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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE WELLINGTON NEIGHBORHOOD**

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE WELLINGTON NEIGHBORHOOD**

THIS DECLARATION is made this 27th day of September, 2000, by Wellington Neighborhood, LLC, a Colorado limited liability company, and Poplarhouse, LLC, a Colorado limited liability company, (hereinafter referred to as "Declarants").

WITNESSETH:

WHEREAS, Declarants are the owners of certain property in the County of Summit, State of Colorado, more particularly described in Exhibit A attached hereto and incorporated herein, which is hereinafter referred to as the "Property";

WHEREAS, Declarants desires to establish a community currently planned and approved to include one hundred twenty-two (122) residential units and eight (8) commercial or retail units, with open space and other common facilities, for the benefit of the owners of property in and residents of that community and to subject the community and the Property to certain covenants, conditions, and restrictions; and

WHEREAS, Declarants has caused to be incorporated under the laws of the State of Colorado, Wellington Neighborhood Association, a nonprofit corporation, for the purposes of exercising the functions as herein set forth.

NOW, THEREFORE, Declarants hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.33-101, et seq. , Colorado Revised Statutes, as it may be amended from time to time (the "Act"); in the event the Act is repealed, the Act, on the effective date of the Declaration, shall remain applicable; and

FURTHER, Declarants hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest in said Property, or any part thereof, and their heirs, successors, and assigns, and shall inure for the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1.1 "Association" shall mean and refer to Wellington Neighborhood Association, a Colorado nonprofit corporation, its successors and assigns.

Section 1.2 "Board of Directors" or "Board" shall mean and refer to the duly elected and qualified members of the Board of Directors of the Association acting in an official capacity.

Section 1.3 "Building" shall mean and refer to all structures containing one (1) or more Units now or hereafter constructed on the Property.

Section 1.4 "Bylaws" shall mean and refer to the bylaws adopted by the Association for administration of the Association, as they may be amended from time to time.

Section 1.5 "Common Elements" shall mean all of the Private Open Space, Private Alleys, Private Easements and all Improvements thereon or thereto.

Section 1.6 "Declarants" shall mean and refer to Wellington Neighborhood, LLC and Poplarhouse, LLC, their successors and assigns.

Section 1.7 "Design Review Committee" or "DRC" means and refers to the design review committee established by the Association in accordance with this Declaration to perform the design review functions with respect to the Property.

Section 1.8 "Easements" shall mean and refer to any easements on the Property or providing access or utilities to the Property, including, but not limited to, the easements depicted and shown on a plat for any portion or all of the Property, as well as the easements created in **Section 8.7** for the benefit of certain Lots.

Section 1.9 "Improvements" shall mean and refer to all improvements now or hereafter constructed on the Property, including, without limitation, Buildings, garages, sheds, decks, fences, walls, alleys, parking areas, driveways, lights, signage, signage lighting, landscaped areas and other related improvements.

Section 1.10 "Lot" shall mean and refer to each separate parcel of property designated on a Plat for any portion of the Property with a number or number and letter, and to each separate parcel of property created by the re-subdivision of any Lot allowed to have constructed on it more than one (1) Unit, and title to which shall be held in fee simple.

Section 1.11 "Master Plan" shall mean and refer to the Master Plan approved by the Town of Breckenridge under Development Permit No. 1999139 and described in the Notice of Approval of Master Plan recorded on the 4th day of February, 2000 at Reception No. 616577 in the records of the Clerk and Recorder of Summit County, Colorado, as such Master Plan may be amended from time to time with the approval of the Town of Breckenridge.

Section 1.12 "Mortgage" shall mean and include all mortgages or deeds of trust which represent a first security interest in one or more Lots, but shall not include mortgages or deeds of

trust junior to a first mortgage or first deed of trust or involuntary liens, such as a mechanic's lien or judgment lien.

Section 1.13 "Mortgagee" shall mean and include the holder of any mortgage representing a first security interest in one or more Lots or the beneficiary of any deed of trust representing a first security interest in one or more Lots, but shall not include the holders of mortgages or beneficiaries of deeds of trust junior to a first mortgage or deed of trust or any claimant of an involuntary lien, such as a mechanic's lien or judgment lien.

Section 1.14 "Occupant" shall mean and refer to any member of an Owner's family, or an Owner's guest, invitee, tenant, employee or licensee, who occupies a Unit or Lot or is on the Common Elements for any period of time.

Section 1.15 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Declarants, or their successors and assigns, with respect to all Lots held in the name of one or both of the Declarants.

Section 1.16 "Party Wall" shall mean and refer to each of the support and division walls, including footings, between certain Units constructed on the Lots.

Section 1.17 "Plat" shall mean and refer to any subdivision plat of or for the Property, including the Preliminary Plat for the Wellington Neighborhood recorded on the 18th day of October, 1999 at Reception No. 606047 and a Resubdivision Plat of Block 3, The Wellington Neighborhood recorded on the 7th day of June, 2000 at Reception No. 623996 in the records of the Clerk and Recorder of Summit County, Colorado, and such amended, additional or supplemental plats or maps as may be filed for the Property or any portion thereof in the Office of the Clerk and Recorder for the County of Summit, State of Colorado.

Section 1.18 "Private Alley" shall mean and refer to any Private Alley designated on a Plat.

Section 1.19 "Private Easement" shall mean and refer to any easement designated as private on a Plat, including, but not limited to, any easement designated as Private Snow Stack Easement.

Section 1.20 "Private Open Space" shall mean all real property and any Improvements thereon or thereto owned by the Association for the common use and enjoyment of the Owners and Occupants. The Private Open Space owned by the Association at the time of the recording of this Declaration includes those areas identified as such on a Plat and shall include any portion of the Property designated as Private Open Space on any amendment, addition or supplement to a Plat, any and all real and personal property owned or controlled by the Association for the common use and benefit of more than one or all of the Owners and Occupants, together with all Improvements thereon, if any. Every Owner, and the successors and assigns thereof, shall be deemed to have

consented to the use and control of said Private Open Space by the Association for the benefit and enjoyment of all Owners and Occupants in accordance with the provisions of this Declaration and any Rules and Regulations of the Association.

Section 1.21 "Project" shall mean the Wellington Neighborhood generally as permitted to be developed or constructed in accordance with the Master Plan.

Section 1.22 "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Property, as such instruments may be amended from time to time.

Section 1.23 "Standards" shall mean and refer to the Wellington Neighborhood Architectural and Development Standards approved and adopted by the Association, as they may be amended from time to time.

Section 1.24 "Unit" shall mean and refer to any individual residential or commercial or retail space constructed within a Building on a Lot.

Section 1.25 "Unrelated Person" shall mean and refer to any person not related to another person by marriage or the legal equivalent thereof or not the legal children of either or both of the persons related by such marriage or the legal equivalent thereof.

ARTICLE II DECLARATION OF PROPERTY RIGHTS

Section 2.1 Development of the Property. The development of the Property, which shall be known as Wellington Neighborhood shall be under the control of the Declarants and shall be carried out generally according to the Master Plan, and the Subdivision Standards and Development Code of the Town of Breckenridge, State of Colorado.

Section 2.2 Plats. Each Plat sets forth the following: (a) the legal description of real property subject to this Declaration; (b) the linear measurements and location of the exterior boundaries of all or a portion of the Property, of all Easements, of the Lots and of the Common Elements and (c) the designation by number, number and letter or other symbol of each Lot.

Section 2.3 Title to Lot. Title to a Lot may be held individually or in any form of concurrent ownership recognized in the State of Colorado. Any contract of sale, deed, lease, deed of trust, mortgage, security interest, will or other instrument affecting a Lot may describe it by its designation as shown on a Plat, followed by the name of the development, and reference to the Plat by which the Lot was created. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Lot and all appurtenant rights, benefits and burdens thereto as created by the provisions of this Declaration, and each such description shall be so construed.

