

DECLARATION
FOR
RED QUILL VILLAGE TOWNHOMES

THIS DECLARATION FOR RED QUILL VILLAGE TOWNHOMES (the "Declaration") is executed as of the _____ day of _____, 2001, by **THE VILLAGE CENTER AT WINTER PARK LLC**, a Colorado limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property situated in the Town of Winter Park, Colorado, described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Property will initially consist of a four (4) unit townhome complex with associated private roads and common area; and

WHEREAS, the Declarant desires to establish a planned community pursuant to the provisions of the Colorado Common Interest Ownership Act (the "Act"); and

WHEREAS, attached to this Declaration as Exhibit B is a copy of the final plat for The Village Center at Winter Park, Filing No. 1 which was recorded on _____, 2001, at Reception No. _____ in the records of the Clerk and Recorder for the County of Grand, State of Colorado, which plat describes the location of the land on which each townhome unit to be created pursuant to this Declaration will be located; and

WHEREAS, Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, and other charges set forth herein for the purpose of protecting the value and desirability of the Property and for the purpose of furthering a plan for the improvement, sale, and common ownership of the Property, to the end that a harmonious and attractive development of the Property may be accomplished and the health, comfort, safety, convenience, and general welfare of the Declarant, all subsequent owners of portions of the Property and their respective heirs, personal representatives, successors and assigns in the Property, or any portion thereof, is promoted and safeguarded.

NOW, THEREFORE, the Declarant hereby submits the Property, together with all improvements, appurtenances and facilities thereto and now or hereafter thereon, to ownership as a planned community pursuant to the provisions of the Colorado Common Interest Ownership Act ("Act"), as the same may be amended from time to time, and hereby imposes upon all of the Property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations, which shall be deemed to run with the Property and shall be a burden and a benefit to the Declarant, its

heirs, personal representatives, successors, assigns and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

DEFINITIONS

I.1 Act. “Act” shall mean and refer to the Colorado Common Interest Ownership Act, codified as Article 33.3 of Title 38, Colorado Revised Statutes, as it may be amended from time to time.

I.2 Agencies. “Agencies” shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

I.3 Assessment Percentage. “Assessment Percentage” shall mean and refer to the percentage of the Association expenses to be paid by the Owner(s) of each Unit. The Assessment Percentage shall be equal for each Unit.

I.4 Association. “Association” shall mean and refer to Red Quill Village Townhome Association, a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers.

I.5 Association Maintenance. “Association Maintenance” shall mean all maintenance, repairs and replacements for which the Association is responsible under the provisions of this Declaration.

I.6 Building. “Building” shall mean the Building containing the attached Townhomes and Garages constructed on each adjoining Unit.

I.7 Common Area. “Common Area” shall mean the portion of the Project conveyed to the Association.

I.8 Common Wall. “Common Wall” shall mean a Party Wall.

I.9 Declarant. “Declarant” shall mean and refer to The Village Center at Winter Park LLC, a Colorado limited liability company, its successors and assigns, provided that such successors and assigns shall first be designated by the predecessor or assigning Declarant as a Declarant for one or more purposes by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Grand, State of Colorado.

I.10 Declaration. "Declaration" shall mean and refer to this Declaration, as it may be amended from time to time.

I.11 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Grand, State of Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" shall include an executory land sales contract wherein the Administrator of Veterans Affairs (United States Department of Veterans Affairs) is seller, whether such contract is owned by the Department of Veterans Affairs or its assigns, and whether recorded or not.

I.12 First Mortgagee. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage, or any insurer or guarantor of a First Mortgage, including the Administrator of Veterans Affairs, United States Department of Veterans Affairs, or their successors in interest. "Eligible First Mortgagee" shall mean and refer to those First Mortgagees or insurers or guarantors of First Mortgages who have made written request to the Association for notification of certain matters and actions in accordance with the provisions of Section 15.2(b) below.

I.13 Garage. "Garage" shall mean the garage constructed on a Lot.

I.14 Improvement. "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures, and landscaping.

I.15 Owner. "Owner" shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

I.16 Party Wall. "Party Wall" shall mean and refer to the entire wall from front to rear, all or a portion of which is used for support or fire wall protection between each adjoining Townhome or Garage, situated or intended to be situated on the boundary line between adjoining Lots.

I.17 Plat. "Plat" shall mean and refer to the Final Plat for Red Quill Village Townhomes, recorded on _____, 2001, at Reception No. _____ in the records of the Clerk and Recorder of the County of Grand, State of Colorado, which describes the Lots on which the Townhomes are located. A copy of the Plat is attached hereto as Exhibit B and incorporated herein by this reference.

I.18 Project. "Project" shall mean and refer to the Property including all improvements now or hereafter constructed thereon, and all land annexed hereto. The Project shall be known as Red Quill Village Townhomes and is hereby declared to be a planned community and not a condominium or cooperative.

I.19 Property. "Property" shall mean and refer to that certain property described on Exhibit A attached hereto, and all land annexed to this Declaration hereafter pursuant to the provisions of Section 16.10 below.

I.20 Townhome. "Townhome" shall mean and refer to the single-family attached residential structure constructed on a Lot, together with its attached Garage.

I.21 Unit. "Unit" or "Lot" shall mean and refer to the physical portion of the Property which is designated for separate ownership by each Owner as described on the Plat, including all improvements constructed thereon (including but not limited to the Townhome, Garage and driveway) and all easements and rights appurtenant thereto.

ARTICLE II

DIVISION OF PROJECT INTO PLANNED COMMUNITY OWNERSHIP

II.1 Division Into Units. The Project will consist initially of the four (4) Units or Lots and Outlots A and B, as described in Exhibit A attached hereto, including the Townhomes and other improvements constructed thereon and all easements and rights appurtenant thereto as provided for herein. The Units shall be deemed to be and hereby are declared to be a planned community which is subject to the Act. The Declarant reserves the right to create up to thirty-five (35) Townhomes as part of the Project.

II.2 No Subdivision of Units. No Unit may be subdivided into two or more Units.

II.3 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations, created by law or by this Declaration.

ARTICLE III

PLAT

III.1 **Recording.** The Plat and amendments thereto, if any, covering the Property shall be recorded in the Office of the Clerk and Recorder of the County of Grand, State of Colorado, prior to conveyance by Declarant of the first Lot shown on such Plat.

III.2 **Content.** The Plat shall depict and show the following information: The name of the Project and a general schematic map of the entire Project; the legal description of the land and a survey thereof prepared in accordance with the requirements for an improvement location certificate, the Unit designations, locations and dimensions, any existing or proposed easements across the Project, and any existing encroachments on the Project. The Plat shall contain the certificate of a registered land surveyor certifying that the Plat substantially depicts the location and the horizontal measurements of the aforesaid information. In interpreting the Plat, the existing physical boundaries of each separate Lot and Townhome, as constructed, shall be conclusively presumed to be its boundaries.

