each Owner shall automatically be a member of the Association. The Association shall have only one class of voting membership and each member shall be entitled to one vote. Said membership is appurtenant to the Townhome Lot of said Owner and shall automatically pass with fee simple title to the Townhome Lot and can not in any way be separated therefrom. Each Owner shall automatically be entitled to the benefits and subject to the burdens relating to ownership of his or her Townhome Lot. If a fee simple title to a Townhome Lot is held by more than one person or entity, then each such person or entity shall appoint one of its constituent persons as a proxy with power of attorney to exercise the right and obligations of membership in the Association. Each Townhome Lot shall have one vote for the transacting of all Association business including the election of an Executive Board.

d. **Declarant Control of the Association.** Subject to paragraph f. hereof, there shall be a period of Declarant control during which the Declarant may appoint and remove the officers and members of the Executive Board. This period of Declarant control shall terminate not later than the earlier of: (i) sixty (60) days after the date which Declarant has conveyed seventy-five percent (75%) of the Townhome Lots which may be created within the Property to Owners other than Declarant; (ii) two (2) years after the last conveyance of a Townhome Lot by the Declarant in the ordinary course of business; (iii) two (2) years after any right to annex real property and create new Townhome Lots was last exercised, or (iv) such other time as the Declarant may, in its sole discretion determine, whichever occurs earlier.

e. **Quorum and Proxies.** The presence of fifty percent (50%) of the Owners in person, or by written proxy as allowed by the Bylaws, shall constitute a quorum at any meeting of the Association. The vote of majority of a quorum shall decide all matters requiring a vote.

**f. Executive Board.** The number of members of the Executive Board, all of whom shall be Owners, shall be established in the By-laws of the Association, but in no event shall be less than three (3). Members of the Executive Board shall be elected in the following manner. (Approved 9/23/03)

i). Declarant shall be entitled to select or appoint, in its sole and absolute discretion, all members of the Executive Board from the day the Association is created until sixty (60) days from the date which Declarant has conveyed twenty-five percent (25%) of the Townhomes, which may be created within the Property, to Owners other than Declarant.

ii). Sixty (60) days after the date which Declarant has conveyed twenty-five percent (25%) of the Townhome Lots, which may be created within the Property, to Owners other than Declarant, Declarant shall be entitled to select and appoint, in its sole and absolute discretion, two (2) members of the Executive Board until sixty (60) days from the date which Declarant has conveyed fifty percent (50%) of the Townhome Lots, which may be created within the Property, to Owners other than Declarant. The other member of the Executive Board shall be nominated and elected by the Owners other than the Declarant.

iii). Sixty (60) days after the date which Declarant has conveyed fifty percent (50%) of the Townhome Lots, which may be created within the Property, to Owners other than Declarant, Declarant shall be entitled to select and appoint, in its sole and absolute discretion, two (2) members of the Executive Board until sixty (60) days from the date which Declarant has conveyed seventy-five percent (75%) of the Townhome Lots, which may be created within the Property, to Owners other than Declarant. The other member of the Executive Board shall be elected by the Owners other than the Declarant.

iv). During that period of time which is: (a) sixty (60) days after the date which Declarant has conveyed seventy-five percent (75%) of the Townhome Lots which may be created within the Property to Owners other than Declarant; (b) two (2) years after the last conveyance of a Townhome Lot by the Declarant in the ordinary course of business; (c) two (2) years after any right to annex real property and create new Townhome Lots was last exercised. or (d) such other time as the Declarant may, in its sole discretion determine, whichever occurs earlier, all members of the Executive Board shall have been or will be nominated and elected by the Owners.

v). Any vacancies in the Executive Board, occurring before the first election of board members by Owners, shall be filled by the remaining Board Members or the Declarant.

**g. Association Powers.** The Association shall have the power to, but not be limited by the following:

i). Administer, manage, repair, and maintain the Common Elements or contract and pay for, or otherwise provide for the maintenance of the Common Elements. Without limiting the generality of the foregoing, said powers shall include: keeping Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow from Common Elements; and, maintaining landscaping and drainage on Common Elements.

ii). Administer, manage, repair, and maintain the Townhome roofs and exterior surfaces, contract and pay for, or otherwise provide for the maintenance of the Townhome roofs and exterior surfaces.

iii). Employ a Managing Agent to administer and manage the affairs of the Association provided that any contract with a Managing Agent, entered into during the period of Declarant control, shall reserve to the Association the right to terminate such contract without cause and without penalty at any time upon ninety (90) days' notice.

iv). Adopt and publish rules and regulations governing the use of all Townhome Lots and the Common Elements and to establish penalties for infractions of rules and regulations.

v). Suspend the voting rights of a member during any period in which the member is in default in the payment of any assessment levied by the Association. These rights may also be suspended after notice and hearing before the Association, for a period not to exceed sixty (60) days, for any infraction of the rules and regulations adopted by the Association.

vi). Exercise a broad range of architectural controls over repairs, alterations, modifications, exterior painting, lighting, roofing and other matters pertaining to the Townhomes and any improvements to the Common Elements.

vii). Appoint standing and ad hoc committees from among the Owners as it deems necessary and desirable and delegate its duties to these committees.

viii). Employ the services of an attorney to provide legal services.

ix). Employ the services of a bookkeeper or a certified public accountant to provide accounting services, tax services or audit services.

x). Obtain and maintain casualty and liability insurance policies to protect the Association, the Executive Board and the property of Owners to the extent desirable.

xi). As necessary and desirable, without any requirement for Owners' approval, grant easements for access, utilities, encroachments, etc. across the Common Elements.

xii). Keep detailed financial records including, but not limited to, a statement setting forth the amount of any unpaid Assessments currently levied against Owners.

**h. Indemnification.** Each board member, officer, and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorneys fees, reasonably incurred or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been a board member, officer or committee member of the Association, or any settlements thereof, whether or not he or she is a board member, officer or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

## 5. LAND USE AND OTHER RESTRICTIONS

a. **Limitations and Restrictions.** All Townhome Lots shall be held, used and enjoyed subject to the limitations and restrictions herein, and subject to the exemptions for Declarant set forth in this Declaration. The strict application of the limitations and restrictions in any specific case may be modified or waived in whole or in part by the Association if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

b. **Land Use and Building Type.** No Townhome Lot within the Property shall be used for any purpose other than residential purposes as generally defined, except that an Owner may maintain an office within his or her home and said Townhome may be rented on a short-term or long-term basis. In accordance with Article 6 hereof, no improvement to Property as herein defined, shall be erected or applied which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Association. In addition, under certain circumstances, approval may be required by the EagleRidge Property Owners' Executive Association and/or the City of Steamboat Springs. No auxiliary buildings other than the Townhomes will be permitted.

c. **Parking.** All parking will be in compliance with City Code and all Owners and their Guests are prohibited from using any part of the Property or driveways to park or store cars, trucks, vans, campers, motor homes, boat trailers, horse trailers, snowmobile trailers, other trailers, boats, snowmobiles, motorcycles, bicycles, etc. for a period of more than 72 hours on any occasion. This prohibition shall not include the parking or storage of such vehicles in closed garages. The Association shall have the right to remove and store a vehicle in violation of this Paragraph after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle or the Owner who allowed the parking of the vehicle.

d. **Temporary Structures.** No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon any part of the Property except with the prior written approval of the Association. This provision shall not prohibit the Declarant from maintaining a construction and/or sales office trailer during the period of construction and sales.

e. **Rules and Regulations.** Rules and Regulations may be adopted by the Executive Board concerning and governing the use of the Project and Common Elements provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective. No Owner, Guest, renter, tenant, licensee, customers or invitees of a Owner shall violate the Rules and Regulations adopted from time to time by the Executive Board, whether relating to the use of Townhomes, the use of Common Elements, or otherwise. The Board may impose a fine in an amount as may be determined from time to time on any Owner for each violation of such Rules and Regulations by such Owner, his family, tenants, guests, invitees, customers or licensees.

f. **Restrictions on Garbage and Trash.** Each Owner shall keep all of his or her garbage, trash and other refuse in a container in his or her garage or other approved enclosed area. Unless otherwise provided by the Association, each Owner, at Owner's expense, shall provide for the regular removal of garbage and other refuse

and agrees to use the trash company designated by the Association. If one is so designated. All trash placed outside for removal shall be in approved containers and only on the day of removal set by the Association. The burning of garbage, trash or waste in outside incinerators, barbecue pits, or the like, is prohibited.