Section 2.4 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable fees for the use of any recreational facility situated on the Common Elements;

(b) the right of the Association to suspend the voting rights and right to use of any Common Elements by an Owner or Occupant for any period during which any assessment against the Lot of such Owner or Occupant remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rules and Regulations;

(c) the rights of the Association to convey or subject Common Elements to a security interest and to grant easements over, under, across and through the Common Elements as provided for in **Section 4.2**;

(d) the right of the Association to close or limit the use of the Common Elements while maintaining, improving, or making repairs therein or thereto.

Section 2.5 Delegation of Use. Any Owner may delegate to his Occupants, in accordance with the Rules and Regulations, his rights of enjoyment of and to the Common Elements and facilities appurtenant to his Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1 Association Membership. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Lot. No Owner, whether one or more persons or entities, shall have more than one membership per Lot owned, but all of the persons or entities owning a Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Lot. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. If title to a Lot is held by more than one individual, by a partnership, association, or other legal entity, or any combination thereof, such individuals or entities shall by written instrument, executed by all such parties and delivered to the Association, appoint and authorize one person or alternate persons to represent the Owners of the Lot. Such representative shall be a person who is an Owner, or a designated board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a manager of a limited liability company Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Owners as a member of the Association, and serve on the Board of Directors if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if the Association has not received the written instrument required above and if only one of the multiple

Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If the Association has not received the written instrument required above and if more than one of the multiple Owners are present, the Association may assume that any Owner who casts the vote allocated to that Lot is entitled to do so unless one or more of the other Owners of the Lot promptly protest to the person presiding over the meeting. If such protest is made, the vote allocated to the Lot may be cast only by written instrument executed by all of the Owners of the Lot who are present at the meeting.

Section 3.2. Voting Rights and Meetings. Each Lot shall have a single vote. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Owners having twenty percent (20%), or any lower percentage specified in the Bylaws, of the total votes in the Association. Not less than fourteen (14) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States Mail to the mailing address of each Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association at which persons entitled to cast twenty percent (20%) of the total votes which may be cast for election of the Board of Directors are present, in person or by proxy at the beginning of the meeting.

Section 3.3 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures, and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the proposed budget adopted by the Board of Directors shall be mailed to the Owners within thirty (30) days after its adoption, along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Owners. Unless at the meeting a majority of the votes of all Owners, rather than a majority of those votes represented and being voted in person or by proxy, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners shall continue to be in effect until such time as the Owners ratify a subsequent budget proposed by the Board of Directors as provided above.

Section 3.4 Owners' and Association's Addresses for Notices. All Owners of each Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Lot shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Lot to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Lot or by such persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot shall be deemed their registered address

until another registered address is furnished as required under this Section. If the address of the Lot is the registered address of the Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit on the Lot or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the following address or such other address as the Board of Directors may designate from time to time by notice to the Owner(s):

Board of Directors
Wellington Neighborhood Association
P.O. Box 4626
Breckenridge, CO 80424

Notices given in accordance with this Section may be delivered or sent: by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one (1) day after deposit with the courier service; or by regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

Section 3.5 Transfer Information. All purchasers of Lots shall provide to the Association written notice of the purchaser's name, address, Lot owned, date of transfer, and name of the former Owner within ten (10) days of the date of transfer. The purchaser shall also provide a true and correct copy of the recorded instrument conveying or transferring the Lot or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Lots. The Association shall have the right to charge the purchaser a reasonable administrative fee for processing the transfer in the records of the Association.

Section 3.6 Declarants' Control of the Association. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarants shall be entitled to appoint and remove the members of the Board of Directors and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. Declarants may voluntarily relinquish such power evidenced by a notice recorded in the Summit County, Colorado real estate records, but, in such event, Declarant may at its option require that specified actions of the Association or the Board as described in the recorded notice, during the period Declarants would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarants before they become effective.

ARTICLE IV ASSOCIATION POWERS AND DUTIES

Section 4.1 Association Management Duties. Subject to the rights and obligations of Declarants and other Owners as set forth in this Declaration, the Association shall be responsible for:

the administration and operation of the Project; the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, including keeping the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, control, operation, maintenance, repair, replacement, and improvement by the Association shall be part of the assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired, or replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of assessments from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement that it provide statements of status of assessments. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

Section 4.2 Association Powers. The Association, subject to the limitations contained in this Declaration and the Act, shall have the powers necessary for the administration of the affairs of the Association and the upkeep of the Common Elements which shall include, but not be limited to, the power to:

- (a) adopt and amend bylaws and Rules and Regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments from Owners;
- (d) hire and terminate a managing agent and other employees, agents, and independent contractors;
- (e) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Owners on matters affecting the Project;
- (f) make contracts and incur liabilities;
- (g) regulate the use, maintenance, repair, replacement and modification of the Common Elements, including, but not by way of limitation, the right to designate, reserve or otherwise restrict the use of Common Elements, such as outdoor parking spaces, in such a manner that they predominately, or exclusively, benefit fewer than all of the Lots;
- (h) cause additional Improvements to be made as part of the Common Elements;

(i) acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property, provided, however, that Common Elements may be conveyed or subjected to a security interest only pursuant to the requirements of the Act, and, provided further, that the Association is not entitled, by act or omission, to seek to abandon, encumber, sell or transfer the Common Elements unless sixty-seven percent (67%) of the Owners give their prior written consent;

(j) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;

(k) impose and receive any payments, fees, or charge for the use, rental, or operation of the Common Elements and for services provided to Owners;

(l) impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessment, and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;

(m) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(n) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;

(o) assign the Association's right to future income, including the right to receive assessments, but only to the extent this Declaration expressly provides;

(p) exercise any other powers conferred by the Act, this Declaration, or the bylaws;

(q) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

(r) exercise any other powers necessary and proper for the governance and operation of the Association.

Section 4.3 Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the bylaws or the Act, the Board of Directors may act in all instances on behalf of the Association; provided, however, the Board of Directors may not act on behalf of the Association to amend this Declaration, to terminate the Project, or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of members of the Board of Directors, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

Section 4.4 Board of Directors Meetings. All meetings of the Board of Directors at which action is to be taken by vote will be open to the Owners, except that meetings of the Board of Directors may be held in executive session(s), without giving notice and without the requirement that they be open to Owners, in the following situations:

- (a) no action is taken at the executive sessions requiring the affirmative vote of the members of the Board of Directors; or
- (b) the action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual Owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board of Directors.

Section 4.5 Right to Notice and Hearing. Whenever the Declaration, Bylaws or Rules and Regulations require that an action be taken after "notice and an opportunity to be heard", the following procedure shall be observed:

- (a) the party proposing to take the action (e.g., the Board of Directors, a committee, an officer shall give notice of the proposed action to all Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action;
- (b) the notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken; and
- (c) the notice shall include a general statement of the proposed action and the date, time and place of the hearing.

At the hearing, the affected person shall have the right personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and to be heard shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

ARTICLE V
ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for Assessments.

(a) Declarants, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) supplementary assessments, and (3) special assessments as such assessments are established and become due as hereinafter provided.

(b) All annual, supplementary and special assessments, together with interest, at the highest lawful rate as provided by the Act, late charges, costs, and reasonable attorney fees:

(1) Shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes, Mortgages and liens and encumbrances recorded before the recordation of this Declaration, and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; and

(2) Shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made to the extent provided by the Act. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes and liens and encumbrances recorded before the recordation of this Declaration, and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.2 Purposes of Assessments. The assessment levied by the Association shall be used exclusively: to promote the health, safety, and welfare of the residents within the Property; for the improvement, maintenance and repair of the Common Elements including landscaped areas and sprinkler or irrigation systems therefor, alleys, parking areas and any other Improvements located therein or thereon; for the maintenance and repair of signs wherever located; and for the selected improvement, maintenance and repair of driveways, sidewalks, paths, fences, yards, landscaped

areas, and other Improvements which may be situated upon the Common Elements, and for such other maintenance, repairs, replacements and services as the Association may determine to be in the best interests of the Owners and undertake.