III.3 **Amendments.** Declarant hereby reserves unto itself the right, from time to time, with the consent of the Town of Winter Park, but without obtaining the consent or approval of any Owner or First Mortgagee, to amend the Plat in order to conform such Plat to the actual location of any improvement(s) constructed, installed or erected on the Property.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

IV.1 **Membership.** Every Owner of a Unit shall be a Member of the Association and shall remain a Member for the period of his ownership of a Unit. Each Unit shall be entitled to one vote to be exercised by the Owner or Owners thereof; provided that a Unit resulting from combining two Units shall have two votes.

IV.2 **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors which shall consist of the number of members which is set forth in the Association's Articles of Incorporation ("Articles"), or By-Laws, as amended from time to time ("By-Laws"). From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board of Directors and all officers of the Association, subject to the provisions below requiring the election of a certain number of Directors by Owners other than Declarant. The period of Declarant's control of the Association shall terminate upon the first to occur of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the total number of Units that may be included in the Project to Owners other than a Declarant, (ii) two (2) years after the last conveyance of a Unit by a Declarant in the ordinary course of business, (iii) two (2) years after Declarant's right to add Units to the Project was last exercised, or (iv) three (3) years after the first conveyance of a Unit to an Owner other than

a Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the period of Declarant's control, but, in that event, Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors will be elected by Owners of Units other than a Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units to Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors will be elected by Owners of Units other than a Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners of Units (including Declarant) shall elect the Board of Directors of at least three (3) members, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant and the Board of Directors shall elect the officers, with such Board members and officers to take office upon election.

IV.3 Delivery of Documents by Declarant. Within sixty (60) days after the Owners of Units other than Declarant elect a majority of the Board as provided in Section 5.2, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 38-33.3-303(9) of the Common Interest Act and the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records and any rules and regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the termination of the period of Declarant's control in accordance with § 38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association and all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Area and inventories of these properties;

(e) A copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the improvements in the Project;

(f) All insurance policies then in force, in which the Owners, the Association or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;

(h) Any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the termination of the period of Declarant's control;

(i) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) Employment contracts in which the Association is a contracting party;
and

(l) Any service contract in which Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services

ARTICLE V

OBLIGATIONS OF THE ASSOCIATION AND THE OWNERS

V.1 Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:

1 Be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Areas and the exterior of the Townhomes, including, but not limited to, roof, walls, foundations, driveways, sidewalks, drainage ditches and pipes, parking spaces, storage spaces, decks, terraces, fixtures, equipment, snow storage areas, trash areas, private roads and drives, utilities, landscaping (other than landscaping installed by the Owner of a Lot), and any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair consistent with similar residential communities located in Winter Park, Colorado and substantially similar to the original construction and installation (but with contemporary building materials and equipment). The Association shall be responsible for the repair and replacement (as necessary) of all hardware on the front entry doors to each Unit; provided that the cost of such repair and replacement shall be assessed to the subject Unit Owner as an Individual Purpose Assessment hereunder. Each Unit Owner shall be responsible for the repair and replacement of all exterior windows and all doors and hardware thereon located within such Owner's Unit or leading from such Unit to any other Unit or the Common Area.

2 Perform structural and exterior maintenance, repair, replacement and modification to the Buildings and other site improvements and landscaping on the Property, other than flowers and other landscape materials that Owners may place within the exterior yard area of their Lot and which shall be maintained by the Owner of such Lot.

The expenses, costs, and fees of such management, operation, maintenance, repair, replacement, and improvement by the Association, as provided in this Section 5.1, shall be part of the Monthly Assessment (as defined below) levied by the Association; provided that the Association may levy the costs and expenses associated with any of the following as an Individual Purpose Assessment against the Owner of the Unit involved: expenses of maintaining, repairing, and replacing all parking spaces, storage spaces, decks, fixtures, equipment, utilities, and other improvements which provide exclusive service to such Owner's Unit and any service lines from such equipment to the Unit, including without limitation all utility, heating, plumbing, air conditioning, and domestic hot water equipment and appurtenances. Except for the Owners' right to reject a budget as described in Section 6.2, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. Each Owner shall afford to the Association and the other Owners, and to their agents, contractors, or employees, access through such Owner's Unit reasonably necessary for maintenance, repair, and replacement of the improvements described above. If any Unit is damaged or destroyed in connection with such access or such maintenance, repair, or replacement, the party causing or responsible for the damage or destruction is liable for the cost of prompt repair of such damage or destruction.

3 Maintain berms, landscaped islands, roadways, utilities, and other improvements on land adjacent to or in the vicinity of the Property which benefit the Project, in the reasonable judgment of the Board of Directors of the Association.

V.2 Owner's Negligence or Failure to Maintain; Prohibition of Certain Activities.

1 Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, or replacement of any improvements or the Common Area, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant or by any member of an Owner's or tenant's family or by an Owner's or tenant's guests, contractors, agents, invitees, or licensees or concessionaires, or as a result of any improvement constructed by or on behalf of an Owner, then the expenses, costs, and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs, and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become an Individual Purpose Assessment determined and levied against such Unit.

2 Each Owner shall be responsible for maintenance, repair, and replacement of the interior of his own Unit and all personal and real property comprising or located within his Unit. In the event an Owner fails to perform any cleaning, maintenance,

repair, or replacement which is his responsibility under this Declaration, and such failure has not been cured within thirty (30) days after written notice has been given to such Owner by the Association, the Association may perform the cleaning, maintenance, repair, or replacement, and all charges incurred by the Association in connection therewith, together with an administrative fee in the amount of twenty-five percent (25%) of such cost shall be the personal obligation of the Owner and may be levied as an Individual Purpose Assessment against such Owner and his Unit. The Association and its officers, contractors, and representatives shall have an easement for access to each Unit for the purpose of exercising its rights under this subparagraph (b).

3 Nothing shall be done or kept in any Unit or in or on the Common Area, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Area, or any part thereof, shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee, or concessionaire or contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, his tenant, or the members of his or his tenant's family, his or his tenant's guests, invitees, licensees, or contract purchasers, which is in violation of this Section 5.2. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard by the Board of the Association, the amounts to be indemnified shall be and constitute an Individual Purpose Assessment determined and levied against the Owner's Unit.

4 No modifications may be made to any of the Common Area by an Owner, other than Declarant, without the prior written consent of the Board of Directors of the Association. The Board may require an Owner to submit drawings, plans, specifications, engineering reports, and other information as the Board may deem to be appropriate, in connection with any request for Board approval of a modification, which approval may be denied, granted, or granted with conditions in the sole discretion of the Board.

V.3 Prohibitions of Certain Activities. Nothing shall be done or kept in any Unit which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, any portion of the Property, or any part thereof, shall be committed by any Owner, or by any member of an Owner's family, or by a guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, the members of its family, its guests, invitees or contract purchasers, which is in violation of this Section 5.3. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper),

then it shall enforce the foregoing indemnity in the same manner as provided in Section 9.2 hereof with respect to an Owner's indemnity against mechanic's liens.

