

***AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF
TOWN AND COUNTRY VILLAGE
TOWNHOMES***

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**AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TOWN AND COUNTRY VILLAGE TOWNHOMES**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the Town and Country Village Homeowners Association, Inc., a Colorado nonprofit corporation.

RECITALS:

A. On September 26, 1983, the Pulte Home Corporation, a Delaware corporation, submitted the real property described on Exhibit A to that certain Declaration of Covenants, Conditions, and Restrictions of Town and Country Village Townhomes recorded in the real property records of Douglas County, Colorado, at Book 491, Page 918 and re-recorded to correct the legal name of the Community on November 18, 1983, in the real property records of Douglas County, Colorado, at Book 498, Page 89, as amended (“Original Declaration”) to its covenants, conditions and restrictions;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration for Town and Country Village Townhomes (“Declaration”), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and instruments creating covenants, conditions, restrictions and reservations on the Property shall be superseded and replaced by this Declaration; and

C. Pursuant to Article XI, Section 1 of the Original Declaration, written consent has been obtained from at least sixty-seven percent (67%) of the Members and sixty-seven percent (67%) of the First Mortgagees to this Declaration, or alternatively, a court order entered by the District Court for Douglas County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

**ARTICLE 1
DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the

meaning specified or used in the Act, unless otherwise defined in this Declaration or as set forth below:

(a) Act shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended.

(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate Improvement, and harmonious additions, alterations and Improvements within the Community.

(c) Assessment shall include all Common Expenses, insurance assessments, utility assessments, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Town and Country Village Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors. The Association shall act by and through its Board of Directors and officers.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Common Area shall mean all real property (including the improvements located thereon) owned by the Association for the common use and enjoyment of the Owners.

(g) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, and also including Long Term Reserve contributions.

(h) Community or Town and Country Village Townhomes Community or Planned Community shall mean the planned community known as “Town and Country Village Townhomes”, the Town and Country Village Homeowners Association, Inc., and the real property subject to this Declaration as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.

(i) Declaration shall mean and refer to this Amended and Restated Declaration of, Covenants, Conditions, and Restrictions of Town and Country Village Townhomes, as amended, recorded in the office of the Clerk and Recorder of Douglas County, Colorado.

(j) Eligible Holder shall mean a holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address,

the legal description and the address of the Lot upon which it holds a security interest.

(k) Governing Documents shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any rules and regulations of the Association, as all of the foregoing may be amended from time to time.

(l) Improvement(s) shall mean structures installed within or upon a Lot.

(m) Long Term Reserve shall mean a reserve fund for capital expenditures as determined by past and current reserve studies, contribution to which will be by monthly payment in addition to the monthly installment of the annual Common Expense Assessment.

(n) Lot shall mean and refer to any plot of land shown upon any recorded Subdivision Map of the Property, including all appurtenances and Improvements located thereon, but excepting Common Area and public streets.

(o) Map shall mean and refer to the map(s) and/or plat(s) of the Property and Improvements that are subject to this Declaration and which are designated in the map for Town and Country Village Townhomes recorded in the records of the Office of the Clerk and Recorder of Douglas County. More than one Map or supplement thereto may be recorded, and, if so, then the term "Map" shall collectively mean and refer to all of such maps, plats and supplements thereto.

(p) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(q) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(r) Property shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(s) Residence shall mean and refer to the structure erected on a Lot which is intended for use as a dwelling in accordance with this Declaration.

(t) Rules and Regulations shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

ARTICLE 2
NAMES & DESCRIPTION OF REAL ESTATE/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is “Town and Country Village Townhomes.” The name of the Association is the “Town and Country Village Homeowners Association, Inc.”

Section 2.2 Property. The Planned Community is located in Douglas County, Colorado. The Property of the Planned Community is described in the Original Declaration. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded plat and on any recorded map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Number of Lots. The number of Lots included in the Town and Country Village Townhomes Community is five hundred-one (501).

Section 2.4 Identification of Lots/Lot Descriptions. The identification of each Lot is shown on the plat. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Lot by its identifying lot number, followed by the name of the Community, with reference to the plat, any map and the Declaration. An illustrative description is as follows:

Lot ____, Town and Country Village Townhomes, according to the Amended and Restated Declaration recorded _____, 20____, at Reception No. _____ and the recorded plat, in the records of the Clerk and Recorder, Douglas County, Colorado.

Reference to the Declaration, plat and map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, plat or map, without specific references thereto.

