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DECLARATION
FOR
MILLER RANCH TOWNHOMES



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Page: 1 of 56
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Teak J Simonon Eagle, CO 133 R 281.00 D 0.00



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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 IMPOSITION OF COVENANTS	1
Section 1.1 Purpose	1
Section 1.2 Intention of Declarant	1
Section 1.3 Development and Use	1
Section 1.4 Declaration	1
Section 1.5 Master Declaration	1
Section 1.6 Covenants Running With the Land	2
Section 1.7 Affordable Housing Restrictions	2
ARTICLE 2 DEFINITIONS	2
ARTICLE 3 NAME, DIVISION INTO RESIDENTIAL UNITS	6
Section 3.1 Name	6
Section 3.2 Association	6
Section 3.3 Number of Units	7
Section 3.4 Identification of Units	7
Section 3.5 Description of Units	7
ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS	7
Section 4.1 The Association	7
Section 4.2 Transfer of Membership	8
Section 4.3 Membership	8
Section 4.4 Declarant Control	8
Section 4.5 Owner's and Association's Address for Notices	8
ARTICLE 5 MAINTENANCE, PARTY WALLS, LANDSCAPING AND SPECIAL EASEMENT	9
Section 5.1 Maintenance	9
Section 5.2 Special Easement	10
Section 5.3 Maintenance Contract	10
Section 5.4 Owner's Responsibility	10
Section 5.5 Owner's Failure to Maintain or Repair	10
Section 5.6 Party Walls	11
ARTICLE 6 ASSOCIATION DUTIES	11
Section 6.1 Association Management Duties	11
Section 6.2 Replacement Reserve	12
Section 6.3 Owner's Negligence	12
Section 6.4 Delegation of Management and Maintenance Duties	12
Section 6.5 Acquiring and Disposing of Personal Property	12
Section 6.6 Cooperation with District, Master Association and Other Associations	12



857582

Page: 2 of 55
11/13/2003 11:49P

Tesla J. Kimpton Eagle, CO 103 R 261.00 D 0.00

Section 6.7	Issuance of Rules and Regulations	13
Section 6.8	Enforcement of Association Documents	13
Section 6.9	Identity of Executive Board and Managing Agent	13
Section 6.10	Payments to Working Capital Account	13
Section 6.11	Implied Rights	13
Section 6.12	Books and Records of the Association	13
Section 6.13	LIMITATION OF LIABILITY OF ASSOCIATION	14
ARTICLE 7 MECHANIC'S LIEN		14
Section 7.1	No Liability	14
Section 7.2	Indemnification	14
Section 7.3	Association Action	14
ARTICLE 8 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT		15
Section 8.1	Owner's Easements	15
Section 8.2	Recorded Easements	15
Section 8.3	Declarant's Rights Incident to Construction and Marketing	15
Section 8.4	Other Easements	15
Section 8.5	Reservation for Expansion	16
Section 8.6	General Maintenance Easement	16
Section 8.7	Association as Attorney-in-Fact	17
Section 8.8	Delegation of Use	17
Section 8.9	Reservation of Easements, Exceptions and Exclusions	17
Section 8.10	Emergency Access Easement	17
Section 8.11	Governmental Requirements	17
Section 8.12	Drainage Easement	17
Section 8.13	Declarant Easements	18
ARTICLE 9 INSURANCE AND FIDELITY BONDS		18
Section 9.1	General Insurance Provisions	18
Section 9.2	Cancellation	19
Section 9.3	Policy Provisions	19
Section 9.4	Insurance Proceeds	19
Section 9.5	Association Policies	19
Section 9.6	Insurer Obligations	20
Section 9.7	Repair and Replacement	20
Section 9.8	Common Expenses	20
Section 9.9	Fidelity Insurance	20
Section 9.10	Worker's Compensation Insurance	21
Section 9.11	Other Insurance	21
Section 9.12	Insurance Obtained by Owners	21



857582

Page: 3 of 56

11/13/2003 11:49p

Task 2 Sienston Exple. CO

133

R 281.00

D 0.00

ARTICLE 10 ASSESSMENTS.....	22
Section 10.1 Obligation.....	22
Section 10.2 Purpose of Assessments	23
Section 10.3 Budget.....	23
Section 10.4 Annual Assessments.....	23
Section 10.5 Due Dates for Assessment Payments	23
Section 10.6 Commencement of Assessments	24
Section 10.7 Apportionment of Annual Assessments	24
Section 10.8 Special Assessments.....	24
Section 10.9 Default Assessments.....	24
Section 10.10 Lien for Assessments.....	25
Section 10.11 Effect of Nonpayment of Assessments.....	25
Section 10.12 Successor's Liability for Assessments	26
Section 10.13 Waiver of Homestead Exemption, Subordination of Association's Lien for Assessments.....	26
Section 10.14 Statement of Status of Assessments	27
ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT.....	28
ARTICLE 12 DAMAGE OR DESTRUCTION.....	29
Section 12.1 The Role of the Executive Board	29
Section 12.2 Estimate of Damages or Destruction.....	29
Section 12.3 Repair and Reconstruction	29
Section 12.4 Funds for Repair and Reconstruction	29
Section 12.5 Disbursement of Funds for Repair and Reconstruction	29
Section 12.6 Decision Not to Rebuild Common Area	30
Section 12.7 Repairs.....	30
Section 12.8 Notice of Damage or Destruction.....	30
ARTICLE 13 CONDEMNATION.....	30
Section 13.1 Rights of Owners	30
Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction ..	30
Section 13.3 Complete Condemnation	31
Section 13.4 Notice of Condemnation.....	31
ARTICLE 14 EXPANSION AND WITHDRAWAL.....	31
Section 14.1 Reservation of Expansion and Withdrawal Rights.....	31
Section 14.2 Expansion of Definitions.....	32
Section 14.3 Declaration Operative on New Units	32
Section 14.4 Effect of Expansion	33
Section 14.5 Termination of Expansion and Development Rights	33