Section 5.3 Annual Assessments.

(a) Annual assessments shall be made for the purposes of providing funds for the normal operations of the Association including, but not limited to: the purposes set forth in **Section 5.2** above; salaries; costs of operating the Association; insurance premiums for insurance coverage provided for in **Article IX**; management fees; office costs; adequate reserve funds for maintenance, repair and replacement of alleys and those portions of the Common Elements that must be replaced on a periodic basis; Improvements to the Common Elements; amounts necessary to pay deficits or debts incurred by the Association; real estate taxes; betterment or other special assessments, if any; and funds for any other purpose or purposes of the Association provided for herein. The total amount of money required to be raised by annual assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of reserves, and providing a reasonable carry-over reserve for subsequent fiscal years. To determine the amount required to be raised by annual assessments for any fiscal year, the Board shall prepare an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated income and other funds which will be available in that fiscal year, the estimated total amount of money required to be raised by annual assessments to cover such costs and expenses and to provide a reasonable reserve, and the estimated apportionment of the assessments among the Lots. The Board of Directors shall furnish a summary of such budget to the Owners and shall set a date for a meeting of the Owners to consider the ratification of such budget as required by **Section 3.3** above or by the Act. Upon request, the Board will furnish a summary of the most recently adopted budget to any Mortgagee. Based on such budget, the Board of Directors shall determine the amount of the annual assessment per Lot for such fiscal period.

(b) If the Board shall fail to establish an annual assessment for any year, the annual assessment for such year shall remain the same as for the year immediately preceding, except that, upon Approval by the Board or by a majority vote of the entire membership of the Association, such annual assessment may be increased or decreased for the remainder of the assessment year as of the first day of the month following such vote.

(c) Annual assessments shall apply only to Lots now or hereafter subjected to this Declaration and included within the jurisdiction of the Association.

(d) Annual assessments shall be payable in twelve (12) equal monthly installments during each fiscal year.

Section 5.4 Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Board shall revise the annual budget for such fiscal year as provided in **Section 5.3**, or prepare a new budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the ratification of such budget as required by **Section 3.3** above or by the Act. Upon request, the Board will deliver a summary of the revised or new budget to any Mortgagee. Based on such revised or new budget, the Board may make a supplementary assessment for such fiscal year against each Lot.

Section 5.5 Special Assessments. A special assessment for purposes of large or unexpected expenditures that are capital in nature shall be made only upon resolution of the Board of Directors. The Board will deliver to all Owners, by first class mail or otherwise, a summary of the special assessment and shall set a date for a meeting of the owners for purposes of ratification of the special assessment as required by **Section 3.3** above or by the Act as amended from time to time.

Section 5.6 Assessment Reserves. Each Owner, other than Declarants, shall be required to deposit and maintain continuously with the Association an amount as determined by the Board from time to time, but not to exceed three (3) times the amount of the monthly installments of the annual assessment, such reserve amount to be held without interest accruing to the Owner. This amount shall be used by the Association as a reserve for payment of each Owner's assessments and for working capital of the Association. The advance payment shall not relieve an Owner from making the regular payments of the annual assessments, or any portion thereof, as same become due, nor shall the Association be required to deduct from such advance payment sums due for annual assessments by an Owner prior to instituting any proceedings against the Owner for delinquent assessments. In the event the Association shall, pursuant to the purposes of this Article, draw delinquent assessments from the reserve created by such advance payment applicable to an Owner, the Owner expressly agrees, following ten (10) days prior written notice from the Association, to repay such amounts to the Association in order to properly maintain the reserve account, and such amount to be repaid shall have the same status as an annual, supplementary or special assessment for purposes of **Article V** of this Declaration. Upon the sale of a Lot, an Owner shall be entitled to a credit from his grantee for the remaining balance of such reserve account applicable to the Owner's Lot.

Section 5.7 Uniform Rate of Assessments. Annual, supplementary and special assessments for each Lot shall be uniform and shall be determined by dividing the total assessment by the total number of Lots that have received certificates of occupancy from the Town of Breckenridge. No Lot shall be subject to assessment until a certificate of occupancy has been issued by the Town of Breckenridge for that Lot.

Section 5.8 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on the first day of the month

following the issuance of a certificate of occupancy for each such Lot. Written notice of assessments shall be sent to every Owner.

Section 5.9 Certificate of Status of Assessment. The Association shall, upon written demand by an Owner or such Owner's designee, or by a Mortgagee or its designee, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the amount of unpaid assessments currently levied against the Owner's Lot. The statement shall be furnished as provided in the Act. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or installment not paid within fifteen (15) days after the due date shall bear interest from the due date at the highest rate allowed by the Act. In addition, the Board may establish by resolution a reasonable delinquent or late charge for any assessment not paid when due. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the Association's lien against the Lot, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. In addition to any other remedies herein or by law provided, the lien herein established may be foreclosed by an action in the Summit County, Colorado District Court in the manner of foreclosure of common law mortgages, pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption. In any civil action to enforce or recover unpaid assessments, the prevailing party shall be entitled to an award of reasonable attorney fees and all costs of collection or foreclosure.

Section 5.11 Subordination of the Lien Mortgages. Except as provided in **Section 5.1(b)(2)**, the lien for assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a Mortgage of record and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessments, except that sale or transfer of any Lot pursuant to foreclosure of any such Mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve the Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof. Nothing herein shall be deemed to release any owner from his personal obligation to pay any assessment.

Section 5.12 Homestead. The lien of the Association for unpaid assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 5.13 Recording of Liens. The board may immediately record a lien against all Lots owned by an Owner who fails to pay an assessment installment within sixty (60) days of becoming due.

ARTICLE VI DESIGN REVIEW COMMITTEE

Section 6.1 Purpose. Except for the original construction, installation or placement of Improvements, including, but not limited to, Units, garages, landscaping, asphalt, concrete or other surface Improvements for roads, alleys, driveways, walkways, paths and the like by Declarant, any and all exterior modifications, additions, landscaping or other construction, installation or placement of Improvements within the Property, as well as any changes or alterations thereto, shall be subject to review by and consent of the Design Review Committee. The goal of such review and consent shall be to maintain the sense of community and place, to promote the patterns of a traditional community development to establish and preserve a harmonious design for the Project, and to protect and enhance the value of the Property, Lots and Units.

Section 6.2 Appointment of Members. The Association shall establish the Design Review Committee consisting of a minimum of three (3) members. Each member of the DRC shall be appointed by the Board of Directors, and any such member may be removed, with or without cause, at any time, by the Board of Directors of the Association by giving written notice to such member. Members of the DRC may be members of the Board of Directors and the Board of Directors itself may be established as the DRC.

Section 6.3 Authority of Design Review Committee.

(a) Except as provided in **Section 6.1** above, the Design Review Committee shall establish and have the authority to amend and modify rules, regulations and design guidelines (the “Architectural and Development Standards” or “Standards”) governing the design and construction of, as well as improvements to, all structures, landscaping, recreational facilities, exterior lighting, signage and general Improvements proposed within the Property. Any and all such Standards, together with any amendments or modifications thereto, shall be approved by the Board of Directors before taking effect.