Section 2.5 Owners’ Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Area;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Area;

(d) the right of the Association, in accordance with its Articles of Incorporation and Bylaws to borrow money for the purpose of improving or maintaining the Common Area and to mortgage the Common Area as security of any such loan;

(e) the right of the Association to suspend the Owner's voting rights and right to use of the recreational facilities, if any, for any period during which any Assessment against a Lot remains unpaid, and, after notice and the opportunity for a hearing, for any infraction of the Governing Documents; and

(f) the right of the Association to close or limit access to the Common Area for maintenance, repair, replacement, and improvement.

(g) the right of the Association to assign the right to use certain parking spaces located on Common Area to the Owner(s) of a particular Lot; provided, however, that any such assignment shall be permanent unless individual Owners of Lots agree to exchange such assigned parking spaces. Any such assignments shall appear in the books and records of the Association, but such assignments need not be evidenced by the recordation of a deed or similar instrument of conveyance. Notwithstanding the foregoing, the Owner(s) of each Lot shall at all times have the right to utilize at least one (1) garage or parking space upon the Property.

Section 2.6 Delegation of Use. Any Owner may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

Section 2.7 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any Improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.8 Utilities. There is a blanket easement upon, across, over and under the Property for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, master television antenna systems, and cable television, provided that this blanket easement shall not extend upon, across, over or under any structure located on any Lot.

Section 2.9 Emergency Easements. A nonexclusive 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 Community, to enter upon any part of the Community in the performance of their duties.

Section 2.10 Easement for Encroachments. If any part of the Common Area encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Area, or upon another Lot, the Owner of that Lot shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Area or on a Lot. The actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Lot indicated on the Map.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Town and Country Village Townhomes Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Town and Country Village Townhomes Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive assessments for Common Expenses, only if approved by the consent of fifty-one percent (51%) of all Owners. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area.

Section 3.5 Allocated Interests. The Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the liability for Common Expenses allocated to each Lot for all normal operating expenses as budgeted annually shall be divided equally among the five hundred-one (501) Lots for all normal operating costs.
- (b) the liability for Common Expenses allocated to each Lot for Long Term Reserve contributions, capital expenditures and Special Assessments shall be based on the front linear footage for each of eight styles of Residences as a percentage of the total front linear footage in the entire Property as follows:

STYLE	# OF LOTS	SQ. FT. (Info only)	FRONT LINEAR FOOTAGE (LF) PER UNIT **	TOTAL LF/ STYLE	% THIS STYLE OF TOTAL LOTS	% COMMON EXPENSE LIABILITY PER LOT
Victoria	54	870	14.5	783	7.56%	0.140%
Ashford	92	1073	14.5	1334	12.880%	0.140%
Brentwood	80	1102	14.5	1160	11.200%	0.140%
Courtney	100	1131	14.5	1450	14.000%	0.140%
Jasmine	48	1228	44	2112	20.392%	0.425%
Mayflower	38	1332	18.0	684	6.604%	0.174%
La Fayette	33	1440	18.0	594	5.735%	0.174%
Kingston	56	1684	40.0	2240	21.628%	0.386%
TOTALS	501 LOTS			10,357	99.999% (due to rounding)	

**These measurements are approximate to within one foot.

FOR EXAMPLE:

The Victoria style Lots have a front linear footage of 14.5 LF. To find the percentage of common expense liability for a Victoria style Lot, divide 14.5 by the total linear footage of all styles, 10,357, which equals 0.140%. Therefore, a Victoria style Lot shall be assessed 0.140% of the Long Term Reserve contributions, capital expenditures and Special Assessments.

- (c) the number of votes in the Association are allocated one vote per Lot.

Section 3.6 Association Management Agreements. Any agreement for professional management of the Community may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice.

Section 3.7 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and hereby are indemnified by the Lot Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws; except in such cases where such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE 4 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

(a) The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), if any, utility assessments (assessed in proportion to usage) if any, and such other assessments as imposed by the Association.

(c) Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Lot Owner of such Lot at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

(d) No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Common Expense Assessments are made.

(e) All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

Section 4.2 Levy of Annual Assessments.

(a) The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year.

(b) The budget shall be adopted pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time-to-time.

(c) Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors.

(d) The omission or failure of the Board of Directors to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Section 4.3 Long Term Reserve. In addition to the levy of the annual Common Expense Assessments provided in Section 4.2 above, the Board of Directors shall levy an assessment for contribution to the Long Term Reserve based upon past and current reserve studies. A separate budget or statement of such assessments shall be adopted together with annual Common Expense Assessment budget as provided in Section 4.2(b) above.