857582

Page: 4 of 56

11/13/2003 11:49:56

Tsak J Simonton-Eagle, CO

193

R 201.00

D 0.00

ARTICLE 15 USE RESTRICTIONS	33
Section 15.1 Use of Units	33
Section 15.2 Conveyance of Units	33
Section 15.3 Use of Common Area and Exterior Maintenance Area	34
Section 15.4 Prohibition of Increases in Insurable Risks and Certain Activities	34
Section 15.5 Restriction on Signs	34
Section 15.6 Declarant's Exemption	34
ARTICLE 16 OTHER ASSOCIATION MATTERS	35
Section 16.1 Master Association Matters	35
Section 16.2 Enforcement of Master Association Documents	35
Section 16.3 Architectural Control	35
Section 16.4 General Reservation	36
Section 16.5 No Use of Trademark	36
Section 16.6 Limit on Timesharing	36
Section 16.7 Acknowledgements	36
ARTICLE 17 DECLARANT'S RIGHTS REGARDING TRANSFER	37
ARTICLE 18 ALTERNATIVE DISPUTE RESOLUTIONS	37
Section 18.1 Agreement to Avoid Litigation	37
Section 18.2 Claims	37
Section 18.3 Mandatory Procedures	38
Section 18.4 Claim for Damages	40
ARTICLE 19 MORTGAGEE'S RIGHTS	40
Section 19.1 Introduction	40
Section 19.2 Percentage of Eligible Mortgage Holders	40
Section 19.3 Title Taken by Mortgagee	40
Section 19.4 Distribution of Insurance or Condemnation Proceeds	41
Section 19.5 Audited Financial Statement	41
Section 19.6 Audited Financial Statement	41
Section 19.7 Notice of Actions	42
Section 19.8 Notice of Objection	42
ARTICLE 20 MISCELLANEOUS	43
Section 20.1 Restriction on Declarant Powers	43
Section 20.2 No Right of First Refusal	43
Section 20.3 Term	43
Section 20.4 Amendment	43
Section 20.5 Unilateral Amendment Rights Reserved by Declarant	43
Section 20.6 Recording of Amendments	44
Section 20.7 Enforcement	44
Section 20.8 Severability	44



857582

Page: 5 of 58

11/13/2023 11:49P

Teak J. Blanton Eagle, CO 130 R 281.00 D 0.00

Section 20.9	Conflict of Provisions.....	44
Section 20.10	Nonwaiver	44
Section 20.11	Number and Gender	44
Section 20.12	Captions.....	45
Section 20.13	Exhibits.....	45



857582

Page: 8 of 56
11/13/2003 11:49

Task J Simonon Eagle, CO 133 R 281.00 D 0.00

DECLARATION
FOR
MILLER RANCH TOWNHOMES

THIS DECLARATION FOR MILLER RANCH TOWNHOMES (this "Declaration") dated as of October 28, 2003, shall be effective upon recordation and is made by BERRY CREEK LIMITED LIABILITY CO., a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1
IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a residential planned community (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, within the Property.

Section 1.2 Intention of Declarant. Declarant desires to (a) protect the value and desirability of the Project, (b) further a plan for the improvement, sales, and planned community ownership of the Project, (c) create a harmonious and attractive residential development within the Project, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of units in the Project.

Section 1.3 Development and Use. The Project initially consists of one (1) Unit (hereinafter defined), and the Project may in the future consist of a maximum of forty-nine (49) Units. No additional Units may be established on the Property by subdivision of existing Units or otherwise.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property, the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.5 Master Declaration. The Property is subject to the Master Declaration for Miller Ranch, recorded Exhibit 31, 2003 under Reception No. 856076 in the Office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time.



Section 1.6 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

Section 1.7 Affordable Housing Restrictions. In order to provide housing for permanent residents of the area, all of the Units will be restricted in the manners as set forth in the Affordable Housing Restrictions (defined below).

ARTICLE 2 DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings (with capitalized terms not otherwise defined herein having the meanings as defined in the Master Declaration):

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such Act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

Section 2.2 "Affordable Housing Restrictions" shall mean the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing recorded October 24, 2003, under Reception No. 855028, in the real estate records of the Clerk and Recorder of Eagle County, Colorado and the Miller Ranch Housing Guidelines, each as supplemented and amended from time to time.

Section 2.3 "Agency" means any agency or corporation such as the Department of Housing and Urban Development, Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or Federal Housing Administration that purchases, guarantees or insures residential mortgages.

Section 2.4 "Annual Assessment" means the Assessment levied annually.

Section 2.5 "Articles" mean the Articles of Incorporation for the Association, currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

Section 2.6 "Assessments" means the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.7 "Association" means Miller Ranch Townhome Association, a Colorado nonprofit corporation, and its successors and assigns. The Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by this Declaration or by the



Articles or Bylaws. The Association is a Project Association as defined under the Master Declaration.

Section 2.8 "Association Documents" means this Declaration, the Articles and the Bylaws, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.9 "Backyard Area" means the landscaping and improvements (other than the Residence) located on a Lot to the rear of the Residence and enclosed by the Master Association Fence.

Section 2.10 "Buildings" means the buildings (including all fixtures and improvements contained within it) in which Units are located. Each of the Buildings may hereinafter be individually referred to as a "Building."

Section 2.11 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.12 "Common Area" means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis, including, without limitation, that property designated as the "Common Area" on the Plat. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

Section 2.13 "Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area and the Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.14 "Declarant" means Berry Creek Limited Liability Co., a Colorado limited liability company, and its successors and assigns. No party other than Berry Creek Limited Liability Co., a Colorado limited liability company shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Eagle County, Colorado, a written assignment from Berry Creek Limited Liability Co., a Colorado limited liability company of all or a portion of such rights and privileges.

Section 2.15 "Declaration" means this Declaration for Miller Ranch Townhomes, together with any supplement or amendment to this Declaration, recorded in the Office of the Clerk and Recorder of Eagle County, Colorado.

Section 2.16 "Director" means a member of the Executive Board.

Section 2.17 "Default Assessment" means the Assessments levied by the Association pursuant to Section 10.8 below.



Section 2.18 "Eligible Mortgage Holder" means a First Mortgagee or any insurer or guarantor of a First Mortgage, or any Agency, which has notified the Association in writing of its name and address and its status as the holder, insurer or guarantor of a First Mortgage. Such notice shall be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 19 below, regardless of whether such Article requires notice to such party.

Section 2.19 "Executive Board" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Project and all improvements on the Property.

Section 2.20 "Expansion Property" means the real property located in Eagle County, Colorado, more particularly described on Exhibit B attached hereto and incorporated herein, which Declarant may subject to this Declaration by one or more duly recorded Supplemental Declarations.

Section 2.21 "Exterior Maintenance Area" means the exterior of any Residence, and the land surrounding the Residence including any exterior driveways, sidewalks and parking spaces serving the Unit, all as more fully described in Section 5.1 below. However, the Exterior Maintenance Area shall expressly exclude the Backyard Area and the Landscaping Maintenance Area (as defined in the Master Declaration).

Section 2.22 "First Mortgage" means an unpaid and outstanding Mortgage which secures financing for the construction and development of the Project or which encumbers a Unit, and which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.23 "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.24 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Project.

Section 2.25 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Project.

Section 2.26 "Master Association" means the Miller Ranch Property Owners' Association, created by the Master Association Documents.

Section 2.27 "Master Association Documents" means the Master Declaration and the articles of incorporation and bylaws of the Master Association, and any procedures, rules and regulations, and policies adopted under such documents by the Master Association.



Section 2.28 "Master Declaration" means the Master Declaration for Miller Ranch, recorded October 31, 2003, under Reception No. 856676 in the Office of the Clerk and Recorder of Eagle County, Colorado, as further amended and supplemented from time to time.