V.4 Management Agreements and Other Contracts.

1 Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days' prior written notice.

2 Any contracts or leases entered into by the Association (except contracts or agreements governed by Subsection (a) of this Section 5.4 and any other contracts, liens and agreements governed by Section 5.7) shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon ninety (90) days' prior written notice.

3 Notwithstanding anything to the contrary contained in this Section 5.4 the Association may enter into contracts and leases in violation of this Section 5.4 upon a waiver by FNMA and/or FHLMC of any provisions of any of such agencies' legal requirements which are violated by any such contracts and leases.

V.5 Acquiring and Disposing of Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners and/or for use in performing the Association's obligations hereunder, tangible and intangible personal property and may dispose of the same by sale or otherwise. The Association may permit Owners to use such personal property when it is not being used by the Association.

V.6 Promulgation of Rules and Regulations. The Board of Directors of the Association may promulgate and enforce reasonable rules and regulations governing the use of the Units, including, without limitation, enforcement of the same by levying and collecting fines for the violation thereof, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

V.7 Contracts, Licenses, and Agreements. The Association, through its Board of Directors, shall have the right to enter into, make, perform or enforce contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, other persons, their family members, guests, and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Project, or any portion thereof, for vehicular parking, for on-site residential management or for recreational use; and rights-of-way and easements for the provision of water, sewer, electric, cable or satellite television service to the Property, or any portion thereof. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board of Directors of the Association, which may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, or

other amounts which the Board determines are necessary to secure such contracts, licenses and agreements, and any such costs and expenses shall be treated by the Association as common expenses pursuant to Article VI hereof.

V.8 Utilities. Water and sewer services to Townhomes may be provided through either individual meters or through common meters with separate service lines form a single meter for each Building. In the event there is a single meter for a Building, the Association shall be responsible for paying such utility costs and billing the Owners of individual Townhomes through Individual Purpose Assessments.

ARTICLE VI

ASSESSMENTS

VI.1 Personal Obligation for Assessments. All Owners, including Declarant, covenant and agree, and shall be personally obligated, to pay to the Association: (a) annual common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 6.6 of this Declaration; and (c) other charges, fees and assessments, including without limitation default assessments, as provided in this Declaration. All assessments for each Unit shall be calculated by multiplying the total annual amount of the assessment due, determined pursuant to Sections 6.2, 6.6, and Section 6.7 (as the case may be) by such Unit's Assessment Percentage. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees and charges attributable to their Unit. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by non-use, abandonment or leasing of its Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against its Unit, as well as all charges for separately metered utilities servicing its Unit. The charges for any utilities which are not separately metered or are used by the Association in performing Association Maintenance (including water for irrigation and any common lighting) shall be included in the annual common expense assessments levied by the Association.

VI.2 Monthly Assessments; Budgets.

1 Until the Association makes an Assessment, Declarant shall pay all common expenses. The initial Assessments shall commence not later than thirty (30) days after the first sale of a Unit to a purchaser other than a successor Declarant. After any Assessment has been made by the Association, a monthly assessment ("Monthly Assessment") shall be payable monthly with the amount of the Monthly Assessment to be determined by the Board of Directors from time to time (but no less frequently than annually) based on a budget adopted from time to time by the Association (but no less

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

2 Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

VI.3 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of those Common Area that must be periodically maintained, repaired, or replaced and for payment of insurance deductibles. Such reserves shall be included in the budget and funded through the Monthly Assessments.

VI.4 Date of Payment of Monthly Assessments. The Monthly Assessments shall be due and payable on the first day of each month, in advance, or on such other dates, and with such frequency (but no less frequently than annually), as may be set by the Board of Directors of the Association from time to time. Any person purchasing a Unit between Monthly Assessment due dates shall pay a pro rata share of the last Assessment due.

VI.5 Rate of Assessment. Both Monthly and Special Assessments shall be fixed at such rates as will be sufficient to meet the advance budget of the Association, as provided in Sections 6.3 and 6.7 hereof.

VI.6 Special Assessments. In addition to the Monthly Assessments authorized above, the Board of Directors of the Association may at any time, from time to time, determine, levy and assess a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Area including without limitation any fixtures and personal property related thereto. Special Assessments shall be based on a budget adopted in accordance with Section 6.3; provided that if necessary, the Association may adopt a new budget pursuant to Section 6.3 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Association's Board of Directors, with at least thirty (30) days' prior written notice provided to the Owners.

VI.7 Individual Purpose Assessments.

1 In addition to the Monthly and Special Assessments as hereinabove provided, the Board of Directors of the Association may at any time, or from time to time, levy and collect Assessments against any one or more, but fewer than all, of the Units, for any matters applicable only to such Units. Such Individual Purpose Assessments may include, but shall not be limited to, expenses for maintaining, repairing, replacing, or improving any portion of the Townhome constructed on such Unit(s); expenses of maintaining, repairing, and replacing all fixtures, equipment, and utilities which are Common Area but provide exclusive service to such Unit(s) and any service lines from such equipment to the Unit(s), including without limitation all utility, heating, plumbing, air conditioning, and domestic hot water equipment and appurtenances; costs which are the responsibility of the Owner(s) of a Unit pursuant to Section 5.2 above; and costs of insurance assessed in proportion to risk (if reasonably determinable) and costs of utilities assessed in proportion to usage if the same are separately measured or to the extent the same can otherwise be fairly and equitably attributed to the Unit(s) and the use of the Allocated Interests for such Unit(s) would be unfair and inequitable to other Owners in the assessment of such costs. Such Individual Purpose Assessments (which include Default Assessments) may be levied against Units to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration, maintenance, repair, replacement, and improvement, or any other purpose, of or with respect to any matter pertaining to the Unit(s) against which such Individual Purpose Assessment is levied.

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

VI.8 Lien for Assessments.

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

2 The statutory lien for Assessments is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

3 Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association pursuant to Section 6.3 which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or a non-judicial foreclosure either to enforce or extinguish the statutory lien.