**g. Exterior Townhome Lot Maintenance.** Each Owner shall, at all times, keep his or her Townhome Lot and Townhome in a neat and clean condition. No trash, litter, garbage, scrap refuse, ashes, or debris of any kind shall be permitted to remain exposed upon any Townhome Lot except that covered containers containing such material may be placed outside at proper times for garbage or trash pickup. The Association shall have the right and duty, through its agents and employees, after Notice and Hearing, to enter upon any Townhome Lot to remove such unsightly objects and materials as mentioned above. The cost of such removal and any appropriate and reasonable penalties set by the Association shall be chargeable to such Owner. Each Townhome Lot is subject to an easement in favor of the Association members, including its agents, employees and contractors, for providing the removal in accordance with the above.

**h. Nuisances.** No noxious or offensive activity shall be carried on upon the Property or any part thereof, nor shall anything be done or maintained thereon which may be or become a hazard, annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as a first-class residential community.

**i. No Annoying Lights, Sounds or Odors.** No light shall be emitted from any portion of the Property which is unreasonably bright or causes unreasonable glare and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells, wind chimes, or other light or sound devices shall be located or used on any portion of the Property without the prior written approval of the Association.

**j. No Hazardous Activities.** No activity shall be conducted on any portion of the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue unit while attended and in use for cooking purposes or within an approved fireplace.

**k. No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, including all tractors, snow removal equipment, snowmobiles, and garden or maintenance equipment, except when actually in use. All service areas for hanging, drying or airing of clothing, rugs, curtains and drapes shall be kept within approved structures.

**l. Utilities.** All electric, television, radio and telephone line installations and connections from the Owner's property line to the Townhome shall be placed underground. All types of refrigerating, cooling or heating apparatus must be concealed. No swamp coolers shall be permitted.

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**m. Restrictions on Signs and Advertising Devices.** No sign, "for sale" sign, "for lease" sign, "bought" sign, garage or yard sale sign, poster, banner, billboard, political sign, advertising device or display of any kind shall be erected or maintained anywhere within the Property or on any Townhome Lot or Townhome except such signs as may be approved in writing by the Association on a fair and consistent basis. This includes signs on decks or those that would be visible through windows. Any sign approved and permitted in writing by the Association may be placed on such Townhome Lot or Townhome, in the approved location, provided, however, that standards relating to dimensions, color, style and location of such sign shall be as designated by the Association, and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

**n. Compliance with Laws.** Nothing shall be done or kept on the Property in violation of any law, ordinance, rule or regulation of any governmental authority.

**o. Household Pets.** No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Property; provided, however, that Owners, but not Guests, may keep a reasonable numbers of dogs, cats, or other domestic animals which are bona fide household pets, so long as such are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Property. The Association shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Association shall take such action or actions as it deems reasonably necessary to correct the violation to include, after Notice and Hearing, directing permanent removal of the pet or pets from the Property. All costs incurred by the Association in enforcing and effecting the removal of such animal, including reasonable attorneys' fees and costs, shall be properly chargeable to the Owner of such animal. An Owner and his or her Guests will both be responsible for pets of Guests. Household pets shall not be allowed to run at large within the Property, but shall at all times be under the control of such pet's owner. Owners of pets and Guests keeping pets shall be responsible for cleaning up after their pets. No dog runs, animal pens or fences of any kind shall be permitted on any Townhome Lot except with the prior written approval of the Association. This includes penning animals on decks or tying animals outside for extended periods of time while the Owner is at home or away from home. Habitually barking, howling or yelping dogs shall be deemed a nuisance as well as noisy and foul smelling birds and other pets.

**p. Owner Caused Damages.** If, due to the act or neglect of any Owner or such Owner's Guests, loss or damage shall be caused to any person or property, within the Property, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Association after Notice and Hearing, from such Owner. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph shall be made by the Association and shall be final.

**q. Antennas.** Subject to any federal, state or local law or regulation, no exterior television or radio antennae or any other antennae of any type, including satellite TV dishes, shall be erected or maintained upon the Property without prior authorization from the Association. (Approved 9/23/03)

r. **Resubdivision Restriction.** No Townhome Lot shall ever be resubdivided in any manner whatsoever or conveyed or encumbered in any manner different than the Plat legal descriptions and dimensions. No Owner shall have any right to request any partitioning of any Townhome Lot or any of the Common Elements.

s. **Restrictions on the Sale of a Townhome Lot or Townhome.** The right of an Owner to sell, transfer or otherwise convey his or her Townhome Lot and Townhome shall not be subject to any right of first refusal or similar restriction and such Townhome Lot and Townhome may be sold free of any such restrictions.

t. **Restrictions on Mortgaging a Townhome Lot or Townhome.** There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Townhome Lot and Townhome. There is no requirement for the use of a specific lending institution or particular type lender.

u. **Temporary Use by the Declarant.** Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant and/or its agents to maintain upon the Property, without charge, such facilities as may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business/construction office in a model house or trailer, storage areas, nursery, construction yard, signs (including "for sale" or "for lease" signs), model townhomes for demonstration purposes and sales offices.

v. **Exemptions for the Declarant.** The Declarant shall be exempt from any restrictions in this Article to the extent that it impedes Declarant's development, marketing, sales, or leasing activities.

w. **Leasing and Renting.** Owners, including Declarant, shall have the right to lease or rent a Townhome under the following conditions:

(i). no Owner may lease or rent less than his entire Townhome;

(ii). all leases and rentals shall provide that the terms of the lease or rental and lessee's or renter's occupancy of the Townhome shall be subject in all respects to the provisions of this Declaration and any and all Rules and Regulations enacted by the Association. Any failure by a lessee or renter to comply therewith shall be a default under the lease or rental agreement and shall cause the Owner to be in violation of the Rules and Regulations of the Association and subject to penalty therefor;

(iii). any Owner who rents or leases a Townhome, for a period in excess of thirty (30) days, shall forward a copy of each such lease or rental agreement to the Association within ten (10) days of its execution; and

(iv). any Owner who rents a Townhome subject to a rental management agreement, for a period in excess of thirty (30) days, shall forward a copy of such management agreement to the Association within ten (10) days of its execution.

Nothing herein shall preclude an Owner from short-term rentals of his or her Townhome, provided they are made pursuant to the terms and conditions of this

Section and other provisions of this Declaration and the Rules and Regulations of the Association.

## 6. ARCHITECTURAL CONTROL AND APPROVAL

a. **Approval of Improvements Required.** Approval by the Association, or by a design review committee established by the Association, shall be required prior to the commencement of the construction, alteration, modification, or rebuilding of any improvement on any portion of the Property, except original first-built improvements to the Property constructed by Declarant. In addition, approval may be required by the EagleRidge Property Owners' Executive Association and/or the City of Steamboat Springs. A purchase of any Townhome Lot within the Property does not grant any implied guarantee of approval by the Association of any future improvements to be located thereon.

b. **Improvement to Property Defined.** Improvement shall mean and include, without limitation: (i) the construction, installation, erection or expansion of any building, structure or other improvements, including, but not limited to, utility facilities, T.V. or radio antennas, and satellite dishes; (ii) the demolition or destruction, by voluntary action, of any building, structure or other improvements; (iii) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, change of driveway; (iv) the construction, installation, erection, expansion or removal of any landscaping, planting, trees, shrubs, grass or perennial plants; (v) the construction, installation, erection, expansion or demolition of any decks, patios, hot tubs, mailboxes, property identification, fences, berms, walls, or other barriers of any kind; (vi) the installation of any exterior lighting or wiring of any kind; and, (vii) any change, alteration, modification, expansion, or addition to any previously approved improvement to Property, including, but not limited to: the addition of storm doors or windows; the addition of any heating or cooling equipment; or any change of exterior appearance, finish material, paint, stain, color, or texture. No improvement or alteration that impairs the structural integrity, electrical systems, or mechanical systems or lessens the support of any portion of the Property or the improvements thereon will be permitted.

c. **Address of the Association.** The address of the Association for submittal of plans or other business shall be that of the Declarant until changed by the Association.

d. **Submission of Plans.** Prior to commencement of work to accomplish any proposed improvement to the Property, the Person proposing to make such improvement to Property ("Applicant"), shall submit to the Association a written description of the proposed improvement, elevation drawings, construction plans, specifications and samples of materials and colors as the Association shall reasonably request, showing the nature, kind, shape, height, width, color, materials and location of the proposed improvement to Property. The Association may require submission of additional plans, specifications or other information prior to considering approval or disapproval the proposed improvement to Property. Until receipt by the Association of all required materials in connection with the proposed improvement to Property, the Association may postpone review of any materials submitted for approval by a particular Applicant if additional submissions are necessary. No improvement to

Property of any kind shall be erected, altered, placed or maintained within the Property unless and until the final plans, elevations and specifications therefor have received written approval by the Association.

**e. Waiver.** The Association may waive any provision regarding architectural control in the event there is a practical difficulty or an unnecessary hardship.