Section 2.29 "Maximum Rate" shall mean three (3) percentage points greater than that rate of interest charged by a bank (designated from time to time by the Executive Board) to the best commercial customers of the designated bank for short-term loans and identified as the "prime rate" by such bank as of the date on which such Maximum Rate is imposed with respect to any amount payable under this Declaration, or if less, the maximum rate allowed by law, including the maximum rate set forth in Section 38-33.3-315(2) of the Act.

Section 2.30 "Member" shall mean every person or entity who holds membership in the Association.

Section 2.31 "Miller Ranch" means all of the real property in Eagle County, Colorado, subject to the Master Declaration.

Section 2.32 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.33 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.34 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.35 "Party Wall" means any common wall adjoining two or more Residences and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within a common wall.

Section 2.36 "Plat" means the subdivision plat(s) recorded with respect to the Property that creates any Units, and all supplements and amendments thereto.

Section 2.37 "Project" shall mean the planned community created by this Declaration, consisting of the Property, the Units, and any other improvements constructed on the Property and as shown on the Plat.

Section 2.38 "Property" means and refers to that certain real property described on Exhibit A attached to this Declaration.

Section 2.39 "Residence" means all improvements, including the residence and any detached garage, constructed on and as part of any Unit.



Section 2.40 "Sharing Ratio" means the percentage allocation of Assessments to which an Owner's Unit is subject as set forth in Exhibit C attached hereto and made a part hereof.

Section 2.41 "Special Assessment" means an assessment levied pursuant to Section 10.8 below on an irregular basis.

Section 2.42 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant.

Section 2.43 "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 14 below.

Section 2.44 "Supplemental Plat" means a supplemental plat of the Project which may depict a part of the Expansion Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 14 below.

Section 2.45 "Unit" means a plot of land subject to this Declaration and designated as a "Lot" on any Plat of the Property recorded by Declarant in the Office of the Clerk and Recorder of Eagle County, Colorado, together with all improvements thereon, including a Residence, and all easements and rights-of-way appurtenant thereto. Unit is also referred to as a Unit under the Act.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE 3 NAME, DIVISION INTO RESIDENTIAL UNITS

Section 3.1 Name. The name of the Project is Miller Ranch Townhomes. The Project is a Planned Community pursuant to the Act.

Section 3.2 Association. The name of the association is Miller Ranch Townhome Association. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

Section 3.3 Number of Units. The number of Units initially submitted to this Declaration is one (1). Declarant reserves the right for itself and any Successor Declarant to expand the Property to include up to a maximum of forty-nine (49) Units, and to expand the Common Area.

Section 3.4 Identification of Units. The identification number of each Unit is shown as its lot number on the Plat.



Section 3.5 Description of Units.

3.5.1 Each Unit shall be inseparable and may be leased, devised, or encumbered only as a residence.

3.5.2 Title to a Unit may be held individually or in any form of concurrent ownership recognized in Colorado; provided that such ownership is consistent with the Affordable Housing Regulations. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Unit in which they own an interest.

3.5.3 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Lot number, Miller Ranch, County of Eagle, State of Colorado, according to the Plat thereof recorded January 15, 2003 at Reception No. 826378, and any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and any recorded amendment and supplement hereto (with applicable recording information inserted herein).

3.5.4 Each Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2).

3.5.5 No Owner of a Unit shall bring any action for partition or division of the Common Area.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

Section 4.3 Membership. The Association shall have one (1) category of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an



interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Unit owned. The Association shall not have a vote with respect to any Unit which may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions of the Bylaws. All members of the Association shall be entitled to vote on all matters affecting the Project.

Section 4.4 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board 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. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

Section 4.5 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners: Executive Board

Miller Ranch Townhome Association
143 E. Meadow Drive
Suite 360
Vail, Colorado 81657



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

ARTICLE 5 MAINTENANCE, PARTY WALLS, LANDSCAPING AND SPECIAL EASEMENT

Section 5.1 Maintenance. In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

5.1.1 Residence Exteriors. Subject to the insurance responsibilities set forth in Article 9 below, the Association shall maintain the exterior of all Residences, which shall include but shall not be limited to, painting and/or staining of the exterior (including decks and porches), painting and/or staining of all walls, fences and gates and roof maintenance and repair (including snow and ice removal), unless any of the foregoing are covered by an Owner's insurance. Notwithstanding the foregoing, the Master Association shall maintain the Landscaping Maintenance Area and the Master Association Fence and each Owner shall maintain the Backyard Area appurtenant to such Owner's Unit. The Association shall have the sole discretion to determine the time and manner in which its maintenance shall be performed as well as the color or type of materials used to maintain the Residences. The Owner shall be responsible for window washing and the repair or replacement of broken window panes. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

5.1.2 Landscaping, Sidewalks and Driveway. The Association shall maintain landscaping of the Units, if any, located within the Exterior Maintenance Area (except for the Landscaping Maintenance Area for which the Master Association is responsible as set forth in the Master Declaration and the Backyard Area for which the applicable Owner is responsible) and landscaping within any Common Area. Maintenance of the landscaping shall include, but not be limited to, maintaining lawns, trees and shrubs. The Association shall also maintain all sidewalks and driveways within the individual Lots of the Project (and the maintenance provided under this Section shall include snow removal services). The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine.

5.1.3 Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Unit to the Unit Owner, and the Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.



Section 5.2 Special Easement. The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 5.

Section 5.3 Maintenance Contract. The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Area and Exterior Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 5.4 Owner's Responsibility. Except as set forth below, an Owner shall be responsible for maintaining all portions of the Owner's Unit including the Backyard Area. Notwithstanding the foregoing sentence, the Owner shall not be responsible for maintaining the Exterior Maintenance Area, unless modified by Section 5.1.3. The Association shall have the right and power to prohibit on a Unit any storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area or remove or alter the fence, landscaping or irrigation system without the express consent of the Executive Board, as more fully discussed in Section 16.3.

Section 5.5 Owner's Failure to Maintain or Repair. In the event that a Unit and the improvements and landscaping thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the improvements or landscaping on the Unit that are insured by the Owner are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

Section 5.6 Party Walls.

5.6.1 The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the Residences sharing such Party Wall and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, for Party Wall purposes, including maintenance, repair, and inspection. No Owner shall



alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when erected.

5.6.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the then Owners of the Residences sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient and fire rating, and such Owners, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such negligent party shall bear the cost of repair and reconstruction to the extent such Owner's negligence caused such damage.

5.6.3 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient and fire rating, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support, the sound transmission coefficient or the fire rating of the Party Wall.

5.6.4 Declarant hereby grants to the Association and the Executive Board and their respective representatives a nonexclusive easement to enter upon and use the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform under this Declaration.

ARTICLE 6 ASSOCIATION DUTIES

Section 6.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and the Exterior Maintenance Area (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 10.3 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

Section 6.2 Replacement Reserve. The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of any portion of the Common Area or the Exterior Maintenance Area that must be maintained, repaired and/or replaced on a periodic basis. If not already held by the Association, the reserve account(s) shall be transferred to the Association for deposit to a segregated fund upon the termination of the period of Declarant control.