(b) Except as provided in **Section 6.1** above, the following, among other things, shall require prior written approval of the DRC: grading and other site preparation; landscaping (including, without limitation, tree cutting and clearing); building construction; sign design and erection; exterior changes to Lots, Units, or other Improvements; modification,

alteration or enlargement of any existing structure; paving and driveways; fencing; exterior lighting; location and maintenance of all structures and Improvements; and changes to the permitted use of any property within the property. In exercising its authority to modify or reject any project proposal, the DRC may, when warranted, consider whether such proposal would cause an unacceptable disturbance of views for other sites or adjacent structures, but such consideration shall weigh heavily the right of each owner to use and develop his or her property in keeping with the standards set forth in this Declaration. The approval of the DRC shall not be required for alterations or remodeling which are completely within a building or structure, do not change the exterior appearance thereof and are not visible from the outside of the structure.

(c) The DRC shall have the power to enforce compliance with the Standards and, in that regard, shall have the authority to levy and collect fines (including incremental fines for repeat offenders), sue for damages or injunctive relief, foreclose to collect such fines or damages or exercise any other enforcement power conferred upon the Association by this Declaration.

Section 6.4 Decisions of Design Review Committee. Decisions made by the DRC shall not be arbitrary or capricious, and shall be presumed to be enforceable in accordance with their terms. Decisions of the DRC shall be conclusive and binding on all interested parties, unless amended or reversed by the Board or the Summit County, Colorado District Court. Any challenge to a decision of the DRC must be filed with the Board of Directors within thirty (30) days of receipt of notice of such decision by the affected party or parties, and the Board shall have the authority to amend or reverse a decision of the DRC. any challenge to the a decision of the Board must be filed with the Summit County, Colorado District Court within thirty (30) days of receipt of notice of such decision by the affected party or parties.

Section 6.5 Inspection of Projects. The DRC, or its designated representatives, may monitor any approved project within the Property to ensure that the construction or work on such project complies with any and all approved plans, the Standards, construction procedures, applicable Rules and Regulations and applicable law. The members of the DRC, or its designated representatives, may enter upon any Lot at any reasonable time or times to inspect the progress, work status, or completion of any project. The DRC may withdraw its approval of any project and require all activity at such project to be stopped if deviations from the approved plans, the Standards, construction practices, applicable Rules and Regulations or applicable law are not corrected or reconciled within ten (10) days after written notification to the Owner specifying such deviations, or within such lesser period of time as is specified by the DRC in such notice to the Owner. The DRC shall have the authority to levy and collect fines or damages for such deviations, including, without limitation, incremental monetary fines for the occurrence of repeated violations.

Section 6.6 Design Review Committee Not Liable. Neither Declarants, the DRC, the Board nor any of their respective officers, directors, employees, members or agents shall be responsible or liable for any defects in any plans or specifications which are submitted, revised or approved

pursuant to this **Article VI**, nor for any defects in construction pursuant to such plans and specification, nor for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the DRC, unless due to the willful misconduct or conscious bad faith of the party to be held liable. In reviewing any matter, the DRC shall not be responsible for reviewing, nor shall its approval of any project be deemed approval of, the project from the standpoint of safety, whether structural or otherwise. Approval of plans and specifications pursuant to this **Article VI** shall not relieve any owner of said Owner's responsibility to comply with any and all applicable governmental laws or regulations.

ARTICLE VII
LIMITATION AND RESTRICTIONS ON BUILDING IMPROVEMENTS

Section 7.1 Permitted Improvements--Single-Family Residential Lots. No Single-Family Residential Lot may contain any Improvements except:

- (a) One (1) Single-family Unit together with one garage of a size sufficient to enclose at least one (1) automobile but not more than two (2) automobiles;
- (b) Such shed or other enclosed area for storage, garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee;
- (c) Such fences, walls, driveways or parking areas as may be approved in writing by the Design Review Committee; and
- (d) Landscaping approved in writing by the Design Review Committee.

Section 7.2 Permitted Improvements - - Duplex Lots. No Duplex Residential Lot may contain any Improvements except:

- (a) One (1) Building containing two (2) attached residential Units each with one garage of a size sufficient to enclose one (1) but not more than two (2) automobiles;
- (b) Such shed or other enclosed area for storage, garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee;
- (c) Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Committee; and
- (d) Landscaping approved in writing by the Design Review Committee.

Section 7.3 Permitted Improvements - Multiple Unit Lots. No Multiple Unit Lots may contain any Improvements except:

(a) One (1) Building containing the number of attached residential or other permitted Units provided for in the Master Plan, with no more than one garage of a size sufficient to enclose one (1) but not more than two (2) automobiles for each residential Unit;

(b) Such shed or other enclosed area for storage, garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee;

(c) Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Committee; and

(d) Landscaping improvements approved in writing by the Design Review Committee.

Section 7.4 Prohibited Improvements. No structures or buildings of a temporary character (except a sales facility or construction trailer for Declarants' use in selling or developing Lots within the Property) nor any mobile home, house trailer, tent, shack, or other such structure shall be placed or used within the Property, either temporarily or permanently, without prior written approval of the DRC which approval may be withheld in the its sole discretion. Notwithstanding the preceding sentence, necessary appurtenances, modest construction trailers and structures of a temporary nature may be used during the period of performance of construction of any Improvements for which necessary government permits and DRC approval have been obtained, provided that (a) the DRC shall approve the location and appearance of such appurtenances, trailers or structures, (b) no overnight occupancy shall be permitted in any such appurtenance, trailer or structure, and (c) such appurtenances, trailers or structures shall be removed from the Property on the earlier of (i) the date that is twelve (12) months after the initial use thereof and (ii) the date of substantial completion of said Improvements.

Section 7.5 Design Review Committee Approval Required. Except as otherwise provided in **Section 6.1** above, each Owner agrees that he or she will not apply to the Town of Breckenridge, or any other governmental authority, for permission to construct Improvements on such Owner's Lot without the prior express written authorization of the Design Review Committee. It shall be an objective of the DRC to prevent the making of Improvements which will materially impair the aesthetic and monetary values of the Property. In reviewing a proposed project, the DRC will consider, among other things, the following factors: (a) the suitability of the Improvements, and the materials of which they are to be constructed; (b) the quality of all materials to be utilized in any proposed Improvements; (c) the effect of any proposed Improvements on adjacent or neighboring property, provided that each Owner is entitled to use and develop his or her Lot in accordance with the standards set forth herein and the Standards; (d) the location and character and method of utilization of all utility services; (e) the impact of any proposed Improvements upon the natural surroundings; and (f) the timely and orderly completion of all such Improvements.

Section 7.6 Town Approval Required. No modification or other improvement to a Lot or Unit that requires the approval of the Town of Breckenridge or other governmental agency shall be made or built until such approval has been obtained.

Section 7.7 Fences. All fences, walls or other barriers on any Lot may be erected in accordance with the Standards and only upon prior written approval of the DRC.

Section 7.8 Paved Areas and Driveway Construction. Private driveways and parking areas within the Property must be paved in accordance with the Standards. Materials used to create special paving patterns are subject to DRC approval.

Section 7.9 Restriction on Signs. Except as otherwise provided in **Section 6.1** above, no signs or advertising devices of any nature shall be erected or maintained on any Property except signs approved by the DRC , signs required by law or legal proceedings, identification signs for work under construction (not to exceed six square feet), temporary signs to caution or warn of danger or Association signs necessary or desirable to give directions or advise of Rules or Regulations. In order to provide consistency with respect to any signage allowed on the Property, the DRC shall have the authority to approve the size and location of signs within the Property and to adopt a standard “for sale” sign to be used by all Owners in connection with any sale of any Lot.

ARTICLE VIII GENERAL RESPONSIBILITIES AND RESTRICTIONS

Section 8.1 Private Alleys and Open Space. The Association is herewith charged with the direct and continuing responsibility for maintenance, repair, replacement, operation, protection, extension and improvement of the Private Alleys and Open Space constituting the Common Elements.