**f. Criteria for Approval.** The Association shall have the right to disapprove any proposed improvement to Property which is not suitable or desirable in the Association's opinion for aesthetic or other reasons. In passing upon the improvement to Property, the Association shall have the right to take into consideration the suitability of the proposed improvement to Property, the materials of which it is to be built, the color scheme, the location, the harmony with the surroundings, the effect of the improvement to neighboring property, and the general conformance of the improvement with all of the provisions of this Declaration. The Association may disapprove the proposed improvement to Property if the plans and specifications submitted are incomplete, or in the event the Association deems the improvement to be contrary to the spirit or intent of the Declaration. The Association may condition its approval of any proposed improvement to Property upon the making of such changes thereon as the Association may deem appropriate.

**g. Decision of the Association.** Unless such time period is extended by mutual agreement, the decision of the Association shall be made within thirty (30) days after receipt by the Association of all materials required by the Declaration and any additional materials reasonably required by the Association. The thirty day time period shall not begin to run until all such materials and any required supplementations are delivered by the Applicant. The Association decision shall be in writing and, if the decision is not to approve a proposed improvement to Property, the reasons therefor shall be stated. The decision of the Association shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Association. A majority vote of the Executive Board, or by the design review committee established by the Association, if applicable, shall constitute the action of the Association. Any request for approval of a proposed improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Association within thirty (30) days after the date of receipt by the Association of all necessary materials as determined by the Association.

**h. Work After Approval.** After approval of any proposed improvement to Property, the proposed improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed improvement to Property, the materials submitted to the Association in connection with the proposed improvement to Property and any conditions imposed by the Association. Failure to complete any proposed improvement to Property within sixty (60) days after the date work is commenced or to complete the improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Association, shall constitute a violation hereunder.

**i. Notice of Completion.** Upon completion of the improvement to Property, the Applicant shall give written Notice of Completion to the Association. Until the date of receipt of a Notice of Completion, the Association shall not be deemed to have notice of completion of any improvement to Property. The Association or its duly

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authorized representative shall have the right to inspect any improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the Association receives a Notice of Completion from the Applicant. If the Association finds that any improvement to Property has been done without obtaining the approval of the Association or was not done in substantial compliance with the plans and specifications furnished by the Applicant to the Association, the Association shall notify the Applicant in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

**j. Correction of Noncompliance.** If the Association determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than fifteen (15) days from the date of receipt by the Applicant of the decision of the Association. If the applicant does not comply with the Association's decision within such period, the Association may, at its option, record a "Notice of Noncompliance" against the Townhome Lot on which the noncompliance exists, or may remove the non-complying improvement to Property or may otherwise remedy the noncompliance. All expenses of recording and releasing the "Notice of Noncompliance" and/or removing the non-complying improvement to Property or otherwise remedying the noncompliance shall be chargeable to such non-complying Owner.

**k. No Implied Waiver or Estoppel.** No action or failure to act by the Association shall constitute a waiver of estoppel with respect to future action by the Association. Specifically, the approval by the Association of any improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar improvement to Property or similar proposals, plans, specification or other materials submitted with respect to any other improvement to Property.

**l. Meetings of the Executive Board.** The Executive Board shall meet from time to time as necessary to perform its duties hereunder. The Executive Board shall report in writing all final actions of the Executive Board and the Executive Board shall keep a permanent record of such actions. The Association shall, upon the reasonable request of any interested party furnish a certificate with respect to the approval or disapproval of any improvement to Property or with respect to whether any improvement to Property was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth herein.

**m. Exemptions for the Declarant.** The Declarant shall be exempt from any restrictions in this Article to the extent that it impedes Declarant's development, marketing, sales, or leasing activities.

**n. No Liability for Board Action.** There shall be no liability imposed on the Executive Board or any design review committee, any member of the Board or committee, any authorized representative, the Association, or Declarant for any damage or injury arising out of or in any way connected with the performance of the duties of the Board or committee, if such party acted in good faith and without malice. In reviewing any matter, the Board or committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or

other governmental laws or regulations, nor shall its approval of an improvement to Property be deemed approval of such matters.

## 7. TOWNHOME MAINTENANCE RESPONSIBILITY

a. **Interior Maintenance, Repair and Alteration.** For purposes of maintenance, repair, alteration, and remodeling, all Owners shall be deemed to own and shall have the obligation to maintain and repair the interior non-supporting walls and interior floors and ceilings, the material making up the finished surface of the perimeter and supporting walls, ceilings, and floors such as, but not limited to, plaster, gypsum, drywall, paneling, wallpaper, paint, windows, glass, wall coverings wall and floor tile, and flooring within the Townhome and the appurtenant patios, decks, or balconies, if any. No Owner shall make any change or alterations of any type or kind to the exterior portions of the Townhome, including the exterior surfaces of doors and windows, or to any Common Element. All Owners shall maintain and keep in good repair and in a clean, safe, attractive, and slightly condition the interior of the Townhome, including the fixtures, doors, and windows thereof and the improvements affixed thereto. Also, all Owners shall maintain, clean, and keep in a neat and clean condition any deck, yard, porch, or patio area adjoining or leading to a Townhome, and any skylight or washer and dryer duct which may be appurtenant to such Townhome.

b. **Exterior, Maintenance, Repair and Alteration.** All exterior maintenance, repairs and alternations shall be the sole responsibility of the Association and considered a Common Expense of the Association. All maintenance, including deck staining and snow removal, and repairs of the decks shall be the sole responsibility of the Association, but any expense incurred by the Association in maintaining or repairing a deck shall be assessed to the Owner of the deck. Said responsibility shall include roof repairs and replacement, exterior door repairs and replacement, and periodic painting and exterior wall and stucco repairs. Any repairs, alternations, or remodeling to the exterior portions of any Townhome shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality, such that there is no reasonably observable difference between that portion of the exterior of the Townhome which was repaired, altered or remodeled and the remaining portions of the exterior of the Townhome.

(Approved  
9/23/03)

c. **Servicing of Utility Lines.** Owners shall not be deemed to own lines, pipes, wires, conduits, cables, or systems ("utilities") running thorough a Townhome which serve one or more other Townhomes except as a tenant in common with other Owners. Such utilities shall not be disturbed or relocated by a Owner without the written consent and approval of the Association. All fixture and equipment installed within the Townhome, and all lines, wires, pipes, conduits, or systems within the Townhome, commencing at a point where the utilities enter the Townhome and which do not serve another Townhome, are owned by the Owner of said Townhome and shall be maintained and kept in repair by the Owner thereof.

d. **Failure to Perform Maintenance; Damage.** All Owners shall do no act or any work that will impair any easement or hereditament. If any Owner fails to carry out or neglects the responsibilities set forth in any subparagraph of this Article, the Association or the Managing Agent may fulfill the same and assess such Owner therefor. Any expense incurred by the Association, or its Managing Agent under this paragraph, including, but not limited to, reasonable attorneys' fees and other costs and expenses, shall be the sole expense of said Owner.

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

## 8. PARTY WALLS MAINTENANCE

a. **Party Walls.** Party Walls are the common walls between Townhomes.

b. **Owner's Expense.** Except as is otherwise provided hereinafter, the cost of reasonable repairs and maintenance of a Party Wall shall be a joint and sole expense of the Owners sharing said Party Wall and not the Association. Where the damage is clearly caused by one Owner, said Owner shall be solely responsible for the cost of repair.

c. **Party Wall Repair and Maintenance.** If a Party Wall, or any portion thereof, is damaged or destroyed, such damage or destruction, if possible, shall be promptly repaired. Repair and construction means the restoration of the Party Wall to substantially the same condition in which it existed prior to such damage or destruction. Said repair and maintenance shall be the joint expense of the Owners of the individual Townhomes to be divided equally between such Owners of the Townhomes and not the Association. Without prejudice to the requirement to share the expense, any Owner shall have the right to demand a larger contribution from the other Owners under any rule of law regarding liability for the negligent or willful acts or omissions of such other Townhome Owner.

d. **Party Wall Modification.** No extension or modification of a Party Wall may be made by any Owner, or person acting pursuant to such Owner's consent, unless prior approval thereto, in writing, shall first have been obtained from the other Owner(s) sharing said Party Wall and the Association. Said approval shall not be unreasonably withheld.

e. **Party Wall Easement.** All Townhome Lots and improvements and the Party Walls thereon are subject to a blanket easement of support and blanket easement for the maintenance and repair of the improvements, utilities and other structures or improvements presently situated, or to be built in the future, on those Townhome Lots. Each improvement and the Townhome Lot upon which it is situated, shall be subject to an easement in favor of the Townhome Lot sharing a common Party Wall for encroachments created by construction, settling and overhangs, previously existing or as designed and constructed and for the maintenance of same, so long as said improvements stand. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owner of any adjacent improvement agree that minor and temporary encroachments of parts of the damaged and destroyed improvements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. There is hereby created a blanket easement upon, across, over and under each Townhome Lot for the benefit of all of the Townhome Lots and the structures and improvements situated thereon including any Party Walls, for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, television and electricity, provided, however, that said easement shall be limited to situations in

which access to any one Townhome Lot is not otherwise available. Said easement includes utility services not presently available to the Townhome Lots which may be installed in the future. By virtue of this easement, it shall be expressly permissible for the providing of electrical and/or telephone company requirements to erect and maintain the necessary equipment on any of the Townhome Lots and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of any improvements on the Townhome Lots.