Section 6.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area or the Exterior Maintenance Area is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with Sections 10.9, 10.10, and 10.11 below.

Section 6.4 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration.

Section 6.5 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

Section 6.6 Cooperation with Districts, Master Association and Other Associations. The Association may contract or cooperate with any metropolitan or special district, the Master Association, or with other homeowners' associations or entities within Miller Ranch as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants, and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 6.7 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use of the Common Area, which rules and regulations shall be consistent with any applicable requirements of the Master Association Documents and shall be substantially consistent with the rights and duties established in this Declaration. The Executive Board shall provide thirty (30) days' written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 6.8 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.



Section 6.9 Identity of Executive Board and Managing Agent. From time to time, but no less frequently than annually, the Association shall deliver to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 6.10 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect and deposit into a segregated fund an amount equal to three (3) months of regular Assessments at the time of the sale of each Unit. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area and the Exterior Maintenance Area for the benefit of the members of the Association, subject to the budget approval procedures of Section 10.3 below. Declarant is prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits during the period of Declarant control. Such payments to this fund shall not be considered advance payments of Annual Assessments. The unused portion of the working capital contribution shall be returned to each Owner upon the sale of his Unit, provided that the purchaser of the Unit has contributed the required working capital to the Association.

Section 6.11 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association or reasonably necessary to effectuate any such right or privilege.

Section 6.12 Books and Records of the Association. The Executive Board or the Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Area and the Exterior Maintenance Area and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees, as well as insurers or guarantors of First Mortgages, may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board, including, but not limited to, the Association's audited financial statements for the immediately preceding fiscal year, if required, which must be made available within one hundred twenty (120) days of the Association's fiscal year end, at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles and Bylaws, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner, prospective purchaser of a Unit, or Mortgagee and any insurer or guarantor of a First Mortgage at all times during convenient weekday business hours.

Section 6.13 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA AND THE EXTERIOR MAINTENANCE AREA, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 9, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA OR THE EXTERIOR



MAINTENANCE AREA TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

ARTICLE 7 MECHANIC'S LIENS

Section 7.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Unit other than such Owner's Unit with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given), the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.3 Association Action. Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Unit or Units.

ARTICLE 8 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

Section 8.1 Owners' Easements. Every Owner has a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Unit subject to the provisions contained herein. Every Owner shall have a right of access to and from his Unit over and across those portions of the other Units and/or the Common Area on which driveways are located.



Section 8.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration, which easements and licenses of record are set forth on the attached Exhibit D. In addition, the Property is subject to those easements set forth in this Article 8.

Section 8.3 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonable necessary or incident to the complete construction and sale of the Project, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or family members, guests, tenants, or invitees of any Owner. Declarant, for itself and its successors and specific assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices, or model residences so long as Declarant, or any Successor Declarant, continues to own, lease, or control a Unit. The use by Declarant of any Unit as a model residence, office, or other use shall not affect the Unit's designation on the Plat as a separate Unit.

Section 8.4 Other Easements.

8.4.1 Each Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration including, without limitation, any patios and decks encroaching into the Common Area. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

8.4.2 Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Units.

8.4.3 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Units and the structures and improvements situated thereon, including the Party Walls, for ingress and egress, installation, replacing, repairing and maintaining a common landscape irrigation system, if any, and all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for Declarant or the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above,



across and under the roofs and exterior walls of the improvements, all in a manner customary for such lines and equipment in the area surrounding the Property, subject to approval by the Association as to locations.

8.4.4 The Units may have common access roads and/or driveways upon certain Units serving more than one Unit, and there is granted hereby a non-exclusive easement to the Owners of Units served by any such road or driveway for ingress and egress purposes over and across those portions of the Common Area and such Units which are used as a common road or driveway. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Units and parking areas.

8.4.5 The declarant under the Master Declaration and the officers, agents, employees and independent contractors of the Master Association shall have a nonexclusive easement to enter upon the Property for the purpose of performing or satisfying their respective obligations as set forth in the Master Declaration and other Master Association Documents.

Section 8.5 Reservation for Expansion. Declarant hereby reserves to itself and the Association and/or for Owners in all future phases of the Project an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, irrigation, and ingress to and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property, and for use of the Common Area as may be reasonably necessary or incident to the construction of improvements on the Units or other improvements on the Property or the Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Project by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Office of the Clerk and Recorder, Eagle County, Colorado.

Section 8.6 General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 5 and Article 6 above, including the right to enter upon any Unit for the purpose of performing maintenance to the Exterior Maintenance Area, as set forth in Article 5 and Article 6 above.

Section 8.7 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally. If requested to do so by the Association or Declarant,



each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

Section 8.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.9 Reservation of Easements, Exceptions, and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, and conduit installation areas, to create other reservations, exceptions, and exclusions with respect to the Common Area for the best interest of all the Owners and the Association and to assign its right to future income, including the right to receive Assessments.

Section 8.10 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 8.11 Governmental Requirements. Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any government agency. Such easements shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

Section 8.12 Drainage Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property. Owners are prohibited from in any way modifying the grading and/or drainage pattern on such Owner's Unit without the prior approval of the Executive Board and of the Master Association.

Section 8.13 Declarant Easements. Declarant reserves unto itself, its successors, assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any Unit, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time.

ARTICLE 9 INSURANCE AND FIDELITY BONDS

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available, and in compliance with requirements of any insurer or guarantor of a First Mortgage, if applicable:

9.1.1 Property insurance on the Common Area for special form covered causes of loss; except that the total amount of insurance must be not less than the full insurable



replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies. Such insurance shall cover all insurable improvements located on or constituting part of the Common Area, if any.

9.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area, the Exterior Maintenance Area and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and the Exterior Maintenance Area. The insurance shall cover claims of one or more insured parties against other insured parties.

9.1.3 Physical damage insurance for all Units, except that each Owner may be required to obtain and maintain such insurance pursuant to Section 9.12 below. Such insurance shall cover the full replacement value of the Units, less applicable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of those items normally excluded from property policies. The insurance coverage shall include, unless the Executive Board directs otherwise, fixtures and carpet initially installed in the Units and replacements thereof up to the value of those initially installed by Declarant, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by an Owner, all such insurance covering the interests of the Owners and their Mortgagees as their respective interests may appear. The Executive Board may obtain this insurance upon such terms and conditions as it deems advisable. Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the Executive Board may, but shall not be obligated to, obtain an appraisal from an insurance company, or such other source as the Executive Board may determine, of the then-current replacement cost of the Residences (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured.

9.1.4 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must provide that:



9.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

9.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

9.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

9.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 9.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 9.7 Repair and Replacement.

9.7.1 Any portion of the Property for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.7.1.1 The regime created by this Declaration is terminated;



9.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.7.1.3 Eighty percent (80%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild and such decision is approved in writing by the design review board of the Master Association; or

9.7.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

9.7.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Project and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to the Sharing Ratios of all the Units.