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

VI.9 Effect of Non-Payment of Assessments. Any Assessments, charges, costs or fees provided for in this Declaration, including, without limitation, any Default Assessment arising under any provision of this Declaration, which are not fully paid within ten (10) days after the due date thereof, will bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such other rate as may be set by the Association from time to time (subject to any limits imposed by law), and the Association may assess a monthly late charge thereon in addition to such interest. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges, costs or fees, and may also proceed to foreclose its lien against such Owner's Unit in the manner of a mortgage upon such property. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges, costs or fees, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. In the event that any such Assessment, charge, cost or fee, is not fully paid when due and the

Association shall commence such an action (or shall counterclaim or cross claim for such relief in any action) against an Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Unit, then all unpaid Assessments, charges and fees, any and all late charges and accrued interest under this Section 6.10, the Association's costs, expenses and reasonable attorney's fees incurred in collection efforts, and the Association's costs of suit, expenses and reasonable attorney's and other professional fees incurred for any such action and/or foreclosure proceedings, and any other costs which may be authorized by a court of competent jurisdiction shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross claim brought by the Association) to collect Assessments or to foreclose a lien for unpaid Assessments, the Association shall be entitled to have a receiver of the Owner and the Owner's Unit to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The receiver shall have the right to collect any rents paid in connection with the use of such Owner's Unit. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

VI.10 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Unit shall not affect the lien for Assessments, charges, costs or fees levied hereunder, except that sale or transfer of a Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association Assessments, but not the personal obligation of the Owner for the payment of Assessments, which became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, except to the extent the lien of the Association has priority over the First Mortgage under Section 6.9; provided, however, that any such Assessments, charges, costs, or fees which are extinguished as provided herein may be reallocated and assessed to all Units. A First Mortgagee may be personally liable for any unpaid Assessments, charges, costs, or fees, or portion thereof, accruing against a Unit prior to the time a First Mortgagee takes title to such Unit, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 6.9 above. No sale, transfer, foreclosure or any proceeding in lieu thereof, shall relieve any Owner from liability for any Assessments, charges, costs or fees, or any portion thereof, accrued during the period of such Owner's ownership of the Unit. No Owner shall have personal liability for Assessments assessed with respect to a Unit that become due prior to the time he acquired title to such Unit.

VI.11 Homestead Waiver. The Association's lien on a Unit for Assessments, charges, costs, and fees, provided for herein, shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Unit shall constitute a waiver of the homestead exemption against all such Assessments, charges, costs, and fees.

VI.12 Working Capital Fund. The Association or Declarant shall require the first Owner of each Unit (other than a Declarant), to make at the time of purchase, a non-refundable contribution to the Association in an amount equal to two (2) times the Monthly Assessment against that Unit in effect or proposed at the closing thereof. At the time Declarant's control of the Association terminates, the Declarant will transfer control of such funds to the Association (if not transferred earlier) and a Declarant then owning Units in addition will pay the Association an amount equal to two (2) times the Monthly Assessment against all Units then owned by it (unless such payment has previously been made with respect to any such Units). Amounts paid into the working capital fund shall not be considered as advance payments of regular Assessments. Funds in the working capital account shall be segregated with other such working capital funds for the use and benefit of the Association, including without limitation to meet unforeseen expenditures or to purchase additional equipment, property, or services. Such contribution to working capital funds shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his Unit, an Owner (including a Declarant if he previously paid working capital funds for the sold Unit) shall be entitled to a credit from his transferee (but not from the Association) for the unused portion of the contribution to the working capital fund. A Declarant shall not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

VI.13 First Mortgagees May Pay Assessments and Cure Defaults. If any Assessment on a Unit shall not be paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles or By-Laws of the Association, shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such Assessment, together with any other amounts secured by the Association's lien created by this Article VI, and may (but shall not be required to) cure any such default.

VI.14 Statement Regarding Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of any unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board of Directors and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Unit

for unpaid Assessments which were due as of the date of the request. The Board of the Association may establish a reasonable fee to be paid in connection with the furnishing of a statement regarding assessments, which fee shall be paid at the time such statement is provided to the party requesting the statement.

VI.15 Liens. It is possible that liens other than mechanics' liens and Assessment liens may be obtained against the Common Area, including without limitation, judgment liens and purchase money mortgage liens.

VI.16 Reallocation. If any Assessment remains unpaid for more than six months after it is first due, the Association may treat such unpaid Assessment as a Common Expense to be assessed against all Units, provided, however, that if the Association subsequently collects all or any part of such unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of such unpaid Assessment as a Common Expense will be entitled to a credit (in an amount equal to its *pro rata* share of the amount of the unpaid Assessment subsequently collected by the Association) against any Assessments subsequently due from such Owner.

ARTICLE VII

INSURANCE

VII.1 Duty to Obtain and Maintain Insurance. The Association shall obtain and maintain at all times, to the extent that the Association determines that obtaining such coverage is prudent based on the relative cost and risk coverage provided by such insurance, the following types of insurance:

1 A multi-peril policy with extended coverage and standard all-risk endorsements, including coverage for fire, vandalism and malicious mischief, as well as such other risks as shall customarily be covered with respect to projects similar in construction, location and use, insuring the Project, including the Units, Party Walls, the Building and other improvements, other than land, excavations, foundations and other items normally excluded from such policies, but excluding coverage on furniture, furnishings or other personal property supplied or installed by an Owner; said policy shall provide coverage in an amount equal to one hundred percent (100%) of full replacement cost without deduction for depreciation. All policies shall contain a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit, which shall provide that any loss thereunder shall be payable to the Association for the use and benefit of First Mortgagees and Owners as their interests may appear.

2 Public liability and property damage insurance providing coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, covering claims for bodily injury, personal injury and property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance,

management and other use of the Project, as well as such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

3 Workmen's Compensation, employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms as may now or hereafter be required by law.

4 The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, to the extent that such coverage is reasonably available, including but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, and coverage for loss or damage resulting from steam boiler equipment or air conditioning equipment accidents.

All policies of insurance carried by the Association shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a member of the Association, shall provide that the Association's policy shall provide primary coverage in the event a loss is also covered by a Unit Owner's policy, and shall provide that the policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to the insured. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Unit upon written request. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (by name and Unit number designation), the Declarant, the Board of Directors of the Association, the manager of the Property (if any) and any First Mortgagee and their respective employees, agents and persons acting as agents. Further, the Association may require the insurance company or companies providing the insurance coverages described herein to provide each Owner and First Mortgagee with a Certificate of Insurance in regard to such Owner's Unit.

VII.2 Insurance Obtained by Owners. Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper and other items of personal property belonging to an Owner, and public liability coverage within each Unit, shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Board of Directors and/or the managing agent of the Association shall have no responsibility therefor. 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 no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

VII.3 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association

to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

VII.4 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in or on any Unit which would result in the cancellation of any insurance on the Project, or any part thereof, or increase in the rate of any insurance on the Project, or any part thereof, over what the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, the members of its family, its guests, invitees or contract purchasers, which is in violation of this Section 7.4. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then the Association shall enforce the foregoing indemnity in the same manner as provided in Section 9.2 hereof with respect to an Owner's indemnity against mechanic's liens.

ARTICLE VIII

CONVEYANCES AND TAXATION OF UNITS

VIII.1 Contracts Entered into Prior to Recording of Plat and Declaration. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Plat and/or this Declaration in the office of the Clerk and Recorder of the County of Grand, State of Colorado, may legally describe such Unit in the manner set forth in Section 8.2 hereof and may indicate that the Plat and/or this Declaration are to be recorded. Upon recordation of the Plat and this Declaration in the County of Grand, State of Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Plat and such Unit shall be subject in all respects to this Declaration.