## 9. MANDATORY OWNERS' COMPLIANCE

a. **Compliance with Provisions.** Each Owner and Owners' Guests shall strictly comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws of the Association, and the Rules and Regulations, decisions, and resolutions of the Executive Board or the Association adopted pursuant thereto, as the same may be adopted and amended from time to time. Failure to comply with any of the same shall subject a Owner to such fines and penalties or special assessments as the Executive Board may set from time to time and shall be grounds for an action to recover sums due for damage or injunctive relief, or both, and for reimbursement of all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, which action shall be maintainable by the Executive Board or its Managing Agent in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

b. **Right of Entry.** In addition, any such failure of compliance shall give the Association and its Managing Agent the right to enter a Townhome as shall be necessary to remedy such violation using such force as may be necessary in so doing, without being liable in damage therefor, and the Association or Managing Agent shall not be deemed guilty in any manner of trespass in so doing.

c. **Suspension of Voting Rights.** Further, the Executive Board may suspend the voting rights of any Owner in the Association and a Owner's right to use any Common Element not reasonably necessary for ingress and egress to a Townhome of the Project during any period or periods when a Owner fails to comply with the aforesaid items.

d. **Notice and Hearing Procedure.** The Association and/or the Executive Board shall not take any action against an Owner or incur any expenses on behalf of an Owner, for violations of the Declaration, Architectural Control, or Limitations and Restrictions until the following procedure is followed:

i). **Demand.** Written demand to cease and desist from the alleged violation shall be served upon the alleged violator specifying: the alleged violation; the action required to abate the violation; a time period, not less than five days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any additional similar violation may result in the imposition of a sanction after Notice and Hearing, if the violation is continuing.

ii). **Notice.** If the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Association shall serve the violator with written notice of a Hearing to be held by the



Association. The notice shall contain: the nature of the alleged violation; the time and place of the Hearing, which time shall not be less than five days from the giving of the Notice; an invitation to attend the Hearing and produce any evidence on his or her behalf; and the proposed sanction to be imposed.

iii). **Hearing.** The Hearing shall be held pursuant to this Notice affording the Owner a reasonable opportunity to be heard. Proof of notice and the invitation to be heard shall be placed in the Minutes of the Meeting. The Minutes of the Meeting shall contain a written statement of the results of the Hearing and the sanction, if any, imposed. The decision of the Association shall be final. Upon the finding by the Association that the expenses incurred by the Association are reimbursable, all costs of collection of such expenses to include reasonable attorneys' fees and costs incurred by the Association shall be paid by the Owner, and it shall be such Owner's personal liability. Such expenses to be paid within fifteen days of the Association's findings.

e. **Notice of Default.** Upon the request of a holder of a first lien Mortgage on a Townhome Lot, the Association shall report to such holder any default by the Owner of such Townhome Lot under subparagraph a. above, if such default has continued for a period of thirty (30) days or more.

## 10. EASEMENTS

a. **Easement for Encroachments.** If any portion of the Common Elements encroaches upon a Townhome Lot, a valid easement for the encroachment and for the maintenance of same, so long as it stands or as the same may be reconstructed pursuant to the provisions of this Declaration, shall and does exist. If any portion of a Townhome encroaches upon the Common Elements or upon an adjoining Townhome Lot, a valid easement for the encroachment and for the maintenance of the same so long as it stands in or as the same may be reconstructed pursuant to the provisions of this Declaration, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the Townhome Lots. Encroachments referred to herein include, without limitation, encroachments caused by: error in the original construction; error in the Plat; settling, rising, or shifting of the earth; Townhome decks extended into the Common Elements; or changes in position caused by repair or reconstruction of the Project or any part thereof.

b. **Access for Maintenance, Repair, and Emergencies.** The Owners shall have the irrevocable right, to be exercised by the Association or its Managing Agent, to have access to each Townhome, from time to time as may be necessary for the maintenance, repair, or replacement of any of the Common Elements therein or accessible therefrom, and for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Townhome. No Owner shall change the lock on doors providing access to a Townhome without first providing the Association or Managing Agent with a duplicate key for such changed lock. Non-emergency repairs shall be made only during regular business days upon at least 24 hours' notice to the occupants of the Townhome wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected Townhome shall be warned of the impending entry as early as is reasonably possible. Damage to the interior or any part of a Townhome resulting from such maintenance, repair, emergency repair, or

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replacement of any of the Common Elements or as a result of such emergency repair within another Townhome, shall be classified as a Common Expense.

c. **Easements for Access and Utilities.** Each Owner shall have a non-exclusive easement for access and utility lines, including, without limitation, water, sewer, gas, electricity, telephone, and television service, between his Townhome and the driveways, roads and streets within and adjacent to the Project over and across the Common Elements. The public shall have a perpetual non-exclusive ten (10) foot wide easement for installation and maintenance of underground public utilities, said easement being five (5) feet either side of the centerline of existing utility lines located on and under the Common Elements in such lands lying outside the perimeter walls of the building foundations.

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

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

f. **Recorded Easements.** Recorded easements appurtenant to, or included in the Project, or to which the Project is or may become subject are set forth as Exhibit D attached hereto.

## 11. DECLARANT'S RESERVATION AND RIGHTS

a. **Period of Declarant's Rights and Reservations.** Declarant shall have, retain, and reserve certain rights as set forth in this Declaration with respect to the Association and the Project from the date hereof, until: (a) the time that the last Townhome within the Project has been sold and conveyed by Declarant to persons other than Declarant; or (b) the date which is two (2) years from the recording of this Declaration, whichever event occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance and in each deed or other instrument by which any property within the Project is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment.

b. **Sales and Construction Activities of the Declarant.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible and free of any charge for the Declarant, its agents, employees, and contractors to maintain, in

those areas of the Townhomes and Common Elements, as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction and sale or rental of Townhomes in the Project, business offices, storage areas, signs, model townhomes, sales offices, construction offices, parking areas, and lighting. Declarant, its agents and employees, shall have reasonable rights of ingress and egress over the Common Elements of the Project during such construction, repair, refurbishing and sales periods. This right shall include the use of up to three (3) Townhomes, owned by Declarant or others, as models

**c. Declarant's Rights to Complete Development of Project.** No provision of this Declaration shall be construed to prevent or limit Declarant's right: to complete development of the Project within the boundaries of the Property; to construct or alter any improvement on the Property, including, temporary buildings, construction trailers or offices for construction or sales purposes, or similar facilities on any property owned by Declarant or owned by the Association within the Project; or, to post signs incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals to: (i) construct, alter, demolish, or replace any improvement on any property owned by Declarant; (ii) to use any structure on any property owned by Declarant as a real estate sales office in connection with the sale of any property within the boundaries of the Property; or (iii) to require Declarant to seek or obtain the approval of the Executive Board or of the Association for any such activity or improvement to property on any property owned by Declarant.

**d. Declarant's Rights to Grant and Create Easements.** Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, decks, and other purposes incident to development and sale of the Project located in, on, under, over, and across Townhomes owned by Declarant and Common Elements.

**e. Expansion of the Property.** Declarant reserves the right, but not the obligation, to annex the real property described in Exhibit C hereto, in part or in whole, and add up to sixteen (16) additional Townhome Lots and additional Common Elements. Although said construction of additional Townhomes is not required by these Declarations, in the event said Townhomes are constructed in the property described in Exhibit C, Declarant shall be required to submit said property and Townhomes to this Declaration. Such expansion may be accomplished by the Declarant filing for record in the office of the Clerk and Recorder for Routt County, Colorado, one or more Supplemental Plats and Supplemental Declaration Amendments to this Declaration containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property as so expanded. The added real property, Townhome Lots and Common Elements shall be subject to all the terms and conditions of this Declaration as amended upon recording the Supplemental Declaration Amendment in the office of the Clerk and Recorder of Routt County, Colorado. An Owner at the time of his or her purchase of a Townhome Lot which has been brought into the Property by a Supplemental Declaration Amendment shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Elements and the same voting privileges as the Owners of the

Initial property subjected to this original Declaration and shall be subject to the same Assessments.

f. **Expansion Property.** All taxes and other assessments relating to the real property described in Exhibit C covering any period of time prior to the addition of such property or any portion thereof to the Project must be paid or otherwise provided for by the Declarant. Liens arising out of the construction of improvements on the real property described in Exhibit C shall not extend into the Property initially covered by this Declaration.

g. **Termination of the Right of Expansion.** This right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, such expansion reservation shall terminate without further act or deed not later than three years from the date of the recording of this Declaration. Notwithstanding anything in this Declaration to the contrary, until the termination of this right of expansion, as provided above, no amendment to this Declaration that would in any way impede the right to expansion shall be made without the prior written consent of the Declarant.