Section 9.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9.9 Fidelity Insurance. Blanket fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association. The Association must also secure and maintain at all times, or require to be secured or maintained at all times by any parties handling the collection, deposit, transfer, or disbursement of Association funds, fidelity insurance. Such bonds shall be in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Managing Agent, as the case may be, at any given time during the term of each bond, provided however that in no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer, or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of the premium) without at least ten (10) days' prior written notice to the Association and any Eligible Mortgage Holders.



Section 9.10 Worker's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 9.12 Insurance Obtained by Owners. In the event that the Association is unable to obtain or maintain physical damage insurance for the Residences as set out in Section 9.1.3 upon terms deemed reasonable to the Executive Board, each Owner shall obtain and at all times maintain physical damage insurance as described in Section 9.1.3 at such Owner's expense, covering the full replacement value of such Owner's Residence. The beneficiaries under such policy shall be that Owner, the Association and any and all other Owners within the same residential structure as the Owner obtaining such physical damage insurance. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit.

Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's personal property and personal liability insurance in a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Area.

The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.



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Page: 27 of 56
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ARTICLE 10 ASSESSMENTS

Section 10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Unit, is deemed to covenant to pay to the Association:

10.1.1 the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and the Exterior Maintenance Area and to perform the functions of the Association;

10.1.2 Special Assessments for capital improvements and other purposes as stated in this Declaration; and

10.1.3 Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing his Unit. Pursuant to the Master Association Documents, the Association is empowered and authorized, and upon the request of the Master Association shall be required, to levy and collect from Owners of Units within the Association the assessments owing to the Master Association as part of the Association's own assessment procedures and to promptly remit such assessments collected by the Association to the Master Association. In the event that such assessments collected and remitted to the Master Association by the Association are less than the entirety of the assessments owed by the Owners as a result of the failure of any of such Owners to pay such assessments to the Association, the Association is required to provide a written statement of such delinquent Owners to the Master Association concurrently with submission of the assessments to the Master Association.

Section 10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Project, and for the improvement and maintenance of the Common Area and the Exterior Maintenance Area, and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 10.3 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting sixty percent (60%) or more of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote



of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Common Area and the Exterior Maintenance Area; care of grounds within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area and Exterior Maintenance Area on a periodic basis, as needed. The Association is empowered to pledge its Annual Assessments or any other of its receivables as collateral securing any loan(s) or other obligations of the Association. The Association is authorized to pledge its Annual Assessment or any of its other receivables as collateral securing loans or other obligations of the Association.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the Annual Assessments and any Special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 10), on the first day of each month. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the amount outstanding or such other charge as the Executive Board may fix by rule from time to time as provided in the Bylaws to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period.

Section 10.6 Commencement of Assessments. All of the Units shall be allocated full Assessments, subject to the provisions of Section 10.8 below, no later than sixty (60) days after Declarant conveys the first Unit in the Project to a purchaser unless otherwise permitted by the Act.

Section 10.7 Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units on the basis of the Sharing Ratios in effect on the date of assessment, as set forth on Exhibit C to this Declaration. The formula for the Sharing Ratio is an allocation among all Units based on their relative square footage.



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Page: 29 of 56
11/13/2003 11:49A

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133

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Section 10.8 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or Exterior Maintenance Area or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.7, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 10.3 above provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.3 prior to levying a Special Assessment. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 10.9 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 10.10 Lien for Assessments. The Annual, Special, and Default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 10.11 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply in accordance with Section 38-33.3-316 of the Act. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws and Section 10.11 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or a Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Prior to recording such lien, the Master Association shall notify the Eagle County Housing Division. Any such lien notice or Eagle County notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 10.11 Effect of Nonpayment of Assessments. If any Annual, Special, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after



the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid monthly or other installments of the Annual Assessment or any Special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages and in accordance with the Affordable Housing Restrictions. Upon foreclosure, if title to a Unit should vest in a Non-Qualified Buyer (as defined in the Affordable Housing Restrictions), an immediate sale to a Qualified Buyer in accordance with the Affordable Housing Restrictions and the most current guidelines shall be required.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of Annual and Special Assessments and all Default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 10.5 above, any accrued interest under this Section 10.11, and the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, and to convey or otherwise deal with the Unit acquired in such proceedings.

First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 10.12 Successor's Liability for Assessments. Notwithstanding the Association's perpetual lien upon a Unit for such Assessments (which shall continue subject to the provisions of Section 10.15 below), successors in interest to the fee simple title of a Unit, shall not be personally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments,



857582

Page: 31 of 55
11/13/2003 11:49a
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133

interest, late charges, costs, expenses, and attorneys' fees against such Unit, arising prior to the date that a successor owner takes title to a Unit, unless assumed by such successor in interest or otherwise required by applicable law.

Section 10.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

10.13.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

10.13.2 To the extent permitted under the Act, after taking into account the superiority of a certain amount of assessment liens permitted by Section 38-33.3-316(2) of the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

10.13.3 Any lien created by the Master Declaration.

With respect to the foregoing subpart 10.13.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 10.13 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.12 above and except as provided in Section 10.14 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.



Section 10.14 Statement of Status of Assessments. Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to a Managing Agent, the Executive Board, or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

10.14.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

10.14.2 The amount of the current installments of the Annual Assessment and the date that the next installment is due and payable;

10.14.3 The date of the payment of any installments of any Special Assessments then existing against the Unit; and

10.14.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.



ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. Except as provided in Section 12.6, in the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.8, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of



857582

Page: 34 of 56
11/13/2003 11:43A
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repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.6 Decision Not to Rebuild Common Area. If the Association obtains the approval of Owners representing at least eighty percent (80%) of the total allocated votes in the Association and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, and all directly adversely affected Owners agree in writing, not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, and if such decision is approved in writing by the design review board of the Master Association, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 12.7 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Plat of the Project and the original plans and specifications for the Project, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

Section 12.8 Notice of Damage or Destruction. In the event that any portion of the Project is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least eighty percent (80%) of the votes of all of the Owners and Eligible Mortgage



Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, shall otherwise agree and such decision shall be approved in writing by the design review board of the Master Association, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.5 above.

Section 13.4 Notice of Condemnation. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE 14 EXPANSION AND WITHDRAWAL

Section 14.1 Reservation of Expansion and Withdrawal Rights.

14.1.1 Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to include up to a maximum of forty-nine (49) Units, and to expand the Common Area.

14.1.2 Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the Project and the provisions of this Declaration.

14.1.3 Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the Project and from the provisions of this Declaration any real property subjected to this Declaration by a duly recorded Supplemental Declaration and, if necessary, Supplemental Plat prior to the time of a sale of a Unit comprising a portion of the real property described in said Supplemental Declaration and, if necessary, Supplemental Plat.

14.1.4 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder for Eagle County, Colorado, of one or more Supplemental Declarations and, if the real property



857582

Page: 36 of 58
11/13/2003 11:48A

being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, of a Supplemental Plat depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

Section 14.2 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units comprising part of the Property plus any additional Units added by a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

Section 14.3 Declaration Operative on New Units.