VIII.2 Contracts Entered into Subsequent to Recording of Plat and Declaration. Subsequent to the recording of the Plat and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit as follows:

Lot ____, The Village Center at Winter Park, according to the Final Plat for The Village Center at Winter Park, Filing No. ____, recorded on _____, _____, at Reception No. _____ in the records of the Office of the Clerk and Recorder for the County of Grand, State of Colorado.

VIII.3 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit in the manner set forth in Section 8.2 hereof shall be good and sufficient for all

purposes to sell, convey, transfer, encumber or otherwise affect the Unit, and all appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Plat.

VIII.4 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act, as amended. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

ARTICLE IX

MECHANIC'S AND OTHER LIENS

IX.1 Mechanic's and Other Liens. No labor performed or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, its agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner for labor performed or for materials furnished in work on the first Owner's Unit.

IX.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) or other liens are not disputed claims with a reasonable basis for such dispute, the Association, shall enforce the indemnity provided for in Section 9.1 hereof by collecting from the Owner of the Unit on which the labor was performed or materials or utilities furnished, the amount necessary to discharge any such mechanic's lien or pay such utility charges, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Unit on which the labor was performed or materials or utilities furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, of the amount to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 9.2 and such amount to be indemnified shall automatically become a lien against such Unit, and the Association may proceed to foreclose such lien in accordance with the procedures set forth in Section 6.9 hereof.

IX.3 Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is effected against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owners in order to obtain release of their Unit from any such lien shall be equal to the quotient of (i) the amount of the lien,

divided by (ii) the total number of Units affected by the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing its rights against any Unit for which payment has not been received.

ARTICLE X

RESTRICTIVE COVENANTS

X.1 **Residential Use.** Units shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use; provided that one home office will be permitted in each Townhome if the same complies with Winter Park Zoning requirements and the following: (i) no chattels, goods, wares or merchandise shall be commercially created, displayed, exchanged, stored or sold; (ii) the office shall be operated entirely within the Townhome (but not within the Garage); (iii) the office shall be operated by a person whose principle residence is in the Townhome; (iv) there shall be no more than one person employed by or associated with the office who does not maintain his principal residence in the Townhome; (v) there shall be no separate entrance to the office from the outside of the Townhome; (vi) the office shall not utilize more than 300 square feet of floor area; (vii) there shall be no external evidence of the operation of an office; (viii) there shall be no signs used in connection with the office except such signs (if any) that the Association may approve in writing; and (ix) the office shall not violate applicable zoning. No structures of a temporary character, trailer, shack, barn, or other outbuilding shall be used or permitted to be kept or stored on any portion of the Project at any time, either temporarily or permanently, other than those used during the construction of improvements on the Project.

X.2 **No Obstruction.** There shall be no obstruction of any easement provided for herein and nothing shall be kept stored outside of a Townhome without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the exterior or structural portions of any Unit without the prior written approval of the Board of Directors of the Association.

X.3 **Exterior Changes.** Except for those improvements erected or installed by Declarant in its construction and completion of the Project, no exterior Improvements or additions to, alterations or decoration of the Units, including but not limited to any structural alterations to any Unit, nor any changes in fences, hedges, walls, or other structures, nor installation of storm windows, storm or security doors, security bars, window- or roof-mounted air conditioning units, satellite dishes, any exterior television, radio, or other communication antennas of any type, or any other change or addition to the exterior of a Unit, nor placement of play or storage equipment outside of a Townhome shall be commenced, erected, placed, or maintained, without the prior written approval of the Board of Directors of the Association. Any changes or additions to any Unit which requires a building permit also shall first be approved by the Town of Winter Park in accordance with applicable requirements of the Town of Winter Park. Subject to the prior written approval of the Board of Directors of the Association approving the proposed materials to be used, any

Owner shall have the right to affix tinting materials on the interior surface of windows located in his Unit. Each Owner may place flowers, bushes, and similar low-lying landscape materials in the exterior yard of such Owner's Lot without first obtaining the approval of the Board of Directors of the Association or any other Owner.

X.4 Leases. The term "lease", as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease the Unit under the following conditions:

1 All leases shall be in writing.

2 All tenancies shall provide that the terms of the lease or other tenancy and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

X.5 Nuisances. No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive, or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

X.6 Garbage Collection. Each Owner shall dispose of the garbage collected within its Unit into containers of such dimensions as the Association shall from time to time designate to be located within the Trash Areas shown on the Plat.

ARTICLE XI

EASEMENTS

XI.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Property, or any portion thereof, and as shown on the recorded Plat.

XI.2 Encroachments. In the event that any portion of a Townhome encroaches upon any Unit(s) or Common Area or in the event any encroachment shall occur in the future as a result of: (i) settling of the Townhomes, or (ii) repair or restoration of any

Townhome after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Townhomes, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trusts, or other security instruments relating to the Units, the actual location of the Townhome shall be deemed conclusively to be within the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of the Townhome or the boundaries of the Unit as indicated on the Plat.

XI.3 Utility Easements. There is hereby created a general easement upon, across, over, in and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical and satellite or cable television. By virtue of this easement, it shall be expressly permissible and proper for the Declarant, the Association and the companies providing electrical, telephone, cable television and television services to erect and maintain the necessary poles and other necessary telephone, cable television and television wires, cables, circuits, conduits, equipment and apparatus on, above, across, through and under the roofs and walls of the Townhomes and in attics and crawl spaces of Townhomes. Notwithstanding anything to the contrary contained in this Section 11.3, no water, sewer, gas, telephone, electrical, satellite television or cable television lines, systems or facilities may be installed or relocated on the Property except as approved by the Association or the Declarant. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant or the Association shall have, and hereby reserve, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof and each is hereby appointed the agent and attorney-in-fact of the Owners for such purpose; provided, however, that such power of the Declarant shall cease upon conveyance of the last Unit by Declarant to the first Owner thereof (other than Declarant). The easement provided for in this Section 11.3 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Property.

XI.4 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

XI.5 Maintenance and Construction Easements. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under any and all portions of the Property as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this

Declaration. An easement is hereby granted to the Declarant, its officers, agents, employees and assigns upon, across, over, in and under any and all portions of the Property as may be necessary or appropriate to complete construction of the Project or to maintain, repair or replace any improvements pursuant to any warranty or agreement with any Owner.

XI.6 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

XI.7 Easements of Access for Repair, Maintenance and Emergencies. Some utilities may be located in a Unit ("Common Utilities") that serve one or more other Units or may be conveniently accessible only through other Units. The Owners of the Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Utilities from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Utilities located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Utilities or to any Unit. The Association shall also have such right, independent of any agency relationship. Subject to the provisions of Sections 5.2 and 5.3 hereof, damage to the interior of any part of any Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Utilities at the instance of the Association or any Owner, shall be an expense of the Association. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations the occupants of the affected Unit shall be warned of impending entry as early as is reasonably possible.