## 12. ASSESSMENTS

a. **Assessments.** All Owners, including Declarant, shall be obligated to pay the assessments imposed by the Association, or its Managing Agent, to meet the Common Expenses Assessment ("Common Assessments") and other properly adopted Special Assessments and Reimbursement Assessments.

b. **Commencement of Assessments.** Until the Association adopts a Common Expense Assessment, the Declarant shall pay all common expenses. On the first day of the first month following the Executive Board's adoption of the first annual Budget, and the Common Expense Assessment based thereon, all Owners, including the Declarant, will commence monthly payments. Common Assessments shall be due in advance on the first day of each month or such other period as may be determined from time to time by the Executive Board or the Managing Agent. In the event the ownership of a Townhome Lot commences on a day other than the first day of the assessment period, the assessment for that period shall be prorated.

c. **Budget Preparation.** At least sixty (60) days prior to the commencement of each calendar year the Executive Board shall cause a Budget to be prepared for the upcoming calendar year. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses. It shall also include any required capital expenditures, any expected income of the Association for the coming calendar year, any expected surplus from the prior year, and any existing surplus held by the Association. The Budget may include an amount for contingencies and amounts deemed necessary or desirable to create, replenish, or add to Association funds for reserves and capital expenditures, as that term is defined under Generally Accepted Accounting Principles related to the Common Elements and such other Association expenditures permitted hereunder.

d. **Budget Notice and Ratification.** Within thirty (30) days after the adoption of any Budget by the Executive Board, the Board shall cause a copy of the Budget to

be distributed to each Owner by first class mail or other appropriate means of distribution. The Budget distribution shall include a notice setting a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be set for not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the proposed Budget and may coincide with the annual meeting. Unless at that meeting, a majority of the Owners entitled to vote reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the 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 Board.

**e. Amount of Assessments.** Assessments shall be levied at a uniform rate for all Townhome Lots. Initially the total Budget will be divided by twelve (12) Townhome Lots to derive the annual Common Assessment for each Townhome Lot. Should all Townhouses be built and subjected to this Declaration each Townhome Lot will be responsible for 1/28th of the annual Common Assessment. Assessments shall be based upon the cash requirements of the Association which shall be deemed to be such aggregate sums as the Executive Board of the Association, or its Managing Agent, shall annually determine as represented by the Budget, and as such Budget shall, from time to time, be adjusted. Such assessments shall be paid by the Owners in order to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations, and improvement of and to the Common Elements. The expenses may include, but not be limited to: expenses of management; taxes and special assessments; insurance premiums; landscaping and care of grounds; snow removal; road maintenance and repair; driveway maintenance and repair; common lighting and heating; other common utility charges; cable television charges; exterior Townhome painting; roof and door repairs; other repairs and renovations; trash collection; private shuttle service to and from the Project; wages; common water and sewer charges; legal and accounting fees; management fees; capital expenditures made by the Board during any calendar year; expenses and liabilities incurred by the Association or its Managing Agent, on behalf of the Owners under or by reason of this Declaration, the Articles of Incorporation, or the Bylaws of the Association; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, working capital reserve, and, replacement reserve fund.

**f. Special Assessments.** The Executive Board shall have the further right during any calendar year, upon thirty (30) days notice to the Owners, to levy and assess against all of the Owners, on a prorata basis, a Special Assessment ("Special Assessment") for such purpose or purposes, in accordance with this Declaration, the Articles, and the Bylaws of the Association, as may be necessary or appropriate to keep the Project as a first-class project including without limitation, assessments for capital expenditures and the cost of any construction, reconstruction, repair, or replacement of any Common Element, including fixtures and personal property. Special Assessments may be vetoed by a vote of sixty percent (60%) of all of the Owners who are eligible to vote at a meeting to be called for this purpose.

**g. Reimbursement Assessments.** The Executive Board may, subject to the provisions hereof, levy an assessment against any Owner, if the willful or negligent failure of the Owner, or a person occupying a Townhome through the Owner, to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations of the Association, shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, attorneys' fees

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("Reimbursement Assessment"). The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Executive Board that the Reimbursement Assessment is owing, and the Association shall have the power to enforce such assessment in accordance with the provisions of this Declaration entitled "Association Lien for Non-Payment of Assessments."

**h. Common Assessment Deposit.** At the closing of each purchase of a Townhome Lot from an existing Owner, each purchaser shall deposit an amount equal to three (3) months Common Assessments with the Association. Said deposit shall be non-refundable and shall be held by the Association as a reserve and for working capital and may be used by the Association in all respects as Common Assessments and periodic payments. The deposit of such sum shall not relieve any owner from making the regular payment of any Common Assessments as the same becomes due.

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**i. Failure to Fix Assessment.** The omission or failure to fix the Budget and Common Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or a release of the Owners from their obligation to pay the same. In the event of such omission or failure the periodic Budget and Common Assessment last ratified by the Owners must be continued until such time as a new Common Assessment and Budget are proposed and adopted by the Board and ratified by the Owners.

**j. Surplus Funds.** The Association shall not be required to credit any surplus funds of the Association remaining after payment of, or provision for, Common Expense reserves against future Assessments to be levied by the Association, to Owners.

**k. Association Funds.** As more particularly provided in the Bylaws, the Executive Board shall appoint a President, Vice-President, Secretary and Treasurer to act as the officers of the Association. The Treasurer shall have the responsibility for Association funds, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association provided, however, that in the event that a Managing Agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer's responsibility shall be to review the accounts of the Managing Agent not less often than quarter-annually. All Association funds will be deposited and maintained in segregated bank accounts and not commingled with any other funds whether administered by the Association or a Managing Agent.

**l. No Offsets.** All Assessments, fines, penalties, late fees, and interest shall be payable in the amounts assessed and no reduction or offsets shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration. Declarant shall be exempt from this provision for work or advances it may furnish or make to the Association and is owed reimbursements therefore.

**m. Owner's Personal Obligation.** Any Assessment assessed against each Townhome Lot pursuant to this Declaration and all fines or penalties assessed in accordance with this Declaration shall be the personal or individual debt of the Owner

thereof. No Owner may exempt himself from liability for his payment of Common Assessments, Special Assessments, Reimbursement Assessments, fines or penalties by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his or her Townhome. Both the Executive Board of the Association and its Managing Agent shall have the responsibility to take prompt action to collect any unpaid Common Assessment, Special Assessments, Reimbursement Assessments, fine or penalty which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default in the payment of any Common Assessment, including, but not limited to, any Special Assessment or Reimbursement Assessment, or the failure to pay any fine or penalty for more than thirty (30) days from the due date for payment thereof, the Owner shall be obligated to pay reasonable late fees and interest set by the Executive Board from time to time but said rate of interest may not exceed twenty-one percent (21%) unless the Act authorizes a higher rate. Suits to recover a money judgment for unpaid Assessments, fines and penalties shall be maintainable without foreclosing the lien set forth below. Such suits shall not be or construed to be a waiver of the lien.

n. **Association Lien for Non-Payment of Assessments.**

i). **Liens.** All unpaid Assessments chargeable to any Owner for Assessments, Special, or Reimbursement Assessments, and all fines, penalties, late fees, or interest assessed but unpaid in accordance with this Declaration or Rules and Regulations of the Association shall constitute a lien on such Townhome Lot within the highest priority granted to a such an assessment lien pursuant to the Act and other provisions of Colorado law. Said liens, pursuant to the Act, arise automatically, without any necessary notice or recording, at the time payments are due but not made. To evidence such liens, the Executive Board of the Association, or its Managing Agent, may, but shall not be required to, prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest, and late charges thereon, the name of the Owner and the description of the Townhome Lot.

ii). **Enforcement of Liens.** Such liens may be enforced by court foreclosure proceedings in a manner similar to foreclosure of a mortgage on real property or as otherwise provided by Colorado law, whichever the Association chooses. The Owner shall be required to pay, and the lien shall also secure, the costs, expenses, and attorneys' fees incurred in connection with filing the lien and collecting such delinquent assessments and in the event of foreclosure proceedings, all additional costs, expenses, and reasonable attorneys fees' incurred. The Owner of the Townhome Lot being foreclosed upon shall be required to pay to the Association the assessments for the Townhome Lot during such period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Townhome Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the same.