Section 4.4 Apportionment of Common Expenses. Except as provided in this Declaration, all assessments for Common Expenses shall be assessed against all Lots in accordance with formula for liability for the Common Expenses as set forth in this Declaration. Assessments for Common Expenses are currently allocated among the Lot Owners as stated in Sections 3.5(a) & (b) above.

Section 4.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair

or replacement of the Common Area, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that any such assessment shall be adopted based upon a budget submitted to the Lot Owners as provided in Section 4.2(b) above.

Section 4.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 4.7 Residential Water Use Assessments. If approved by the consent of fifty-one percent (51%) of all Owners, in addition to the Common Expense and other assessments provided for in the Governing Documents and the Act, the Association may install individual water meters to assess each Lot for the water usage of such Lot as calculated by such meter. Each Owner shall bear the costs of installation, maintenance, repair or replacement of the water meter for his or her Lot in addition to the water use calculated. The Residential Water Use Assessment shall be a lien against the Lot which may be foreclosed or otherwise collected as provided in this Declaration.

Section 4.8 Real Estate Transfer Assessments.

(a) Each Owner, upon the transfer of a Lot, shall pay to the Association at the time of the closing of such transfer, an amount equal to two (2) times the then current monthly installment of the annual assessment.

(b) The statement of assessments which shall be prepared in accordance with the Bylaws shall include the amount of this Real Estate Transfer Assessment to be due and payable to the Association at the time of the closing of the transfer of a Lot.

(c) This Real Estate Transfer Assessment is separate from and in addition to any and all other assessments which are levied against the Lots by the Association and shall be deposited into the operating or reserve accounts of the Association as the Board determines best benefits the Association's needs at the time of the transfer.

(d) This Real Estate Transfer Assessment shall be an Association lien on the Lot as provided in this Declaration if not paid at the time of closing of the transfer of the Lot.

Section 4.9 Effect of Non-Payment of Assessments.

(a) Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due

date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors.

(b) Failure to make payment within thirty (30) days of the due date thereof shall cause the total amount of such Lot Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

(c) The Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due.

(e) If a foreclosure action is filed to foreclose any assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent the Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner.

(f) The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

(g) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same.

Section 4.10 Lien Priority.

(a) The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except:

- (1) liens and encumbrances recorded before the recordation of the Declaration;
- (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and

(3) liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) This Section does not affect the priority of mechanics' or materialmen's liens.

(c) The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law.

(d) Sale or transfer of any Lot shall not affect the lien for assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.11 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Property, or any portion thereof for which the Association has a duty to insure, repair, maintain or replace is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within thirty (30) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a Default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article.

ARTICLE 5 ARCHITECTURAL REVIEW

Section 5.1 Required Approval. No structures, including Residences, accessory buildings, tennis courts, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a Residence, to a Lot or to any structure or any attachment to the exterior of a Residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee") as outlined in the "Town and Country Village Townhomes Architectural Guidelines and Rules and Regulations." Only house numbers and mail boxes which were installed by the Association or approved by the Committee shall be used and maintained on any Lot within the Community. The Committee may require that applications of Owners and their plans and specifications show exterior

design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size, as well as such other materials and information as may be required by the Committee.

Section 5.2 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth herein. The approval or consent of the Architectural Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Architectural Review Committee may require that the applicant(s) reimburse the Committee or Board for actual expense incurred by it in its review and approval process.

Section 5.3 Establishment of the Architectural Review Committee. The Architectural Review Committee shall consist of a minimum of three (3) members appointed by the Board of Directors, who shall serve at the pleasure of the Board.

Section 5.4 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 5.5 Reply and Communication. The Committee shall reply to all submittal of plans made in accordance herewith in writing within forty-five (45) days after receipt. In the event the Architectural Review Committee fails to take any action on submitted plans and specifications within forty-five (45) days after the Committee has received the complete plans and specifications, approval shall be deemed to be granted. All communications and submittals shall be addressed to the Committee at such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners.

Section 5.6 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

Section 5.7 Right to Appeal. An Owner may appeal any decision of the Architectural Review Committee to the Board of Directors. The Board of Directors shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in Section 5.2 above and the

architectural guidelines. Any decision of the Architectural Review Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 5.8 Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 5.9 Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 5.10 Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 5.11 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE 6 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. All Property within the Town and Country Village Townhomes Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 6.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by

acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.

(c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(e) All penalties imposed are collectible as Assessments.

Section 6.3 Use/Occupancy. Lots shall not be used for any purpose other than a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Town and Country Village Townhomes Community as a first class residential Community, as reasonably determined by the Board of Directors of the Association, are prohibited.