Section 8.2 Exterior Maintenance.

(a) Within Lots. In addition to the responsibility for the Common Elements set forth in **Section 8.1**, the Association may provide irrigation for trees, shrubs and grass within the Lots and maintenance (including snow removal), repair and replacement of driveways and parking areas within the Lots. Any such provision of irrigation, or maintenance, repair and replacement shall be on a uniform basis to all Lots. If the Association does not or ceases to provide irrigation for trees, shrubs and grass or does not or ceases to provide maintenance, repair and replacement of driveways and parking areas, required irrigation, maintenance, repair and replacement shall be the responsibility of each Owner with respect to his Lot.

(b) Owner Negligence. In the event that the need for maintenance, repair or replacement of any Common Element, driveway or parking area is caused through the willful or negligent acts of the Owner or Occupants of a Lot, the cost of such maintenance, repair or replacement shall be added to and become part of the assessment for such Lot.

(c) Painting and Maintenance of Single Family Units. Each Owner of a single family unit shall be responsible for the painting and maintenance of the exterior of such Unit.

(d) Painting and Maintenance of Duplex or Multi-Unit Buildings. The Association shall paint and maintain the exterior of all duplex or multi-unit Buildings, as and when determined to be necessary by the Association or at the request of all of the Owners of all of the Units within such Building. The cost of such repainting or maintenance shall be the responsibility of the Owners of the Units within the Building to be shared generally based on the amount of exterior area of such Unit as determined in its sole discretion by the Board of Directors, and the expenses of such painting charged to each such Owner shall be treated as an assessment collectible in the manner provided for in **Article V** above.

(e) First Owner Landscaping Obligations. Each Owner acquiring a Lot from Declarants shall plant at least twelve (12) one gallon perennials in beds or similar preprepared locations provided by Declarant or, if not provided, in locations approved by the DRC within eight (8) months of the transfer of title to such Lot from Declarant.

(f) Landscaping, Maintenance and Snow Removal By Owners. Each Owner shall be responsible for maintaining all trees, shrubs, grass and other landscaping within his Lot and for removal of snow from: any public walkway along the front of his Lot, whether within the Lot or within a public right-of-way or Private Open Space; the walkway leading up to his Unit from the adjacent right-of-way or Private Open Space; driveways and parking areas within his Lot; and in front of any garage door, except to the extent that the Association elects to undertake any such snow removal for all Lots.

(g) Other Owner Maintenance. Except as otherwise provided herein, each Lot and all other portions of the Property, including all Improvements within the Property, shall be kept and maintained by the Owner(s) thereof in a clean, safe, attractive and sightly conditions and in good repair.

(h) Other Association Maintenance. If any Owner fails to perform any of the responsibilities provided in this Section, the Association may perform such responsibilities and assess the cost thereof against the Lot on for which such responsibilities were performed and collect such amount in the same manner as provided for assessments in **Article 5**.

Section 8.3 Maintenance. To the extent not specifically provided for in **Section 8.2**, maintenance, upkeep and repairs of any Building and/or Unit or other Improvements on or to each Lot, including all utilities, fixtures and equipment installed within any lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot, shall be the sole responsibility of the Owner thereof and not of the Association. In the event an Owner of any Lot shall fail to maintain his Lot or Unit and the Improvements situated thereon in a manner satisfactory to the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said Lot and in said Unit and to repair, maintain, and restore the Lot or Unit and the exterior of the

Unit and any other Improvements erected thereon. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 8.4 Party Walls in Duplex and Multi-Unit Buildings.

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

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Units on either side of such party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either Owner of the Units on either side of the wall may restore it, and the Owner of the Unit on the other side of the wall shall contribute one-half of the cost of restoration thereof, without prejudice, however, to the right of any such owner to call for a larger contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions.

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

Section 8.5 Declarant's Use. Notwithstanding any provisions to the contrary, Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant, to the extent allowed by law, complete any Improvements indicated on any Plats or the Master Plan, exercise any development right pertaining to the Property, and maintain, during the period of construction and sale upon such portion of the Property as Declarants deems necessary, facilities incidental to said construction and sale, including, but without limitation, a business or sales office, construction office, management office, signs advertising the Project and the sale of the Lots and Units, one or more model Units and material storage areas. Additionally, Declarants may use any and all Common Elements for construction staging.

Section 8.6 Restrictions.

(a) Storage of Equipment and Vehicles. All boats, snowmobiles, motorcycles, and other recreational type vehicles must be stored in a garage. Motor homes, travel trailers, construction equipment and other oversized machinery and equipment shall not be stored or parked within the Property. This subparagraph shall not prohibit the storage or parking of construction equipment and machinery within the Property during the period of construction

activities for which all applicable permits and Design Review Committee approval have been obtained, provided that the DRC may require the removal of any such equipment or machinery upon written notice to the Owner of the affected Lot.

(b) No Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, except as otherwise provided herein; (b) refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure; (c) service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure; (d) pipes for water, gas, sewer, drainage or other purposes, wires, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks shall be kept and maintained within an enclosed structure or below the surface of the ground, unless otherwise approved in writing by the Design Review Committee prior to installation, except that satellite reception equipment no larger than eighteen inches (18") in diameter shall be permissible upon written approval of the proposed location thereof by the DRC; and (e) no metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Lot.

(c) Pets. Dogs, cats or customary household pets, not to exceed two (2) pets per Unit, may be kept on a Lot. No wild animal, reptile or bird may be trapped, transported, kept or maintained anywhere within the Property, except for (a) animal control activities of authorized governmental entities and licensed contractors and (b) activities of Owners to trap rodents for the purpose of removal or destruction. No pet may be kept which abnormally or unreasonably interferes with the rights, comforts or convenience of other Owners. For-profit breeding of any animals on the Property is specifically prohibited and no kennels or commercial pet operations are permitted. The Association shall have the authority to include within the Rules and Regulations restrictive controls with respect to pets. All pets must be kept on a leash whenever outdoors unless such pet is within an approved fenced area. Pets must not be noisy or obnoxious. Owners or Occupants shall clean up after pets. If an Owner fails to clean up after a pet or if an Owner allows a pet to run free, or if a pet is noisy or obnoxious, the Board may order removal of such pet or pets on a permanent basis.

(d) Horses. No horses may be stabled or kept anywhere on the Property. Horses may be ridden on public streets and trails and private alleys and may be hitched temporarily in the rear area of a Lot or at any other area designated by the Association for the hitching of horses. Owners or Occupants shall clean up after horses. If an Owner or Occupant fails to clean up after a horse on the Property, the Association may do so and assess the Owner or Occupant for the cost thereof.

(e) Restriction on Parking. Parking of vehicles on the Property or any portion thereof is permitted with respect to a Lot only within a garage or parking spaces constructed

by Declarant with the prior approval of the Design Review Committee, and such parking shall be used only by the Owner or Occupants of such Lot or their guests for the parking of personal vehicles. The Association will have the authority to adopt rules and regulations with respect to restrictions on parking, including, but not limited to parking within any private parking easement or private snow stack easement designated on a Plat. No vehicles of any kind may be parked within the Private Alleys.

(f) Unrelated Persons. No Unit may be occupied by more than three (3) Unrelated Persons, except that any Unit including four bedrooms may be occupied by no more than four Unrelated Persons.

(g) No Short Term Rental. No Unit or Lot may be rented for a period of less than six (6) months, and all Units shall be rented pursuant to a written lease providing for a term of at least six (6) months and allowing for termination within less than six (6) months only for cause.

(h) Use. No Unit or Lot shall be used, and no Improvements shall be hereafter constructed or converted for a use other than as approved by the Town of Breckenridge and the Design Review Committee. No secondary or accessory unit or apartment may be created in any Unit or on any Lot, except as approved by the Town of Breckenridge and the DRC. All uses undertaken shall be wholly compatible with the structure of the Building, the surroundings, and the topography of the land, as well as the legitimate and proper uses of the Property.