iii). **Homestead Exemption.** Each Owner hereby agrees that the Association's lien on a Townhome Lot for assessments as herein described shall be superior to the Homestead Exemption provided by Colorado Revised Statutes, 1973, as amended, § 38-41-201, *et seq.*, and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Townhome Lot within

the Project shall signify such grantee's waiver of the Homestead Exemption granted in said section of the Colorado statutes.

iv). **Mortgage Payment.** Any First Mortgagee holding a lien on a Townhome Lot may pay, but shall not be required to pay, any unpaid Assessment assessed against a Townhome Lot.

v). **Release of Lien.** A recorded lien may be released by recording a Release of Lien to be signed by a board member or an officer of the Association or by its Managing Agent on behalf of the Association.

vi). **Mortgagee Obligations.** Except as may otherwise be provided by the Act, or other provisions of Colorado law, any holder of a First Mortgage who comes into possession of a Townhome Lot pursuant to the remedies provided in the Mortgage, by way of foreclosure of the Mortgage, or by way of a deed given in lieu of foreclosure, shall take the Townhome Lot free of any claims of unpaid Assessments, including Assessments, Special, or Reimbursement Assessments, and shall only be responsible for Assessments, including Common, Special, or Reimbursement Assessments, arising after the date such first Mortgagee acquires title to the Townhome Lot. All Assessments, fines, penalties, and charge waived by this provision shall remain a personal or individual obligation of the prior Owner.

### 13. FINANCIAL REPORTS

a. **Financial Reports.** Upon written request for a statement of account by an Owner or his agent, Mortgagee or prospective Mortgagee, or prospective grantee of a Townhome, the Association, or its Managing Agent, shall furnish a copy of the: most recent financial statement of the Association, if any; a written statement of the amount of any unpaid Assessment, including, but not limited to Common Assessment, Special, or Reimbursement Assessments remaining unpaid for longer than thirty (30) days after the same were due; the amount of the current assessments and the dates that assessments are due; and the amount of any advanced payments made, prepaid items such as insurance premiums and reserves therefor, and deficiencies in reserve accounts, which statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Any such statement shall be delivered within fourteen (14) days after the receipt of the request and shall be binding on the Association, the Executive Board, and all Owners. In the event no such statement is furnished, as requested, to the requesting party, then the Association shall have no right to assert a priority lien upon the Townhome Lot for unpaid Assessments which were due as of the date of the request. The holder, insurer or guarantor of a First Mortgage encumbering a Townhome Lot shall be entitled to have an audited financial statement for the preceding fiscal year for the Association, at the sole cost and expense of such Mortgagor, if such party submits a written request therefor.

### 14. PRIORITY OF ENCUMBRANCES

a. **Townhome Mortgages.** Any Owner shall have the right from time to time to mortgage or encumber his interest in the Townhome Lot by a first lien Mortgage or

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any other mortgage. A first lien Mortgage shall be one which has first and paramount priority under applicable law.

b. **Junior Mortgage.** Any Owner shall have the right from time to time to mortgage or encumber his interest in the Townhome Lot by a junior mortgage or other junior encumbrance (junior to a first lien Mortgage) provided, however, that any such junior Mortgage or junior encumbrance shall always be subordinate to the prior and paramount liens of the Association for all Assessments, and all of the terms, conditions, covenants, restrictions, uses, limitations, and obligations under this Declaration, and provided further that the holder of such junior, Mortgage or junior encumbrance shall release, for purposes of restoration of any improvement upon the encumbered Townhome Lot, all of the holder's right, title, and interest in and to the proceeds under all insurance policies covering the premises, which insurance policies were effected and placed upon the premises by the Association. Such release shall be furnished forthwith by such holder upon written request of the Association and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such holder.

## 15. INSURANCE

a. **Property Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, property insurance on: (i) the entire Project, including all of the Townhomes and fixtures therein, initially installed by Declarant or their replacement of like kind and quality, but not including personal property supplied by or installed by Declarant or Owners; (ii) all insurable real property and personal property owned by the Association, including, but not limited to, the Common Elements, for broad insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available, and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies. Such insurance shall also contain a standard mortgage clause in favor of each first lien mortgagee of a Townhome Lot, which clause shall provide that the loss, if any, thereunder with respect to the Townhome described in such Mortgage shall be payable to such Mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Association as may otherwise be provided herein. The insurance described herein shall be in the name of the Association as attorney-in-fact for all the owners and first lien Mortgages.

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b. **Liability Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance shall: (i) have limits as determined by the Executive Board from time to time but in no event less than One Million Dollars (\$1,000,000.00) per occurrence when the aggregate of the underlying policy and any umbrella policy are taken together; (ii) insure the Board, the Association, the officers of the Association, first lien

Mortgagees (if so required), the Owners as their interests may appear, the Managing Agent, if any, and their respective employees, agents, and all persons acting as agents; (iii) include the Declarant as an additional insured in such Declarant's capacity as a member of the Association, as the Project developer, or as a member of the Executive Board; (iv) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Project; and (v) cover claims of one or more insured parties against other insured parties.

**c. Miscellaneous Insurance Provisions.** Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant this section shall provide that: (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its right of subrogation under the policy against the Association, each Owner and first lien Mortgagee, and any person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (iii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (iv) if at the time of a loss under the policy, there is other insurance in the name of a Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance.

**d. Executive Board Insurance Review.** Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Association properties and in light of the possible or potential liabilities of the Association.

**e. Owner Insurance.** Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any such Owner. Insurance coverage on furnishings, furniture, appliances, and other items of personal or other property belonging to a Owner and public liability coverage within each Townhome Lot shall be the sole and direct responsibility of the Owner thereof, and the Executive Board of the Association and its Managing Agent shall have no responsibility therefor.

**f. Workers' Compensation Insurance.** The Association or its Managing Agent shall, also, obtain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter provided by law.

**g. Flood Insurance.** If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Association or its Managing Agent shall obtain and

maintain a blanket policy of flood insurance on the Project in an amount equal to the maximum amount of such insurance available or such other amount as the Executive Board deems appropriate.

**h. Fidelity Insurance.** The Association and its Managing Agent shall not be required, but may, obtain and maintain fidelity coverage against dishonesty of directors, officers, employees of the Association, the Managing Agent and any other person handling funds of the Association, and against destruction or disappearance of money or securities, and forgery. Said policy, if obtained, may also contain endorsements thereto covering any persons who serve the Association without compensation. Such fidelity coverage, if obtained, may name the Association as obligee. If obtained, such coverage shall in the aggregate be equal to not less than three months current assessments plus reserves, as calculated from the current Budget of the Association.

**i. Executive Board and Officers' Insurance.** The Executive Board may, but shall not be required to, obtain Directors' and Officers' errors and omissions liability insurance in such amounts as it shall determine from time to time.

## 16. DAMAGE, RESTORATION AND CONDEMNATION

**a. Association as Attorney-in-Fact.** This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its damage or destruction, for its repair and reconstruction, and to maintain, repair and improve the Townhomes and Common Elements. Title to any Townhome Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor, shall constitute appointment of the attorney-in-fact herein provided. All of the Owners or holders of any equitable interest in the Project irrevocably constitutes and appoints the Association their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Project upon its damage, destruction, or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its duly authorized officers or agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of a Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Townhome and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration, reconstruction, or replacement unless the Owners and holders of first lien Mortgages agree not to rebuild in accordance with the provisions set forth hereinafter. In the event that insurance proceeds, condemnation proceeds, or proceeds from the sale of all or a portion of the Project are to be apportioned among the Owners in accordance with the provisions hereof, or in the event the Owners are to be specially assessed in accordance with the provisions hereof, such apportionment or assessment shall be made in accordance with the terms and conditions contained herein.

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**b. Damage or Destruction.** Except as provided by the Act any portion of the Project for which insurance is required to be carried hereunder and which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Project is terminated in accordance with the provisions hereof; (ii) repair or replacement would be illegal under any state or local statute or ordinance ; (iii) eighty percent (80%) of all Owners vote not to rebuild; or (iv) prior to the conveyance of any Townhome Lot to a person other than Declarant, the holder of a Mortgage on the damaged portion of the Project rightfully demands all or a substantial portion of the insurance proceeds. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the improvements. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction.