Section 6.4 Home Occupations. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Lot and does not change the residential character thereof and complies with local zoning ordinances and regulations. Home occupations may include, but are not limited to, home offices or a studio for arts and crafts or photography. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, Bed and Breakfast, restaurant, bar or other commercial purposes. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner.

Section 6.5 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) Short term occupancies and rentals (of less than six (6) months) of Lots shall be prohibited, without prior written permission from the Board of Directors;

(b) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association;

(c) Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association. A copy of the lease or rental agreement shall be provided to the Association, care of any manager of the Association or an officer, upon request;

(d) All occupancy, lease and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them;

(e) Leases and rentals shall be for or of the entire Lot; and

(f) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 6.6 Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed on any Lot so that the same are visible from any neighboring Lot, the Common Area, or any street.

Section 6.7 Landscaping Requirements and Restrictions. The landscaping of each Lot shall be maintained by the Owner in a neat, attractive and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

Section 6.8 Restrictions on Animals and Pets.

(a) Pets, including cats, dogs, birds, reptiles, or other animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored on a Lot, *if* the animal is not obnoxious to other Owners or occupants.

(b) The Lot Owner or person having control of an animal reported to be obnoxious to other Owners or occupants shall be given a written notice to correct the problem. If not corrected, that Lot Owner, upon a second written notice, will be required to remove the animal from the Community.

(c) The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association.

(d) Animals may not be kept for any commercial or breeding purposes.

(e) Lot Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 6.9 Antennae.

(a) Subject to federal statutes or regulations governing common interest communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on the Common Area of the Community.

(b) Exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type subject to federal statutes or regulations governing common interest communities, may be erected entirely upon an Owner's Lot.

(c) Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Lots.

(d) All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

Section 6.10 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 6.11 Vehicular Parking, Storage, and Repairs.

(a) Vehicular parking upon any Common Area shall be regulated by the Board of

Directors.

(b) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Board of Directors of the Association: oversized vehicles, commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to twelve hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any Improvement located thereon.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages.

Section 6.12 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association. The Association shall be responsible to maintain, repair, replace and improve any Common Area and any Improvements located thereon.

Section 6.13 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community 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 or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of

Directors.

Section 6.14 Outside Burning/Precaution for Fire Hazards. There shall be no exterior fires, except for conventional barbecues. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 6.15 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any Property within the Community 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 Property within the Community and no open fires shall be lighted or permitted on any Property within the Community except in a contained barbecue unit while attended and in use for cooking purposes.

Section 6.16 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted in the Community if located on any Lot as to be visible from a street, any other Lot, or from the Common Area.

Section 6.17 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Board of Directors or as permitted in other provisions of this Article or the Rules and Regulations of the Association.

Section 6.18 Outbuildings. An “outbuilding” as the word is used herein, is intended to mean an enclosed covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, tents, shacks, barns, or garages, shall be used on any Lot at any time for residential purposes, either temporarily or permanently, or for any other purpose unless approved in writing by the Board of Directors or the Architectural Review Committee.

Section 6.19 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner.

ARTICLE 7 PARTY WALLS

Section 7.1 Definition. For purposes of this Article 7, “Party Wall” shall mean and refer to any wall which is part of the original construction of the structures located on Lots and is placed on or immediately adjacent to a Lot line and which separates two (2) or more structures.

Section 7.2 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 7.3 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of a Party Wall in proportion to such use.

Section 7.4 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, insurance provisions contained in Article 8 below shall apply.

Section 7.5 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7.6 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 7.7 Arbitration. In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs of the arbitration, but each party shall pay its own attorneys' fees.

ARTICLE 8 EXTERIOR MAINTENANCE

Section 8.1 General. The Association shall provide exterior maintenance upon the structures of each Lot which is subject to assessment the nature and extent of such maintenance to be as may be established from time to time by the Board of Directors as follows:

- (a) paint;
- (b) repair, replacement and care of roofs;
- (c) repair, replacement and care of gutters and downspouts;
- (d) repair, replacement and care of exterior building surfaces;
- (e) repair, replacement and care of walks and other exterior improvements; and
- (f) such exterior maintenance shall not include window glass or other glass surfaces or snow removal from Lots.

Section 8.2 Maintenance of Window Wells and Stoops. Owners shall maintain the window wells, including window well covers, if any, which are adjacent to their townhomes, and

shall remove snow and ice from the stoops adjacent to their townhomes, regardless of whether the window wells or stoops are located on their Lots or on Common Area.