ARTICLE XII

DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

XII.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Units, Building or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Unit 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 irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its construction, damage, obsolescence or condemnation, shall be appointed. Such appointment must be approved by the Owners holding sixty-seven percent (67%) or more of the votes in the Association and at least sixty-seven (67%) of the First Mortgagees of Units based upon one vote for each First Mortgage held.

XII.2 Damage or Destruction. "Repair and reconstruction" of the improvements, as used in the succeeding subsections, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Unit and Townhome having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration or replacement, in accordance with the provisions hereinafter set forth:

1 Notwithstanding the provisions of Article XV hereof relating to the percentage required for consent or approval of Owners and First Mortgagees, in the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such repair and reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and construction.

2 If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), 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 which, notwithstanding anything to the contrary contained in Section 6.6 hereof, shall be made without a vote of the Owners against all of the Owners and their Units. Such special assessment shall be assessed in accordance with the provisions of Section 6.6 hereof, and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s), using all of the insurance proceeds for such purpose, notwithstanding failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on its Unit, and may be enforced and collected as provided in Section 6.9 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs, attorneys' fees and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

3 Notwithstanding subsection (b) of this Section 12.2 and subject to the approval of at least eighty percent (80%) of the Owners (based on one vote per Unit) and sixty-seven percent (67%) of First Mortgagees and insurers and guarantors of First Mortgages (based on one vote for each First Mortgage held), if applicable, the improvements will not be repaired or reconstructed; in such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of the County of Grand, State of Colorado, setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat, and the Articles of Incorporation and By-Laws of the Association. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, combined with all sale proceeds and all such proceeds shall be divided into portions by the Association, each portion representing one Unit, with the amount of each portion to be allocated to each Unit by the Board of Directors of the Association based on the prorated fair market value of the Units as they existed immediately prior to the damage and destruction, based upon appraisals of the Property prepared by an appraiser certified by the MAI or the reasonable equivalent of such certification. The appraisals shall be distributed to the Owners and shall become final unless, within thirty (30) days after distribution, disapproved by Owners of Units to which at least twenty-five percent (25%) of the votes in the Association were allocated. Each Owner's prorated share of the proceeds shall be determined by dividing the fair market value of such Owner's Unit by the fair market value of all of the Units. In the event the Units cannot be appraised because of the amount of damage or destruction, each Owner's prorated share of the proceeds shall be based upon each Unit's Assessment Percentage.

Such divided proceeds shall be paid into separate accounts. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner(s) and First Mortgagees thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the payment of the liens encumbering the Unit represented by such separate account, as follows:

- (i) For payment of taxes and special assessment liens in favor of any assessing entity;
- (i) For payment of the lien of any First Mortgage;
- (i) For payment of unpaid Association common expense assessments, other assessments, charges and fees, and all costs, expenses and fees incurred by the Association;
- (i) For payment of the customary expenses of sale;
- (i) For payment of junior liens and encumbrances in the order of and to the extent of their priority;
- (i) For payment to creditors of the Association; and
- (i) The balance remaining, if any, shall be paid to the Owner(s) of the Unit.

XII.3 Obsolescence.

1 The Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more of the Units may agree that the Building is obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded in the County of Grand, State of Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid common expense assessment for the renewal and reconstruction of the Building shall be a debt of each Owner and a lien on its Unit which may be enforced and collected as provided in Section 6.9 hereof.

2 Subject to the provisions of Article XV for approval or consent of Owners, First Mortgagees, insurers and guarantors of First Mortgages, if applicable, the Owners may agree that the Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the Office of the Clerk and Recorder for the County of Grand, State of Colorado, a notice setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary or

Assistant Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat, and the Articles of Incorporation and By-Laws of the Association. The sale proceeds shall be paid into separate accounts, each such account representing a Unit as more fully provided in Section 12.2(c) hereof. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner(s) thereof. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 12.2(c) hereof.

XII.4 Condemnation. If at any time or times during the continuance of planned community ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 12.4 shall apply:

1 All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.

2 In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association in accordance with the procedure set forth in Section 12.2(c) hereof; provided, however, that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 12.2(c) hereof.

3 Subject to the provisions of Article XV hereof relating to the approval of Owners, First Mortgagees, insurers and guarantors of First Mortgages, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: as soon as practicable, subject to the following sentence, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (ii) the respective amounts allocated to the taking of or damage to a particular Unit, and to the improvements an Owner has made within its Unit, shall be apportioned to the particular Unit involved, and (iii) the total amount allocated to consequential damages

and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation, using the appraisal procedures described in Section 12.2(c) hereof. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 12.2(c) hereof.

4 Subject to the provisions of Article XV hereof relating to the percentages required for approval or consent of Owners, First Mortgagees, and insurers and guarantors of First Mortgages, if applicable, in the event a partial taking results in the taking of a complete Unit, the Owner(s) thereof shall automatically cease to be member(s) of the Association and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the assessment percentages so that each Unit remaining subject to this Declaration shares the assessments equally and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Units for amendment of this Declaration as provided in Articles XIV and XV hereof. The Condemnation Award as to each such completely taken Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 12.2(c) hereof, except that creditors of the Association shall not receive any share of the proceeds.

5 Any reconstruction and repair necessitated by condemnation shall be governed by the procedures of Section 12.2 hereof.

ARTICLE XIII

BURDENS AND BENEFITS OF DECLARATION

XIII.1 Covenants Running With Property. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

XIII.2 Binding Upon and Inure to the Successors. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transfer- red or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity.

ARTICLE XIV

AMENDMENT OF DECLARATION

XIV.1 Amendment. Except for those matters governed by Section 18.1 hereof, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by instrument approved in writing by not less than sixty-seven percent (67%) of the Members; provided, however, that no amendment shall adversely affect the Declarant's rights hereunder or amend this Section 14.1 without the prior written consent of Declarant.

XIV.2 Recording of Amendments. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the County of Grand, State of Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties or a certification signed by the Secretary of the Association and affixed to such amendment certifying that the required percentage of the Members have approved such amendment and that written evidence of such approvals are contained in the records of the Association.

ARTICLE XV

FIRST MORTGAGEES

XV.1 Member and First Mortgagee Approval. Notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

1 Unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Members and the consent of sixty-seven percent (67%) of the First Mortgagees of Units (based on one vote for each First Mortgage held):

(i) seek to abandon or terminate the Project, whether by act or omission;

(i) change the pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(i) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any property owned by it (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the Project);

(i) partition or subdivide any Unit; or

(i) use hazard insurance proceeds for losses to any part of the Property for other than the repair, replacement or reconstruction of such part of the Property in accordance with the procedures set forth in Section 12.2 hereof, except as may be provided herein in the case of substantial loss to such Units.