**c. Restoration.** If the insurance proceeds are insufficient to repair and reconstruct the improvements and the Owners do not vote to terminate the Project as provided herein, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment to be made against all of the Owners and their Townhome Lots. Such Special Assessment shall be made pro rata to each Owner and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement, or restoration of the improvement using all of the insurance proceeds for such purpose notwithstanding the failure of a Owners to pay the Special Assessment. The Special Assessment provided for herein shall be a debt of each Owner and a lien on his Townhome Lot and may be enforced and collected as provided herein. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Townhome Lot of any Owner refusing or failing to pay such Special Assessment within the time provided and if not so paid, the Association shall cause to be recorded a notice that the Townhome Lot of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this paragraph. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum (or such other rate as may be set from time to time by the Executive Board but said rate of interest may not exceed twenty-one percent (21%) unless the Act authorizes a higher rate) on the amount of the assessment, and all reasonable attorneys' fees in the collection thereof. The proceeds derived from the sale of such Townhome Lot shall be used and disbursed by the Association as attorney-in-fact in the following order:

- i). for payment of taxes and special assessment liens of record in favor of any governmental assessing entity;
- ii). for payment of the balance of the lien of any first lien Mortgage of record;
- iii). for payment of the customary expenses of sale;
- iv). for payment of unpaid Assessments, interest, late fees, fines penalties, and all costs, expenses, and fees including reasonable attorney's fees, incurred by the Association;

v). for payment of junior liens and encumbrances of record in the order of and to the extent of their priority; and

vi). the balance remaining, if any, to the Owner.

g. **Condemnation.** In the event of a taking or condemnation of the entire Project, ownership pursuant to this Declaration shall terminate and the condemnation award shall be apportioned among the Owners according to the Distribution Interest set forth below and shall be disbursed in accordance with subparagraphs (i), (ii), (iv), (v) and (vi) of subparagraph (c) of this section. In the event of a condemnation of a portion of the Project, its Common Elements or any Townhome Lot, the provisions set forth in this section relating to destruction, damage, or obsolescence shall apply, except that the proceeds of such condemnation shall be utilized in lieu of insurance proceeds as therein set forth and except that restoration shall not be undertaken unless the same is legally permissible. Notwithstanding the above, in the event restoration is not possible and a specific award is made for a Townhome Lot or Townhome Lots, the amounts allocated to those certain Townhome Lots shall belong to the Owners of such Townhome Lots, subject to any valid liens against the ownership of such Townhome Lot.

h. **Distribution Interest.** For the purposes of this Declaration, each Owner's Distribution Interest shall be expressed as a percentage determined by a fraction, the numerator of which shall be the fair market value of such Owner's Townhome and Townhome Lot and the denominator of which shall be the sum of the fair market value for all Townhomes and Townhome Lots. In the event that the Project is damaged or destroyed and a determination of the fair market value of the Townhomes and Townhome Lots is required to be determined hereunder, the fair market value of the Townhomes shall be appraised at their fair market value immediately before such damage or destruction. The fair market value of the Townhomes shall be determined by an MAI appraiser selected by the Executive Board with the approval of two-thirds (2/3) of the Owners. The appraisal shall be certified to the Association and the cost of such appraisal shall be borne by the Association.

## 17. DURATION, REVOCATION, TERMINATION AND AMENDMENT

a. **Duration.** The covenants, restrictions and obligations of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten years.

b. **Revocation or Termination.** Except as is otherwise provided, this Declaration shall not be revoked or terminated unless eighty percent (80%) of the Owners and the eligible holders of recorded first lien Mortgages representing at least sixty-seven percent (67%) of the votes of Townhome Lots that are subject to Mortgages consent and agree to such revocation by an instrument or instruments duly executed and recorded. Declarant reserves the right to terminate this Declaration until such time as the conveyance of any of the Townhomes Lots has taken place.

c. **Amendments.** This Declaration shall not be amended unless at least a seventy-five percent (75 %) of the Owners, and the eligible holders of recorded first lien

Mortgages representing at least sixty-seven percent (67%) of the votes of Townhome Lots that are subject to Mortgages consent and agree to such amendment by an instrument or instruments duly executed and recorded. In addition, Declarant reserves the right to amend this Declaration, as may be permitted under the Act, without the prior written approval of the Association, until the conveyance by deed of the last of the Townhome Lots hereunder, provided, however, that such amendment shall not materially affect the rights and obligations of any Owner or first lien Mortgagee hereunder. Notwithstanding anything else herein to the contrary, for a period of two (2) years from the date of recording of this Declaration, Declarant reserves the right to amend this Declaration by a Supplemental Declaration Amendment which annexes all or a part of the real property described in Exhibit C hereto.

d. **Alteration of Common Elements.** Except as otherwise provided herein, the Common Elements shall have a permanent character and shall not be altered without the consent of seventy-five percent (75%) of the Owners and the eligible holders of recorded first lien Mortgagees representing at least sixty-seven percent (67%) of the votes of Townhome estates that are subject to Mortgages as expressed in an instrument or instruments duly executed and recorded.

## 18. REAL AND PERSONAL PROPERTY OWNERSHIP

a. **Real And Personal Property Ownership.** The Association may acquire and hold, for the use and benefit of all Owners, real and tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by the Owners and their interest therein shall not be transferable except upon the transfer of the Owner's Townhome Lot. A transfer of a Townhome Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference thereto or execution of a bill of sale. Each Owner may use such real and personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. A sale of a Townhome Lot under foreclosure or power of sale shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the Townhome Lot sold.

## 19. WETLANDS ADVISORY

a. **Wetlands Advisory.** The intermittent stream and areas adjacent to the stream are restricted wetland areas that are protected from disturbance and cannot be eliminated or filled with any materials. No dumping of any kind whatsoever is permitted in the wetlands including, but not limited to, grass clippings, motor oil, and trash.

## 20. MAILING ADDRESSES AND NOTICES

a. **Registration of Mailing Address; Notices.** Each Owner may register a representative and his mailing address with the Association, and notices or demands intended to be served upon an Owner shall be sent by mail postage prepaid.

addressed in the name of the representative at such registered mailing address. If no such registration is made, all notices and demands shall be sent to an Owner, postage prepaid, at the address of the Townhome and shall be deemed properly given to the Owner. All notices required or permitted hereunder shall be in writing and shall be sent, postage prepaid, to the address of the Owners as provided in this paragraph, to the Mortgagees as provided herein, and to the Declarant and the Association at 1680-38th Street, Suite 700, Boulder, Colorado 80301, Attention Lawrence Feldman, until such address is changed by written notice.

## 21. MORTGAGEE NOTICE

a. **Mortgagee Notice.** Every holder of a Mortgage on a Townhome shall give notice of such encumbrance to the Association by delivering a copy of such recorded encumbrance along with such Mortgagee's mailing address to the Association.

b. **Notice Request.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of any Mortgage, such person will be entitled to timely notice of:

i). any condemnation loss or any casualty loss which affects a material portion of the Project or any Townhome on which there is a first lien Mortgage, held, insured, or guaranteed by such person;

ii). any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

iii). any proposed action which requires the consent of a specified percentage of holders of first lien Mortgages; and

iv). any thirty (30) day delinquency in the payment of any Assessment.

c. **Failure to Respond.** In the event that any first lien Mortgage holder fails to submit a response to any proposal requiring the consent of such Mortgage holder hereunder within thirty (30) days after it receives proper notice thereof, such Mortgagee shall be deemed to have consented to such proposal.

## 22. ARBITRATION

In the event of any dispute arising between Townhome Lot Owners and other Townhome Lot Owners or the Association concerning any provision of this Declaration the same shall be determined by arbitration, which arbitration shall be conducted in accordance with the procedural rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The selection of any arbitrator shall be made by the American Arbitration Association, upon the application thereto of any Owner or the Association. Each party to the arbitration shall pay its prorata share of the costs thereof. However, the prevailing party may recover such costs from the non-prevailing party if the arbitrator agrees to make such award.

## 23. GENERAL

a. **Severability.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof or any circumstances thereof be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase, or word and any other circumstances shall not be affected thereby.

b. **Singular, Plural, Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

c. **Paragraph References.** Paragraph titles are for convenience of reference and are not intended to and shall not, limit, comment, enlarge, or change the meaning of the contents of the various paragraphs.

d. **Enforcement.** The terms and provisions of this Declaration may be enforced, through judicial action or otherwise in accordance with the terms hereof, by the Association or by the Declarant, during any period during which the Declarant is entitled to appoint any Board Member, or by any Owner aggrieved by any violation of the terms and provisions hereof.

e. **Waiver.** No failure by the Association to insist upon the strict compliance or performance with any term or provision contained in this Declaration shall constitute a waiver of any such term or provision unless such waiver is made in writing by the Association. Any waiver of a breach or violation made by the Association in writing or otherwise shall not prevent a subsequent act which constitutes a violation of any term, provision or covenant hereunder from having the force and effect of a violation or prevent the Association from exercising all of its rights and remedies hereunder.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 6th day of May, 1996.

***Cascades at Steamboat, LLC***

By: \_\_\_\_\_



Lawrence Feldman, Member





# EXHIBIT A

## LEGAL DESCRIPTION OF TOWNHOME LOTS

Shasta Aspen, Shasta Birch, Shasta Spruce, Shasta Willow, Rainier Aspen, Rainier Birch, Rainier Spruce, Rainier Willow, McLaughlin Aspen, McLaughlin Birch, McLaughlin Spruce, McLaughlin Willow, according to The Cascades at EagleRidge Phase I Plat, recorded in the records of the Routt County, State of Colorado Clerk and Recorder's records at Reception No. 462678 <sup>File #</sup> 12327 on May 10, 1996.