(i) Landscaping. Except as required of Declarant pursuant to development permits issued by the Town of Breckenridge with respect to the subdivision or resubdivision of the Property or the construction of Buildings, no tree may be cut down and no planting or gardening shall be done, and no fences, hedges, walls, or other structures shall be erected or maintained in or upon any Lot except as approved by the DRC.

(j) Utilities. An Owner shall not do any act or work that will impair any Easement or hereditament, nor perform any act nor allow any condition to exist which will adversely affect the other Lots or the Owners thereof.

(k) General Restrictions. By way of enumeration, and not limitation, the use of all the Lots, Buildings and other Improvements located thereon shall be subject to the following restrictions and limitations:

(1) No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any Lot without prior written approval and of the DRC, except that satellite reception equipment as is allowed pursuant to **Subsection 8.5(b)**;

(2) No wood burning device (stove or fireplace) shall be installed in any Unit. Only natural gas fireplaces may be installed in the Units.

(3) Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the Property. The Association shall have the right to remove such refuse piles or other unsightly objects or materials at the expense of the Owner responsible therefor, and such entry shall not be deemed a trespass if three (3) days prior notice has been given to the Owner and the Owner failed to remove same during said three (3) day period;

(4) No free-standing mailbox or newspaper box shall be erected unless approved by the DRC;

(5) Trash, garbage or other waste shall be disposed of in a sanitary manner pursuant to Rules and Regulations adopted by the Association. All trash containers must be kept within an enclosed structure at all times except on trash pickup day. All containers must have animal proof lids securely in place when outside. The foregoing notwithstanding, the Association may contract with one company for trash removal for all Lots, and adopt Rules and Regulations pertaining to trash removal which shall be binding upon all Owners.

(6) No tanks of any kind, either elevated or buried shall be erected, placed or permitted upon the Property;

(7) No exterior clotheslines shall be attached to any Unit or permitted or maintained on the Property;

(8) All furniture, tools, and other personal property shall be kept and maintained in neat condition and in such a manner so that, to the extent possible, the same are concealed from view from any other Lot;

(9) No house trailer, motor home, manufactured housing, recreational vehicle, boat, camper, trailer, snowmobile, motorcycle, commercial vehicle, tent, shack, detached garage, barn, or outbuilding of any kind shall be permitted to be kept on the Property;

(10) No junk vehicle, inoperative vehicle, unlicensed vehicle, or vehicle under repair shall be parked, stored or maintained on the Property for more than two (2) days; and

Section 8.7 Easements.

(a) Northerly Four Foot Easements. The northern four feet (4') of each Lot within Blocks 3 and 4 and such other blocks as Declarant may designate in an amendment or supplement to this Declaration shall be subject to an easement in favor of the adjacent Lot to the north allowing the Owner of such adjacent Lot to use the entirety of said northerly four feet (4') as a part of his Lot, which shall include the right to fence such northerly four feet (4') subject to the approval of the Design Review Committee.

(b) Platted and Recorded Easements. Each Lot and the Common Elements shall be subject to: all easements and rights of way as shown on any Plat; all recorded easements and licenses appurtenant to or included in the Property or to which any part of the Property may become subject as set forth on attached Exhibit B; easements and encroachments created by construction, including those for overhangs, roofs, patios and fences; easements for utility and utility services as designed or constructed by the Declarants; easements for vehicular and pedestrian access to and from each Unit, over, across and through driveways as constructed by Declarants on Common Elements or on any other Lot, whether located completely or partially on or shared with such adjacent Lot, and for parking of vehicles, provided that no Owner, tenant, guest or other invitee shall have any right to park any vehicle on any portion of any driveway in a location which hinders vehicular access to or from the Unit or garage located on any other Lot; easements for maintenance of all Improvements and utility services; and easements for access by the Association to effect the purposes set forth in these Declarations, including, but not limited to, the promotion of the health, safety, and welfare of the residents of the Property.

(c) Declarants Easements. Declarants shall have an easement over the Lots and Common Elements for the purpose of completing the full and final development and improvement of the Property.

(d) Association Easements. The Association, the Board of Directors, and their agents shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Lots and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration and under the Act. The Association easements shall include, without limitation, an easement for snow stack extending into any lot adjacent to a Private Alley a distance of twenty feet (20') in from the property line of such Lot adjacent to such Private Alley provided that such easement shall exist only where no garage or paved parking areas, or other Improvements approved by the DRC, have been constructed.

(e) Appurtenance of Easements. The easements, uses and rights herein created for an owner shall be appurtenant to the Lot of that Owner and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and reserve the Easements, uses

and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

(f) Restoration of Easements. All easement areas, whether in favor of the Declarants, the Association or an Owner shall be kept and maintained in a neat and clean condition in accordance with applicable approvals of the DRC during all use thereof and, upon completion of use thereof, all easement areas shall be restored to the condition they were in prior to use or the condition required by DRC approvals or this Declaration, all at the expense of the Declarants, the Association or the Owner using such easement.

Section 8.8 Enforcement of Covenants. The Association and/or any Owner are herewith vested with authority by Declarants and are assigned the rights of Declarants to enforce, to the same extent as Declarants might, any and all covenants running with the Property, or with other property in which Declarants, its successors or assigns, has an interest or right of enforcement, including, but not limited to, all covenants contained herein, or in other protective covenants recorded against the Property, if any; provided that the authority and rights herein granted and assigned shall not preclude Declarants from proceeding to enforce any or all of said covenants, whether or not the Association is acting in that regard. The Declarants's right of enforcement shall not be greater than that of the Association or any owner and shall cease when the Declarants no longer owns any portion of the Property. In any civil action to enforce a covenant created herein, the prevailing party shall be entitled to an award of reasonable attorney's fees.

ARTICLE IX INSURANCE AND INDEMNIFICATION

Section 9.1 Insurance. All insurance, other than title insurance, carried in connection with Common Elements or Improvements thereon or thereto shall be governed by the provisions of this **Article IX.**

Section 9.2 Insurance Requirements Generally.

(a) Insurance to be Obtained. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado.

(b) Waiver of Subrogation. To the extent possible, the casualty, property, and liability insurance shall: (1) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be canceled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and (iii) provide that the policy of insurance shall not be terminated, canceled or substantially modified without at

least thirty (30) days prior written notice to the Association; and provide as required by Section 313 of the Act.

(c) Deductible. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of the holders of any first mortgage or deeds of trust. Any loss falling within the deductible portion of a policy shall be borne by the Association. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by assessments and otherwise as elsewhere provided in this Declaration.

Section 9.3 Casualty Insurance. The Association or its agents shall obtain and maintain at all times insurance coverage or the nearest equivalent available for the full replacement cost of any Improvements and personal property of the Association.

Section 9.4 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Lots and any other area the Association is required to restore, repair, or maintain pursuant to this Declaration with bodily injury and property damage liability limits not less than One Million Dollars (\$1,000,000.00) for each occurrence and not less than Two Million Dollars (\$2,000,000.00) aggregate. Each policy shall include a "severability of interest" endorsement.

Section 9.5 Insurance by Owners. Each Owner shall obtain property, hazard and liability insurance for the Owner's Lot and Unit, and shall provide copies of such insurance policies to the Association, if the Association so requests. The Association may establish minimum coverage amounts for such insurance. At all times each Owner shall also be responsible for obtaining insurance for all of the Owner's personal property and furnishings, and, except as provided by this Article, the Association shall not be responsible for providing any such insurance. Nothing herein shall be construed as requiring any owner to obtain any insurance whatsoever as to his own personal property.