2 Unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Members and the consent of fifty-one percent (51%) of the First Mortgagees of Units (based upon one vote for each First Mortgage owned);

(i) add or amend any material provisions of this Declaration, the Articles of Incorporation or By-Laws of the Association, which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

(A) voting rights;

(B) assessments, assessment liens or priority of such liens;

(C) reserves for maintenance, repair and replacement of those elements of the Project which must be maintained, repaired or replaced on a periodic basis;

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

(E) responsibility for maintenance and repair of any portion of the Project;

(F) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(G) boundaries of any Unit;

(H) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

(I) leasing of Units;

(J) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey its Unit;

(K) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

(i) effectuate any decision to terminate professional management and assume self-management of the Association, when professional management has previously been required by any First Mortgagee or any insurer or guarantor of a First Mortgage;

3 Unless it has obtained the consent of at least fifty-one percent (51%) of the First Mortgagees of Units (based upon one vote for each First Mortgage owned):

(i) restore or repair the Project, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Project and the construction of improvements thereon;

(i) terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project.

XV.2 Notice of Action.

1 A First Mortgagee or insurer or guarantor of a First Mortgage shall be entitled to timely written notice of:

(i) any condemnation loss or casualty loss which affects a material portion of the Project or any Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

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

(i) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XV or elsewhere in this Declaration.

2 Upon written request therefor, a First Mortgagee or insurer or guarantor of a First Mortgage shall be entitled to timely written notice of any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or By-Laws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days.

XV.3 First Mortgagee Approval Deemed Obtained. Unless, within thirty (30) days after the mailing of a written request for approval to a First Mortgagee by prepaid certified mail, return receipt requested, a First Mortgagee or insurer or guarantor of a First Mortgage

notifies the Association of its disapproval of any of the matters requiring their approval as provided herein, the approval of such First Mortgagee or insurer or guarantor of a First Mortgage shall be deemed to have been given.

XV.4 Audit. The Association may provide an audited financial statement for the immediately preceding fiscal year to any First Mortgagee of a Unit, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor made by any such First Mortgagee, insurer, or guarantor of such a First Mortgage; provided that if the Association has not previously received an audit for such fiscal year, the Association may require the requesting party to pay the expense of the audit to the Association in advance.

XV.5 Association Books and Records. The Association shall make available to Owners, First Mortgagees of Units and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, books, records and financial statements of the Association. The Association shall make available to prospective purchasers of Units current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, and the most recent annual audited financial statement, if such is prepared, of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

XV.6 Statement of Unpaid Assessments. The Association shall provide to an Owner or its designee or to a holder of a security interest or its designee, upon written request, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) days of receipt of the request and shall be binding on the Association.

XV.7 Exercise of Rights. No First Mortgagee, insurer or guarantor of a First Mortgage shall be denied any of the rights granted in this Article XV because of a failure to comply with the registration requirements of Section 16.4 hereof. It is the intent of this Declaration that the registration rights contained in Section 16.4 are voluntary.

ARTICLE XVI

DECLARANT RIGHTS

XVI.1 Declarant's Special Rights. Declarant hereby reserves the development rights and other special Declarant's rights, as such term is defined in the Common Interest Act, as may be set forth in this Declaration. Such special Declarant rights include, but are not limited to, the right to: (a) create Units; (b) subdivide Units; (c) maintain sales and management offices, model Units, and advertising signs within the Project; (d) use the Common Area to make improvements to the Common Area or Units; (e) the right to appoint Directors and officers of the Association during the period of Declarant's control; and (f) the right complete development of the Project and annex additional property to the Project as provided below. Such special Declarant rights affect all of the Property which is subject to this Declaration. Declarant may assign any such rights to any person who purchases one or more Units for the purpose of constructing Townhomes on such Unit(s) (which person is referred to herein as a "Principal Builder").

XVI.2 Declarant's Rights to Complete Development of Project. No provision of this Declaration shall be construed to prevent or limit Declarant's or a Principal Builder's rights or require Declarant or a Principal Builder to obtain any consent from the Association or any Owner to complete development of property within the boundaries of the Project; to construct or alter Improvements on any property within the Project; to maintain, and authorize others to maintain, model homes, offices for construction, sales purposes, or similar facilities on any property owned by Declarant or owned by such other person, including a Principal Builder, or owned by the Association within the Project; or to post signs or do any other act or thing incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Project. Nothing contained in this Declaration shall limit the right of Declarant or a Principal Builder or require Declarant or a Principal Builder to obtain approvals (including, without limitation, approval of the Association or any Owner): (a) to excavate, cut, fill, or grade any property within the Project or to construct, alter, demolish, or replace any Improvements on any property within the Project; (b) to use any structure on any property owned by Declarant or a Principal Builder as a construction, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Project; (c) to store construction materials, supplies, equipment, tools, waste or other items on property within the Project; or (d) to have tents, shacks, storage sheds or other temporary structures or buildings on property owned by Declarant or a Principal Builder. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

XVI.3 Declarant's Rights Incident to Completion of the Project. Declarant, for itself and its successors and assigns, including a Principal Builder, shall have and hereby retains or is granted a right and easement of ingress and egress over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Project, the sale of the Units, the exercise of Declarant's special rights under Section 16.1 and the exercise of Declarant's development rights; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests or invitees, to or of his Unit or the Common Area. The rights under this section shall terminate upon conveyance by a

Declarant of all Units to Owners other than a Declarant or a Principal Builder or seven (7) years after the recording of this Declaration, whichever occurs first.

XVI.4 Declarant's Rights Incident to Completion of any Warranty Work. Declarant, for itself and its successors and assigns, including a Principal Builder, shall have and hereby retains or is granted a right and easement of ingress and egress over, in, upon, under, and across any Common Area and any Unit as may be reasonably necessary or incidental to the completion of any work required to be performed under any warranty given by Declarant or a Principal Builder to an Owner; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests or invitees, to or of his Unit and Declarant or a Principal Builder shall notify an Owner of the day and approximate time that such work will be performed. The rights under this Section shall terminate upon the expiration of all warranties given by Declarant or a Principal Builder.

XVI.5 Technical Amendment. To the extent allowed by the Common Interest Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, technical amendments to this Declaration and the Articles and/or By-Laws of the Association, at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant or a Principal Builder) or seven (7) years after the date this Declaration is recorded in the County of Grand, Colorado, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of this Declaration.

XVI.6 Special Amendment. To the extent allowed by the Common Interest Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles, and/or By-Laws of the Association, at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant) or seven (7) years after the date this Declaration is recorded in the County of Grand, Colorado, whichever occurs first, in order to comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

XVI.7 Expiration of Special Declarant's Rights. If any right reserved herein by Declarant for the benefit of Declarant is a "development right" or a "special declarant right" as such terms are defined in the Common Interest Act, then such right shall expire in accordance with the provisions reserving the right in question, or if no such expiration is identified, then such right shall expire seven (7) years from the date this Declaration is recorded. Any such unexpired rights may be transferred by Declarant to any person by an instrument executed by Declarant and its transferee, describing the rights transferred and recorded in the Office of the Clerk and Recorder for the County of Grand in compliance with Section 38-33.3-304 of the Common Interest Act.