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## EXHIBIT B

### LEGAL DESCRIPTION OF COMMON ELEMENTS

Common Elements as shown on and according to The Cascades at EagleRidge Phase I Plat, recorded in the records of the Routt County, State of Colorado Clerk and Recorder's records at Reception No. 462678 <sup>File #</sup> 12321 on May 10, 1996.

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## EXHIBIT C

### LEGAL DESCRIPTION OF REAL PROPERTY WHICH MAY BE SUBMITTED TO THE DECLARATIONS IN THE FUTURE

Lot A (Land for Future Development) as shown on and  
according to The Cascades at EagleRidge Phase I, Plat  
recorded in the records of the Routt County, State of  
Colorado Clerk and Recorder's records at Reception No.

462678 <sup>file #</sup> <sub>12329</sub> on May 10, 1996.

## EXHIBIT D

### **LEGAL DESCRIPTION OF RECORDED EASEMENTS**

1. Patent reservation for ditch and canal right of ways in Book 6 at Page 551.
2. Sewer trunk pipeline easement described in Book 345 at Page 886.
3. Notes, provisions, and easements shown on the plat at File No. 8826.
4. Substituted Protective Restrictions, Covenants, Limitations, Easements and Approvals for EagleRidge, recorded in Book 639 at Page 1812, amended in Book 641 at Page 1863, and in Book 667 at Page 2018.
5. Those easements created by this Declaration or shown on the Plat recorded simultaneously with this Declaration and any duly recorded amendments or supplements to this Declaration and/or the Plat referenced herein.

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*The Cascades at Eagle Ridge Townhome Association, Inc.*

**RULES AND REGULATIONS**

Amended As of September 13, 1997

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The following are Rules and Regulations, pertaining to the conduct of persons and the use of the Common Elements and any other common areas, within **THE CASCADES AT EAGLERIDGE**, have been duly adopted by the Executive Board of **THE CASCADES AT EAGLERIDGE TOWNHOME ASSOCIATION, INC.** pursuant to the Declaration and Bylaws therefor. All words and phrases defined in the Declaration and Bylaws shall have the same meaning when used herein.

1. **All Townhome Lot Owners shall obtain, read, and become familiar with the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations.**

2. All Townhome Lot Owners shall apply to the Executive Board for approval of any Improvements or alterations to any Townhome Lots including, but not limited to: landscaping; exterior painting; deck staining; enclosures or any structures on decks; storm doors and windows, and any exterior window covering such as bars.

3. Common sidewalks, driveways, entrances, passageways, utilities, shall not be obstructed or used by any Townhome Lot Owners for any other purpose than intended.

4. Only a safe "Ice Melt" type product and no salt or corrosive product may be used to melt snow and ice on driveways and walks.

5. **No owner, guest or renter shall, at any time, park more than one car outside the garage or on Cascades Drive. Parking in the area of townhome garages shall be done in a manner so as not to block access to any other owner's garage. To facilitate snowplowing, all parking on both sides of Cascades Drive from October 1st through April 20th of every year, from midnight through 8:00 A.M., shall, without exception, be prohibited. In addition, parking at all times, the year round, shall be limited to the sidewalk side of Cascades Drive. All violations of parking rules may result in cars being towed at the townhome owner's expense and the possibility of other fines.**

6. No articles or vehicles of any kind shall be stored or placed on or in the Common Elements or driveways except on a temporary basis.

7. Except as otherwise provided in the Declaration, no signs shall be placed or permitted within the Property -- including inside or outside windows, decks and exterior areas. Except as provided below, so long as any Townhome Lot is owned by Declarant, no Owner shall be permitted to place any sign on the

Property or on his Townhome Lot advertising his Townhome Lot for sale or lease.

8. Except as otherwise approved by the Board or as permitted by the Declaration, no Townhome Lot Owners, resident, or lessee of a Townhome Lot shall install exterior wiring for any purpose, nor shall any television or radio antenna, satellite dishes, machines or air conditioning units be installed on the exterior of the Property or protrude through the walls or the roof of any Townhome.

**9. Townhome Lot Owners and occupants shall exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises and offensive odors, and in using or playing or permitting to be used or played musical instruments, radios, phonographs, television sets, amplifiers and any other instruments or devices in such manner as may disturb or tend to disturb owners, tenants or occupants of other Townhome Lots. Extra special care, in this regard, shall be exercised in the hot tub areas.**

10. Decks and patios, if any, shall be used only for the purposes intended and shall not be used for hanging garments or other articles or for cleaning rugs, household articles or other items. No rugs or other materials shall be dusted from windows, courts, decks, or patios. No exterior window coverings of any kind are permitted and only appropriate permanent window coverings may be used on the interior; no temporary coverings such as newspapers, towels, sheets, blankets, etc. may be used.

**11. All Owners shall maintain strict control of and over any cat, dog or other animal owned by such Owner at all times, and shall be responsible for all damage done by such animal. Townhome Lot Owners and Guests shall be responsible for keeping their pets quiet at all times and no dog shall at any time be left unattended on a deck, tied outside the Townhome or walked on the Property without a leash. Any damage to the Common Elements or other common areas caused by a Townhome Lot Owner's or Guest's animal shall be repaired at the expense of that Townhome Lot Owner. No pets may be kept on the premises that are not owned by a Townhome Lot Owner. Lessees, renters and any other occupants other than Townhome Lot Owners are not permitted to keep pets on the Property.**

12. No sweepings, trash, rubbish, rags, papers, ashes, or other substances shall be deposited in the sanitary sewer system from any Townhome Lot, which may tend to impede the flow of liquid through such system.

13. Any damage to the Common Elements or common personal property caused by an Owner, a member of his family, guests, customers, or invitees shall be repaired at the expense of that Townhome Lot Owner.

14. The moving of furniture and fixtures in and out of Townhome Lots and Townhomes and the maintenance and repairs to any Townhome or Townhome

Lot shall be accomplished only between the hours of 8:00 AM and 8:00 PM or in accordance with the then current Association Rules and Regulations.

15. The common hot tubs shall be used only: between the hours of 10:00 A.M. and 10:00 P.M.; by persons 16 years or older unless accompanied by an adult; and at no time, whether accompanied by an adult or not, by a child under 4 years old (no body likes the prospect of loaded diapers in the hot tub). No glass containers of any kind or loud noise shall be permitted in hot tub areas at any time.



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*The Cascades at Eagle Ridge Townhome Association, Inc.*

**Procedures and Enforcement**

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Reasonable procedures, including notice of alleged violations and opportunity to be heard, shall be implemented by the Association for enforcement of the Declaration, the Articles of Incorporation, the Bylaws, and these Rules and Regulations (collectively the "Documents"). See Article 9 of the Covenants for hearing procedures. All fees, fines and charges imposed by the Association and all costs incurred by the Association in enforcement of the Documents, including, but not limited to, the cost of any corrective actions and collection proceedings shall constitute enforceable assessments against Townhome Lot Owners pursuant to the provisions of the Documents. For each day any violation continues after notice, it shall be considered a separate violation. The Association shall have the authority to take any remedial action it deems appropriate in the event of a violation of the Documents.

No failure by the Association to insist upon the strict performance of any term or provision contained in the Documents shall constitute a waiver of any such term or provision unless such waiver is made in writing by the Association. Any waiver or indulgence of a breach of a term or provision of these Rules and Regulations shall not prevent a subsequent act, which would have originally constituted a violation under the Documents, from having all of the force and effect of a violation or prevent the Association from exercising all of its rights and remedial actions. Fines for various violations will be assessed and paid according to the following schedule. Each day an offense continues it will be considered a separate violation.

1st Offense -	Written warning
2nd Offense -	\$25.00 fine
3rd Offense -	\$50.00 fine
4th Offense and each following offense -	\$500.00 fine

All assessments, dues, and other payments not received by the 10th day after they are due will be subject to a late fee of \$10.00. If not received by the 10th of the month following the month in which they were due another \$10.00 late fee is due. For example, if on the 11th of February neither the January dues or the February dues have been received, the late fee due will be \$30.00; \$20.00 for the January dues and \$10.00 for the February dues. Any uncollected dues after 90 days may be pursued in small claims court with all costs charged to the homeowner who is in arrears. The Association also reserves the right to file a lien against a Townhome Lot Owner's Townhome Lot for any and all dues and other payments owed to the Association.

***The Rules and Regulations are subject to amendment and to the promulgation of further regulations from time to time at the discretion of the Board.***