Section 9.6 Directors and Officers Legal Liability Insurance and Fidelity Insurance. The Association shall maintain adequate directors and officers legal liability insurance and fidelity coverage, if available, to protect against dishonest acts on the part of the directors, officers, trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as obligee, (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation, and from and definition of "employee" or similar expression, and (iv) provide that they may not be canceled or substantially modified

(including cancellation for nonpayment of premiums) without at least fifteen (15) days written notice to the Association.

Section 9.7 Other Insurance. The Association may obtain such additional insurance coverage against such additional risks or for such higher limits as it may determine to be appropriate.

Section 9.8 Indemnification.

(a) Indemnification. The Association shall indemnify each director, officer, property manager, their respective successors, personal representatives and heirs, against all losses, costs and expenses, including attorney's fees, reasonably incurred by them in connection with any action, suit or proceeding to which they may be made a party by reason of their position with or employment by the Association, except as to matters as to which such person(s) shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director, officer or property manager in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director, officer or property manager is entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a common expense, provided, however, that nothing in this Section shall be deemed to obligate the Association to indemnify any member or Owner who is or has been a director, officer or property manager of the Association with respect to any duties or obligations assumed or liabilities incurred by him as a member or Owner under and by virtue of this Declaration.

(b) No Indemnification of Independent Contractors. No independent contractor, including a director, officer, member or owner providing services to the Association as an independent contractor, shall be protected by this indemnification provision, any indemnification provision provided for in the Bylaws of the Association or any insurance policy obtained by the Association in relating to any such indemnification provision.

ARTICLE X
CONDEMNATION

Section 10.1 Consequences of Condemnation. If at any time or times pursuant to this Declaration, all or any part of the Common Elements shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu or in avoidance of such condemnation, the provisions of this Article shall apply.

Section 10.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association, which may distribute the Condemnation Award to the owners or apply such proceeds to the payment of the expenses of the Association in lieu of such distribution. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Disbursement of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 10.3 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association and such Owner's interest shall thereupon terminate.

ARTICLE XI SPECIAL CONSIDERATIONS

Section 11.1 Sixty-Seven Percent Vote. Except as otherwise provided herein, unless at least sixty-seven percent (67%) of the Owners of the Lots (based upon one vote for each Lot) on the Property have given their prior written approval, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements for the benefit of the Lots, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause;
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or an Owner;
- (c) by act, or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Buildings or Units, or the maintenance of the Common Elements;
- (d) fail to maintain fire and extended coverage on insurable Common Elements and other property of the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs;
- (e) use hazard insurance proceeds for losses to any Private Open Space or other property for other than the repair, replacement or reconstruction of such property.

Section 11.2 Majority Vote. In all other respects, the affirmative vote of a majority of the membership represented at a meeting of the Association and entitled to vote on the subject matter

shall be the act of the Association unless another number is specifically designated as the required affirmative vote by the specific provision of this Declaration under consideration.

ARTICLE XII RIGHTS OF MORTGAGEES

Section 12.1 Payment of Taxes. Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Element and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Element and the Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. Upon request, the Association shall execute an agreement with a Mortgagee evidencing its entitlement to such reimbursement.

Section 12.2 Priority to Proceeds. Neither the Owner, nor any other party shall have priority over any rights of the Mortgagee of a Lot in the case of a distribution to such owner of insurance proceeds or any Condemnation Award for losses to or a taking of Common Elements.

Section 12.3 Notification of Default. A Mortgagee is entitled, upon request, to written notification of any default in the performance by an Owner of any obligation under this Declaration which is not cured within sixty (60) days.

ARTICLE XIII SPECIAL DECLARANTS RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 13.1 Special Declarants Rights. Declarants hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarants Rights"). Declarants's Special Declarants Rights include the following:

(a) Completion of Improvements. The right to complete the Improvements constituting the Project and indicated on the Master Plan including the right to store materials and place construction trailers and a temporary construction office on the Property and to make such other use of the Property as may be reasonably necessary to complete construction of the Project.

(b) Sales Management and Marketing. The right to maintain a sales office and model, or combined sales office and model, and the right to maintain signs advertising the Project within the Common Elements until Declarants has conveyed all of its Lots. The sales office and model, or combined sales office and model, may be in any one of the Units, which may or may not be specified on a Plat. Declarants shall have the right to relocate the sales office, model or combined sales office and model from one Unit to another.

(c) Construction Easements. The right to use easements through the Common Elements for the purpose of making Improvements within the Project.

(d) Control of Association and Board of Directors. The right to appoint or remove any officer of the Association or any member of the Board of Directors, to the extent permitted under the Act and provided for in the Bylaws.

(e) Signs. The right to maintain signs on the Common Elements advertising the Project.

Section 13.2 Additional Reserved Rights. In addition to the Special Declarants Rights set forth in **Section 13.1** above, Declarants also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right from time to time to establish, by dedication or otherwise, and to vacate, utility and other easements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, driveways, and to create other reservations, exceptions, and exclusions for the benefit of and to serve the Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Owners and/or the Association.

(c) Easement Rights. The rights to an easement over, across and through the Common Elements as may be reasonably necessary for the purpose of discharging Declarants's obligations arising under this Declaration or the Act.

(d) Other Rights. The right to exercise any Additional Reserved Rights created by any other provision of this Declaration.

Section 13.3 Limitations on Special Declarants Rights and Additional Reserved Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarants, any Special Declarants Rights or Additional Reserved Rights may be exercised by the Declarants anywhere on the Property or within the Improvements so long as the Declarants (a) owns any Lot; (b) holds a security interest in any Lot; or (c) for twenty-five (25) years after the date of recording this Declaration, whichever eventuality grants to Declarants the longest possible period for exercise of Special Declarants Rights and Additional Reserved Rights.

Section 13.4 Interference with Special Declarants Rights. Neither the Association nor any Owners may take any action or adopt any Rule and/or Regulation that will interfere with or diminish any Special Declarants Rights or Additional Reserved Rights without the prior written consent of

the Declarants. In the event any controversy, dispute, or litigation involving exercise of the reserved Special Declarants Rights by Declarants, this Declaration shall be interpreted so as to give the Declarants the broadest, most flexible Special Declarants Rights allowed by the Act.

Section 13.5 Rights Transferable. Any Special Declarants Rights or Additional Reserved Rights created or reserved under this Article for the benefit of Declarants may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarants and the transferee.

ARTICLE XIV RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS

Section 14.1 Expansion Rights. Declarant expressly reserves the right to subject all or any part of the Property designated as Lots 1, 2, 3 and 4, Block 6 on the Preliminary Plat described in **Section 1.17** (the "Expansion Property") to the provisions of this Declaration upon the substantial completion of the Improvements on the Expansion Property. The consent of the existing Owners, Mortgagees or other holders of Security Interests shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

Section 14.2 Development and Withdrawal Rights. Declarant expressly reserves the right to create Lots, Common Elements and Easements to combine Lots and to subdivide Lots, on all or any portion of the Expansion Property reserved for future development in this Declaration or on a Plat. Declarant may exercise any or all of the expansion and development rights reserved in this Declaration at any time with respect to any part or all of the Expansion Property. No assurances are made with respect to the boundaries of any parcel that may be developed or the order in which any parcel may be developed. Exercise of any expansion and development right with respect to any one parcel does not require the exercise of any such rights on any other parcel of the Expansion Property. No assurances are made, however, that any further development will occur. If all or any part of the Expansion Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Expansion Property that is reserved for future development in this Declaration or on a Plat from the Project by recording a document signed by the Declarant and evidencing such withdrawal in the Summit County, Colorado real estate records; provided, however, that no portion of such property may be withdrawn after a Lot in that portion of the property that has been added has been conveyed to a purchaser. The Declarant alone is liable for all expenses in connection with Expansion Property, except for expenses for maintenance and preservation of any Common Elements or Easements, or other property rights thereon created for the benefit of, and added by grant or otherwise to, the Project, which expenses shall be a common expense included within the assessments made by the Association.