XVI.8 Right to Complete Development of Project. Declarant reserves the right to develop up to thirty-five (35) Townhome Units within the Project. No provision of this Declaration shall be construed to prevent or limit the rights of Declarant to complete development of the Project or elect not to complete development of any part of the Project.

XVI.9 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, and other purposes incident to development and sale of the Project located in, on , under, over, and across Common Area.

XVI.10 Declarant's Right to Annex Additional Property to Project. Declarant shall have and Declarant hereby reserves the right to, but shall not be obligated to, develop the Project in phases and, as part of such phased development, to annex part or all of any property now or hereafter owned by Declarant, including the property described on Exhibit C, to the Project in phases as may be determined by Declarant, at any time within seven (7) years after the date this Declaration is recorded, so long as Declarant owns any part of the Project or the property described on Exhibit C. Such annexation shall be accomplished in accordance with the Plat of the Property. Within the context of and in accordance with Declarant's general development plan, Buildings built on any property annexed to the Project shall be substantially the same style, quality, size, and cost as Buildings previously constructed in the same portion of the Project or such other style, quality, size, and cost as may be approved by Declarant. Any property added to the Project which is not described in either Exhibit A or C may not exceed ten percent (10%) of the total area of the property described in Exhibits A and C.

Property shall be annexed to the Project by Declarant executing and recording a Notice of Annexation. Such Notice shall describe the real property to be annexed and shall refer to this Declaration, including the date and reception number for the recordation of this Declaration. In the event Declarant exercises this right, any such property annexed to the Project shall be subject to the terms and conditions of this Declaration. Such Notice of Annexation may be recorded as an Exhibit to a Deed conveying one or more Units to another person or entity.

No approval of any other Owners or Mortgagees shall be required for annexation, other than the approval of the Owner of the property to be annexed.

XVI.11 Successor Declarant and Principal Builder. Declarant may designate as a "Successor Declarant" and/or a "Principal Builder" any person which acquires some or all of the Declarant's then remaining interest in the Project or the property described on Exhibit C by an instrument which may be recorded, including designation in a Deed conveying one or more Units to such person or entity. Upon execution and delivery of such instrument by Declarant, the person designated as Successor Declarant therein shall accede to all of the rights and obligations of Declarant under this Declaration with respect to the property acquired by such Successor Declarant and all references to Declarant contained herein

shall be deemed to refer to such Successor Declarant, and the person designated as a Principal Builder shall have all of the rights of a Principal Builder set forth in this Article XVI.

ARTICLE XVII

MISCELLANEOUS

XVII.1 Period of Planned Community Ownership. The planned community ownership created by this Declaration and the Plat shall continue until this Declaration is terminated in any manner provided in this Declaration.

XVII.2 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

XVII.3 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto.

XVII.4 Registration of Mailing Address. Each Owner, First Mortgagee, insurer and guarantor of a First Mortgage, shall register its mailing address with the Association, and notices or demands intended to be served upon any Owner, First Mortgagee, insurer or guarantor of a First Mortgage shall be delivered by messenger or sent by mail, postage prepaid, addressed in the name of such person or entity at such registered address.

XVII.5 Non-Waiver. Failure by the Declarant, the Association, any Owner, First Mortgagee, or other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

XVII.6 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidation of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

XVII.7 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

XVII.8 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

XVII.9 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or By-Laws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and By-Laws of the Association, the Articles of Incorporation shall control.

XVII.10 Counterparts. This Declaration, and any amendments hereto, may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for the recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.

ARTICLE XVIII

PARTY WALLS

XVIII.1 General Rules of Law to Apply. Each Owner shall own in fee simple subject to the provisions of this section the portion of any Party Wall lying within his Lot and, to the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for property damage thereto shall apply to each Party Wall, subject to each Owner's rights to payments for damage or destruction of a Common Wall from insurance obtained by the Association. Each Owner having a Common Wall and the Association are hereby granted mutual reciprocal easements for support, repair, and maintenance of the Common Wall. In the event any Common Wall originally constructed by Declarant shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot and no Owner shall either maintain any action for removal of a Common Wall or any action for any damage because of such protrusion. In the event there is such a protrusion, it shall be deemed that said Owner has granted perpetual easements to the adjoining Owner for continuing use, repair and maintenance of the Common Wall or such protrusion. The foregoing shall also apply to any replacement of any Common Wall if the same is constructed substantially in conformity with original Common Wall constructed by Declarant.

CONSENT AND SUBORDINATION

THIS CONSENT AND SUBORDINATION ("Consent") is made this ____ day of November, 2001, by **CITYWIDE BANKS** ("Lender"), whose address is _____

WHEREAS, Lender has made a loan to **THE VILLAGE CENTER AT WINTER PARK LLC**, a Colorado limited liability company ("Borrower") in the original principal amount of \$5,000,000.00, secured by that certain Deed of Trust, dated October 4, 2000 ("Deed of Trust"), recorded on October 13, 2000, at Reception No. 2000-009591, in the records of the Clerk and Recorder of the County of Grand, State of Colorado, pertaining to the real property described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, in connection with the sale of Lots within the Property, Borrower is recording the Declaration For Red Quill Village Townhomes (the "Townhome Declaration") to which the Consent is attached, and Lender desires to consent to such Townhome Declaration and to subordinate the lien of the Deed of Trust to such Townhome Declaration, as more fully herein set forth.

NOW THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender hereby agrees as follows:

1. Consent. Lender hereby consents to the Townhome Declaration.
2. Subordination. The lien of the Deed of Trust and all other documents now or hereafter evidencing or securing the indebtedness thereunder shall be and hereby is subordinated to all of the terms and provisions of the Townhome Declaration.
3. Force and Effect. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender, persons purchasing Lots that are subject to the Townhome Declaration, and their respective successors and assigns.

EXHIBIT A
TO
DECLARATION
FOR
RED QUILL VILLAGE TOWNHOMES

Legal Description

Lots 21 through 24, inclusive, RED QUILL VILLAGE TOWNHOMES, and Outlots A and B, according to the Final Plat thereof recorded on _____, 2001, at Reception No. _____, in the records of the Clerk and Recorder for the County of Grand, State of Colorado.

EXHIBIT B
TO
DECLARATION
FOR
RED QUILL VILLAGE TOWNHOMES
Plat of Red Quill Village Townhomes

EXHIBIT C
TO
DECLARATION
FOR
RED QUILL VILLAGE TOWNHOMES

Annexable Property

Lots 1 through 20 and 25 through 35, inclusive, according to the RED QUILL VILLAGE TOWNHOMES, according to the final plat thereof recorded on _____, 2001, at Reception No. _____ in the Office of the Clerk and Recorder of the County of Grand, State of Colorado.