14.3.1 The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the Supplemental Declaration(s) describing the Expansion Property and, if necessary, Supplemental Plat(s) of public record in the Office of the Clerk and Recorder of Eagle County, Colorado.

14.3.2 It is contemplated that additional Units on the Property will be committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to construct any additional Units. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

14.3.3 No rights of any character of any owner in units in the Expansion Property shall attach until a Supplemental Declaration and, if necessary, Supplemental Plat is filed of record annexing the units constructed in such area to the Project. Upon the recording of such Supplemental Declaration and, if necessary, Supplemental Plat, the Units located in the area shall be deemed to be governed in all respects by the provisions of this Declaration.

Section 14.4 Effect of Expansion.

14.4.1 Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Sharing Ratio applicable to a Unit shall automatically be reduced to a



fraction, the numerator of which shall be the square footage of the applicable Unit and the denominator of which shall be equal to square footage of all Units then subject to this Declaration. Such reduction in the Sharing Ratio appurtenant to a Unit shall be reflected and set forth in the Supplemental Declaration.

14.4.2 Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original plat or is the owner of a Unit constructed in the Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

Section 14.5 Termination of Expansion and Development Rights. The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire seven (7) years from the date of recording this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act or Eagle County Land Use Regulations, or unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

ARTICLE 15 USE RESTRICTIONS

Section 15.1 Use of Units. All Units shall be used for dwelling and lodging purposes only, in conformity with the Affordable Housing Restrictions and all zoning laws, ordinances, and regulations, and may be used for home occupations only to the extent permitted by applicable zoning codes and the Affordable Housing Restrictions. Notwithstanding the foregoing, Units owned or controlled by Declarant may be used as a sales office, management office, rental management office, storage facility, and/or such other uses as may be permitted under the Act.

Section 15.2 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 15.3 Use of Common Area and Exterior Maintenance Area. There shall be no obstruction of the Common Area or the Exterior Maintenance Area, nor shall anything be kept or stored on any part of the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association.

Section 15.4 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Area, or any part thereof,



which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Area shall be committed by any Owner, or by any member of the Owner's family, or by any guest, lessee, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, lessees, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a Default Assessment as provided in Sections 10.9, 10.10, and 10.11 above.

Section 15.5 Restriction on Signs. Except as otherwise provided in Section 15.6, no signs or advertising devices of any nature shall be erected or maintained on any Unit or the Common Area, in such a manner as to be visible from any other Unit or the Common Area except signs approved by the Executive Board, political signs, signs required by applicable law or legal proceedings, signs which are required by law to be allowed, identification signs for work under construction (as approved by the Executive Board), temporary signs to caution or warn of danger or the Association signs necessary or desirable to give directions or advise of rules or regulations. Permitted signs shall be subject to reasonable regulation by the Executive Board.

Section 15.6 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights (as that term is defined in the Act); or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Miller Ranch; provided, however, that Declarant shall comply with all applicable laws in the exercise of the rights in this Section.

ARTICLE 16 OTHER ASSOCIATION MATTERS

Section 16.1 Master Association Matters. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Project is subject to the Master Association Documents, (b) by virtue of his ownership of a Unit, he has become a member of the Master Association, (c) such Owner is subject to any rules and regulations of the Master Association, and (d) pursuant to the Master Association Documents, an Owner is a member of a specified category of the Master Association and is entitled to all of the benefits and subject to all of the burdens of such membership. Each Owner, by accepting a deed to a Unit, acknowledges that he has received a copy of the Master Declaration and the articles of incorporation and bylaws of the Master Association. Each Owner agrees to perform all of his obligations as a member of the Master Association as they may from



857582

Page: 39 of 56
11/13/2003 11:48A
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Texas J. Simonton Eagle, CO 133

time to time exist, including, but not limited to, the obligation to pay annual, special, and default assessments as required under the Master Association Documents.

Section 16.2 Enforcement of Master Association Documents.

16.2.1 The Association shall have the power, subject to the primary power of the executive board of the Master Association, to enforce the covenants and restrictions contained in the Master Association Documents, but only as said covenants and restrictions relate to the Project, and to collect regular, special and default assessments on behalf of the Master Association.

16.2.2 This Declaration is intended to supplement the Master Association Documents as they apply to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration and the Articles and Bylaws, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Association Documents. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Association Documents. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

Section 16.3 Architectural Control.

16.3.1 In addition to all other approvals which may be required, including, without limitation, the approval of the Design Review Board of the Master Association, no exterior or structural addition to or change or alteration to any Unit, the Common Area, the fence, landscaping or irrigation system located in the Exterior Maintenance Area (including the construction of any additional skylight, window, awning, or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board.

The alterations and changes described in this Section shall also be in compliance with and have received all approvals required by the Master Declaration and any applicable zoning and other laws, rules, and regulations, including the rules and regulations promulgated by the Association.

16.3.2 After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by the Master Declaration and by any governmental or quasi-governmental body having jurisdiction over the Property.

Section 16.4 General Reservation. Subject to any applicable restrictions under the Act, Declarant reserves the right to dedicate any access roads and streets serving the Property for and to public use and to allow such street or road to be used by owners of adjacent land.

Section 16.5 No Use of Trademark. The term "Miller Ranch Townhomes," and the term "Miller Ranch" are service marks and tradenames of Declarant. Each Owner, by accepting



a deed to a Unit, covenants and agrees that such Owner shall not use the terms "Miller Ranch Townhomes" and "Miller Ranch" without the prior written permission of Declarant.

Section 16.6 Limit on Timesharing. No Unit shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co-Owners of a Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

Section 16.7 Acknowledgements. Each Owner is hereby advised of the following matters affecting the Project and Miller Ranch and the Owners' use and enjoyment thereof:

16.7.1 The Units are subject to the Affordable Housing Restrictions. The Affordable Housing Restrictions contain certain provisions that impair a Mortgagee's legal rights to remedy a default under the mortgage and that require the Owner to send a notice of past due payments or default under the note secured by the Mortgage to Eagle County, Colorado. In addition, the Affordable Housing Restrictions impose resale restrictions on the Units.

16.7.2 Purchaser acknowledges the Project may be located adjacent to various public and private facilities constructed or planned for construction within Miller Ranch, including, without limitation, recreational fields and amenities, a middle school and high school, day care facilities, bike paths, community college facilities and other uses as set forth in the Community Documents for Miller Ranch (the "Adjacent Facilities"). Purchaser acknowledges and agrees that such areas may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof, including, without limitation: (i) associated vehicular, pedestrian and bicycle traffic, (ii) construction vehicles and equipment; (iii) events organization and (iii) outdoor lighting. No interest in or right to use any amenity located near the Project (other than amenities included within the common elements of the Project, if any), shall be deemed conveyed to an Owner as an Owner in the Project.

16.7.3 The Project is located near railroad tracks and the use of such tracts is expected to generate attendant noise and other inconveniences to Purchaser.