Section 8.3 Maintenance of Landscaping.

(a) Each Owner shall be responsible for maintenance of the landscaping on his or her Lot, subject to first having received the written approval of the Architectural Review Committee for any additions, removals, or modifications.

(b) Any Owner who fails to maintain his or her Lot in a manner satisfactory to the Association shall be subject to the remedies contained in the Declaration and the Act.

(c) The Association shall be responsible for the landscaping and maintenance of Common Area, including having grass, weeds, trees, and vegetation cut and/or trimmed when necessary.

(d) No Owner shall, in whole or in part, change the landscaping on his or her Lot or any portion of the Common Area by the addition or removal of any items thereon without the prior written approval of the Architectural Review Committee.

Section 8.4 Owner's Negligence.

(a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance or repair of the Common Area, a Lot, or any improvements located thereon, is caused by the willful or negligent act or omission of any Owner, or the willful or negligent act of any Owner's family, guest, or invitee, the cost of such repair or maintenance shall be a Default Assessment against the Owner and the Owner's Lot.

(b) A determination of the negligence or willful act or omission of any Owner, or Owner's family, guest or invitee, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner.

**ARTICLE 9
INSURANCE/CONDEMNATION**

Section 9.1 Insurance on the Lots. Each Owner shall obtain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot. The liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Lot Owners and the Association's insurance shall be primary.

Section 9.2 Insurance Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Owners, Eligible Holders, and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien Security Interests at least ten (10) days prior to the expiration of the then-current policies.

(c) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien Security Interests, their successors and assigns and Owners as insureds.

(d) Prior to the Association obtaining any blanket policy of casualty insurance on the structures on Lots and any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the structures on Lots and any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall the Association's casualty insurance policy contain a co-insurance clause.

(e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.3 Hazard Insurance on Lots and Common Area.

(a) The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to any structures on Lots, and any improvements installed or made to any Common Area and the other property of the Association for the full replacement value without deduction for depreciation.

(b) Hazard insurance covering the structure(s) located on each Lot shall not include coverage for land, foundation, excavation and other items normally excluded from coverage, and shall include coverage for replacement of value of the structure(s) excluding all items in the interior - all fixtures; built-in appliances; paint; paper, or paneling on the walls and ceilings; the tile or carpet on the floor.

Section 9.4 Association Liability Insurance. The Association shall obtain adequate public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 9.5 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9.7 Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 9.8 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.10 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 9.11 Adjustments by the Association. Any loss covered by an insurance policy

described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.12 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or the Owner as appropriate, except as provided in the Act.

Section 9.13 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 9.14 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

ARTICLE 10

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 10.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot upon which it holds a security interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien security

interest shall have the same rights as Eligible Holders.

Section 10.2 Special Rights. Eligible Holders shall be entitled to:

- (a) examine the books and records of the Association during normal business hours;
- (b) receive a copy of financial statements of the Association, including any annual audited financial statement;
- (c) receive written notice of all meetings of the Members of the Association;
- (d) designate a representative to attend any such meetings;
- (e) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration;
- (g) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws;
- (h) thirty (30) days' written notice prior to the effective date of termination of professional management of the Association or the Common Area, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and
- (i) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Area or to the Lot on which the Eligible Holder holds a security interest, if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Area or any Lots.

Section 10.3 Special Approvals. Unless at least fifty-one percent (51%) of the Eligible Holders of first lien security interests (based on one (1) vote for each mortgage owned) of Lots in the Association and requisite Lot Owners have given their written approval, neither the Association nor any Member shall:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes

consistent with the intended use of such Real Estate by the Association shall not be deemed within the meaning of this provision);

(b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;

(c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Lots, including the architectural design of the exterior appearance of Lots, or the upkeep of the Common Area;

(d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration;

(e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the Improvements which were damaged or destroyed;

(f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs;

(g) amend any material provision of this Declaration; and

(h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Holder.

(i) An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only.

(j) If an Eligible Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 10.4 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Lot or any of the Common Area and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Area or Lots.

ARTICLE 11 GENERAL PROVISIONS

Section 11.1 Enforcement. Except with regard to architectural approvals and architectural review, the Association or an Owner may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least fifty-one percent (51%) of the Owners in the Association, fifty-one percent (51%) of Eligible Holders, and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Douglas County, Colorado, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.5 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.7 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 11.8 Challenge to this Amendment. All challenges to the validity of the amendments must be made within one (1) year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

AFTER RECORDING, RETURN TO:

Powers Phillips, P.C.
700 17th Street, Suite 1600
Denver, Colorado 80202