Section 14.3 Amendment of this Declaration. If Declarant elects to submit the Expansion Property, or any part thereof, to this Declaration, Declarant shall record an Amendment to this Declaration containing a legally sufficient description of the Expansion Property, or the part thereof

so added. The Amendment to this Declaration may contain such other provisions, restrictions and requirements relating to the Expansion Property as Declarant deems necessary or desirable.

Section 14.4 Supplement to the Map. Declarant shall, contemporaneously with the filing of the Amendment of this Declaration, file an amended or supplemental Plat showing the location of the Lots created on the Expansion Property, and substantially conforming to the requirements contained in this Declaration.

Section 14.5 Interpretation. Upon the recording of an Amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Project as expanded. The Expansion Property, or any part thereof, shall be added to and become a part of the Property for all purposes. All conveyances of Lots after such expansion shall be effective to, transfer rights in all Common Elements, as expanded. Reference to this Declaration in any instrument shall be deemed to include all Amendments to this Declaration without specific reference thereto.

Section 14.6 Maximum Number of Units. The maximum number of Lots in the Project shall not exceed three hundred (300) or, if allowed by the Act, the maximum number of Lots allowed by any governmental entity having jurisdiction over the Property and the Expansion Property, pursuant to any development plan for the Property and the Expansion Property. Declarant shall not be obligated to expand the Project beyond the number of Lots initially submitted to this Declaration.

Section 14.7 Construction Easement. Declarant expressly reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas, in Lots and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion thereof. All work may be performed by Declarant without the consent or approval of any Owner or Mortgagee. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property for the purpose of furnishing utility and other services to Buildings and Improvements to be constructed on any of the Expansion Property reserved for future development. Declarant's reserved construction easements include the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Common Elements.

Section 14.8 Reciprocal Easements. If all or any part of the Expansion Property is not submitted to this Declaration, and until such time as such submission should occur if at all:

- (a) the owner(s) of the Expansion Property shall have whatever easements are necessary or desirable, if any, for access, utility services, repair, maintenance and emergencies over and across the Property; and

(b) the Owner(s) in the Project shall have whatever easements are necessary or desirable, if any, for access, utility services, repair, maintenance and emergencies over and across the Expansion Property.

Declarant shall prepare and record in the Summit County, Colorado real estate records whatever documents are necessary to evidence such easements, if any, and shall amend Exhibit B to this Declaration to include reference to the recorded easement(s). Such recorded easements shall specify that the owners of the Expansion Property and the Owners in the Project, shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s) so created. Preparation and recordation by the Declarant of any easement pursuant to this Section shall conclusively determine the existence, location, extent and validity of the reciprocal easements that are necessary or desirable and as contemplated in this Section.

Section 14.9 Termination of Expansion and Development Rights. The expansion and development rights reserved to Declarant, for itself, its successors and assigns, shall expire twenty-five (25) years after the date of recordation of this Declaration in the Summit County, Colorado records, unless the expansion and development rights are reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board of Directors may impose on the subsequent exercise of the expansion and development rights by Declarant as provided by the Act.

Section 14.10 Interference with Expansion or Development Rights. Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that will interfere with or in any manner limit or diminish any expansion or development right reserved by this **Article XIV** without the prior written consent of the Declarant. In the event of any controversy, dispute or litigation involving exercise of the reserved expansion or development rights by Declarant, this Declaration shall be interpreted so as to give the Declarant the broadest, most flexible expansion or development rights allowed by the Act.

Section 14.11 Transfer of Expansion or Development Rights. Any expansion or development rights created or reserved under this **Article XIV** for the benefit of the Declarant may be transferred to any person by an instrument describing the rights so transferred and recorded in the Summit County, Colorado real estate records. Such instrument shall be executed by the transferor Declarant and the intended transferee.

ARTICLE XV GENERAL PROVISIONS

Section 15.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any provision, covenant, or restriction herein contained shall in no event

be deemed a waiver of the right to do so thereafter. In any civil action to enforce any provision, covenant, or restriction, the prevailing party shall be entitled to an award of reasonable attorney fees.

Section 15.2 Severability. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in force and effect.

Section 15.3 Term. This Declaration, and any amendments or supplements thereto, and all covenants, conditions and restrictions provided for therein, shall run with the land and be binding and in full force and effect in perpetuity, subject to the termination provisions hereof and of the Act.

Section 15.4 Declaration Amendment. Declarants, for a period of five (5) years from the date of recording of this Declaration, may make such minor and technical amendments to this Declaration as Declarants deems appropriate. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration, and any amendment or supplement thereto and any Plat, may be amended by a vote or agreement of Owners having at least sixty-seven percent (67%) of the votes in the Association. Any amendment by such a vote of the Owners may be executed by an officer of the Association designated for that purpose or, in the absence of a designation, by the president of the Association. The provisions of this Section notwithstanding, no amendment or termination shall be effective during the period of Declarants' control of the Association as provided for in Section 3.6 and no amendment may be made which will interfere with or diminish any of Declarants rights as provided for in **Articles XIII and XIV** hereof.

Section 15.5 Plat Amendment. Declarants reserves the right to amend the Plat described herein so as to make minor adjustments to property lines of property then owned by Declarants as Declarants deems appropriate for a period of five (5) years from the date such Plat is recorded.

Section 15.6 Assignability. Declarants's right hereunder shall be freely assignable.

Section 15.7 No Partition or Subdivision. The Common Elements shall remain undivided, and no owner, other person, or other entity shall bring any action for partition, division, or subdivision of the Common Elements. Similarly, no action shall be brought for partition or subdivision of a Lot or Unit between or among the owners thereof. Each Owner hereby expressly waives any and all such rights of partition or subdivision he may have by virtue of his ownership of a Lot. This Section shall not, however, be interpreted to prevent adjustments to Lot lines agreed to by the Owners of the Lots affected.

IN WITNESS WHEREOF, Wellington Neighborhood, LLC has caused its name and seal to be hereunto signed and affixed by its duly authorized officer this 27th day of September, 2000.

POPLARHOUSE, LLC,
a Colorado limited liability company

WELLINGTON NEIGHBORHOOD, LLC,
a Colorado limited liability company

By: /s/ David G. O'Neil
David G. O'Neil, Manager

By: /s/ David G. O'Neil
David G. O'Neil, Manager

STATE OF COLORADO)
)ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 27th day of September, 2000 by David G. O'Neil as Manager of Wellington Neighborhood, LLC, a Colorado limited liability company, and as Manager of Poplarhouse, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 5/4/02

/s/ Sharyn F. Steiner
Notary Public

EXHIBIT A

Legal Description of Property

TRACTS A, B, C, D, E AND G ACCORDING TO THE PRELIMINARY PLAT
FOR THE WELLINGTON NEIGHBORHOOD RECORDED OCTOBER 18, 1999
AT RECEPTION NO. 608047, COUNTY OF SUMMIT, STATE OF COLORADO

EXHIBIT B

Easements and Licenses of Record

Easement for ingress and egress as set forth in instrument recorded March 06, 1973, under Reception No. 132224.

Easement granted to Joseph S. Miller for access, by instrument recorded September 20, 1973 under Reception No. 136898.

Easement granted to Allen Whisler and Kahra Whisler, for access, by instrument recorded September 20, 1973 under Reception No. 136901.

Terms, conditions and provisions of easement recorded May 24, 1979 under Reception No. 191507.

Terms, conditions and provisions of easement recorded under Reception No. 171334.

Easement and notes as shown on Plat recorded October 18, 1999 under Reception No. 608047 and Plat recorded June 7, 00 under Reception No. 623996.