16.7.4 Substantial construction-related activities relating to the development of Miller Ranch Condominiums or other development within or near the Miller Ranch Subdivision may cause considerable noise, dust and other inconveniences to the Owners.

ARTICLE 17 DECLARANT'S RIGHTS REGARDING TRANSFER

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more

other such rights or interests, to any person, corporation, partnership, association or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

ARTICLE 18 ALTERNATIVE DISPUTE RESOLUTION

Section 18.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors and committee members, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Project, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described herein ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court.

Section 18.2 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Association Documents, or the rights, obligations and duties of any Bound Party under the Association Documents or relating to the design or construction of improvements on the Project shall be subject to the provisions of this Section.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

18.2.1 Any suit by the Association against any Bound Party to enforce the provisions of Article 8 (Assessments).

18.2.2 Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the architectural standards and use restrictions and rules;

18.2.3 Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents;

18.2.4 Any suit in which any indispensable party is not a Bound Party; and

18.2.5 Any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required below.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth below.

Section 18.3 Mandatory Procedures.

18.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

18.3.1.1 The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

18.3.1.2 The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

18.3.1.3 Claimant's proposed remedy; and

18.3.1.4 That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

18.3.2 Negotiation and Mediation.

18.3.2.1 The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

18.3.2.2 If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of a reputable and knowledgeable mediation group providing such services in Eagle County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Eagle County, Colorado, area.

18.3.2.3 If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

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

18.3.2.5 Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent

and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

18.3.3 Final and Binding Arbitration.

18.3.3.1 If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the rules of arbitration as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

18.3.3.2 This subsection is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

18.3.4 Allocation of Costs of Resolving Claims.

18.3.4.1 Subject to Section 20.3.4.2 below, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

18.3.4.2 Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand, shall add Claimant's Post Mediation costs to the Award, such costs to be borne equally by all Respondents. Any Award, which is equal to or less favorable to Claimant than any Respondent's Settlement Offer, shall award to such Respondent its Post Mediation Costs.

18.3.4.3 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award including, without limitation, attorneys' fees and court costs.

Section 18.4 Claim for Damages. Damages alleged or awarded in connection with a Claim shall be limited to actual damages. No punitive, incidental, consequential or other damages shall be claimed or awarded.

Notwithstanding anything contained herein to the contrary, any claims, grievances or disputes against Declarant arising out of or relating to the design or construction of improvements on the Project shall require notification to Declarant in writing and provide for a reasonable amount of time for Declarant to correct the defect before any Claim may be made.

ARTICLE 19 MORTGAGEE'S RIGHTS

Section 19.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Mortgages. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the articles of incorporation, bylaws and rules and regulations of the Association. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2 Percentage of Eligible Mortgage Holders. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it shall mean the approval or consent of Eligible Mortgage Holders under Mortgages encumbering Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Mortgages held by Eligible Mortgage Holders.

Section 19.3 Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired, or (ii) could have been acquired under the laws of the State of Colorado governing foreclosures, whichever is earlier, provided, however, that the lien of the Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six (6) months of annual Assessments, and provided, further, that a First Mortgagee or Agency that acquires title to a Unit through foreclosure of a First Mortgage will not be liable for any fees or charges related to the collection of the six (6) months of unpaid dues or charges that accrued before the First Mortgagee or Agency acquired title to the Unit.

Section 19.4 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for foreclosures to, or taking of, all or part of the Common Area, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 19.5 Audited Financial Statement. Upon the written request from any Mortgagee which has an interest or prospective interest in any Unit, the Association shall prepare and furnish an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.



Section 19.6 Notice of Actions. The Association shall give prompt written notice of the following events to each Eligible Mortgage Holder that sends the Association a written request for such information, which request states the name and address of the Eligible Mortgage Holder and the Unit on which it holds the mortgage:

19.6.1 Any condemnation or any casualty loss which affects a material portion of the Common Area or any Unit in which an interest is held by the Eligible Mortgage Holder.

19.6.2 Any delinquency which remains uncured for sixty (60) days in the payment of Assessments by an Owner whose Unit is encumbered by a Mortgage held by such Eligible Mortgage Holder.

19.6.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

19.6.4 Any proposed action which would require the consent of Eligible Mortgage Holders.

19.6.5 Consent Required. No amendment of any provision which is of a material nature may be effective without the vote of Owners representing at least sixty-seven percent (67%) or more of the total voting interest in the Association and until approved in writing by Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. A change to any of the provisions governing the following would be considered as material:

- 19.6.5.1 voting rights;
- 19.6.5.2 increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- 19.6.5.3 reductions in reserves for maintenance, repair, and replacement of common elements;
- 19.6.5.4 responsibility for maintenance and repairs;
- 19.6.5.5 reallocation of interests in the general or limited common elements, or rights to their use;
- 19.6.5.6 redefinition of any unit boundaries;
- 19.6.5.7 convertibility of units into common elements or vice versa;
- 19.6.5.8 expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- 19.6.5.9 hazard or fidelity insurance requirements;
- 19.6.5.10 imposition of any restrictions on the leasing of units;

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Page: 48 of 58
11/13/2003 11:49A

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132

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19.6.5.11 imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

19.6.5.12 a decision by the owners' association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;

19.6.5.13 restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or

19.6.5.14 any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Section 19.7 Notice of Objection. If any other change in this Declaration or any Association Documents requires the approval of any Mortgagees, then unless such Mortgagee, provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action, within thirty (30) days following the receipt of notice of such proposed amendment or action by certified or registered mail with return receipt requested, the Eligible Mortgage Holder will be deemed conclusively to have approved the proposed amendment or action.

Section 19.8 First Mortgagee's Rights.

19.8.1 First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

19.8.2 Eligible Mortgage Holders shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the eligible Mortgage Holder in the payment of Assessments of which the Eligible Mortgage Holder has received notice under Section 19.6.2 above. In that event, the Eligible Mortgage Holder shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

19.8.3 The Affordable Housing Restrictions set forth provisions regarding the relative seniority of the Mortgage and the Deed Restrictions.

ARTICLE 20 MISCELLANEOUS

Section 20.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any



provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 20.2 No Right of First Refusal. This Declaration does not create any right of first refusal with respect to a Unit.

Section 20.3 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of this Declaration and the termination provisions of the Act.

Section 20.4 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty-seven percent (67%) or more of the total voting interest in the Association at a meeting of the Owners called for that purpose or by written consent; provided, however, that any provision of this Declaration requiring a vote of more than sixty-seven percent (67%) of the total voting interest in the Association to be effective may only be amended by a vote of the applicable aggregate voting interest stated in such provision. In addition, (a) a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error, and (b) any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein.

Section 20.5 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 20.6 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment or that no approval of the Owners was necessary.

Section 20.7 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, all as amended, shall be by any proceeding pursuant to Article 18 of this Declaration to the extent required by the terms of this Declaration, or otherwise at law or in equity, against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the



aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded under Article 18 or by the Court, as applicable.

Section 20.8 Severability. Invalidity of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 20.9 Conflict of Provisions. In case of any conflict between this Declaration and the Master Association Documents, the Master Association Documents shall control. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 20.10 Nonwaiver. Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 20.11 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

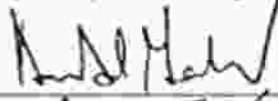
Section 20.12 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 20.13 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the 28th day of October, 2003.

BERRY CREEK LIMITED LIABILITY CO., a Colorado limited liability company

By: ASW Realty Partners, LLC, a New Mexico limited liability company, Manager

By: 
Name: Andrew S. Gordon
Title: Manager



STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 20th day of October, 2003, by Andrew S. Geba, as Manager of ASW Realty Partners, LLC, a New Mexico limited liability company, Manager of Berry Creek Limited Liability Co., a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: 8-12-07
[SEAL]

LAURA L. HOWE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires Aug 12, 2007

Laura L. Howe
Notary Public

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Page: 58 of 58

11/13/2003 11:49A

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JOINDER OF LIENOR

The undersigned, beneficiary under the Deed of Trust July 26, 2002, and recorded September 13, 2002, at Reception No. 807107 in the office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Declaration for Miller Ranch Townhomes, affecting a portion of the Property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration.

WELLS FARGO BANK WEST,
NATIONAL ASSOCIATION, a national
banking association

By: [Signature]

Name: Charles E. Murry

Title: Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 27 day of October, 2003
by Charles E. Murry as Vice President of Wells Fargo Bank
West, National Association.

WITNESS my hand and official seal.

My commission expires 01-31-04

[SEAL]

[Signature]
Notary Public



My Commission Expires 01/31/04



EXHIBIT A

Property Description

Lot 72, Miller Ranch, a Resubdivision of Tract D, Berry Creek/Miller Ranch PUD, according to the Plat recorded January 15, 2003, at Reception No. 820378, County of Eagle, State of Colorado.

A-1



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Page: 52 of 56
11/13/2003 11:49a

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EXHIBIT B

Expansion Property

Lots 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, and 150, Miller Ranch, a Resubdivision of Tract D, Berry Creek/Miller Ranch PUD, according to the Plat recorded January 15, 2003, at Reception No. 820378, County of Eagle, State of Colorado.

Lots 76, 77, 78, 79, 80, 81, 82, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118 and 119, Miller Ranch Filing No. 2, a Resubdivision of Tract A and Parcel 14, Miller Ranch, according to the Plat recorded October 23, 2003, at Reception No. 854785, County of Eagle, State of Colorado.

B-1



857582

Page: 53 of 58

11/13/2003 11:40a

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EXHIBIT C

Owners' Sharing Ratios

The formula used to establish Sharing Ratios is based upon the square footage of a Unit as a percentage of the total square footage of all Units. The calculation of such formula as contained in this Declaration is final and binding upon all Owners irrespective of any later measurement of such square footages. Upon the submission of all of the Expansion Property to the Declaration, the Sharing Ratios will be as follows:

UNIT TYPE

FINAL ALLOCATED INTEREST

Three Bedroom Unit (end)

Lots 65, 70, 71, 75, 76, 82, 104, 111,
112, 119, 136, 143, 144, and 150

2.2526% for each three bedroom Unit (end)

Three Bedroom Unit (interior)

Lots 67, 73, 78, 106, 109, 114, 117,
138, 141 and 148

2.0619% for each three bedroom Unit
(interior)

Two bedroom Unit (interior)

Lots, 66, 68, 69, 72, 74, 77, 79, 80,
81, 105, 107, 108, 110, 113, 115, 116,
118, 137, 139, 140, 142, 145, 146, 147
and 149

1.9139% for each two bedroom Unit
(interior)

Until all of the Expansion Property is submitted to the Declaration, the Sharing Ratio for a particular Unit on a particular date, will be the Unit's Sharing Ratio shown above, divided by the sum of the Sharing Ratios of all Units which have been submitted to the Declaration by such date. **THE TABLE OF ALLOCATED INTERESTS SET FORTH ABOVE DOES NOT IMPLY THAT ALL OF THE UNITS LISTED IN THE TABLE HAVE BEEN SUBMITTED TO THE DECLARATION**

C-1



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Page: 54 of 56
11/13/2003 11:49P

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EXHIBIT D
Easements and Licenses of Record

1. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded in Book 175 at Page 221.
2. Terms, conditions and provisions of Planned Unit Development recorded March 22, 2002 Reception No. 789801.
3. Right of way easement as granted to KN Energy, Inc. in instrument recorded April 30, 1999 under Reception No. 694363 and as described on the document recorded December 27, 1999 at Reception No. 718785.
4. Terms, conditions and provisions of Miller Ranch-Berry Creek Intergovernmental Agreement recorded June 3, 1999 at Reception No. 698432.
5. Terms, conditions and provisions of stipulation as to ownership of the Howard Ditch and Howard Ditch First Enlargement recorded October 11, 1996 in Book 708 at Page 213.
6. Right of way easement as granted to Holy Cross Electric Association, Inc. in instrument recorded May 19, 1995 in Book 667 at Page 636.
7. Right of way easement as granted to Upper Eagle Regional Water Authority in instrument recorded May 31, 2000, under Reception No. 731114.
8. Right of way easement as granted to Eagle River Water and Sanitation District in instrument recorded May 31, 2000 under Reception No. 731115.
9. Right of way easement as granted to K N Energy, Inc., a Kansas Corporation in instrument recorded July 5, 2001 under Reception No. 761419.
10. Easements, conditions, covenants, restrictions, reservations and notes on the plat of Berry Creek/Miller Ranch Planned Unit Development recorded June 25, 2002 at Reception No. 799649.
11. Terms, conditions and provisions of Howard Ditch easement agreement recorded June 20, 2002 at Reception No. 799277.
12. Terms, conditions and provisions of Holy Cross Energy underground right-of-way easement recorded September 3, 2002 at Reception No. 806010.
13. Gravel road traversing subject property as shown on the survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.



857582

Page: 55 of 56
11/13/2003 11:49A
R 251.00 D 0.00

Teak J Simonton Eagle, CO

14. Bike path not within Bike Path Easement as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
15. Flow line of irrigation ditch traversing subject property as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
16. Drainage Ditch as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
17. Terms, conditions and provisions of Land Lease and Option Agreement recorded September 13, 2002 at Reception No. 807106.
18. Terms, conditions and provisions of Subdivision and On-Site Improvements Agreement recorded January 16, 2003 at Reception No. 820469.
19. Terms, conditions and provisions of the Plat of Miller Ranch recorded January 15, 2003 at Reception No. 820378.
20. Terms, conditions and provisions of the Master Declaration for Miller Ranch recorded October 31, 2003 at Reception No. 856076.



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Page: 55 of 56
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Peak J. Simonson Esq., CO

133

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