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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
STRATTON FLATS TOWNHOMES**

TABLE OF CONTENTS

ARTICLE I DECLARATION

1.01 Declaration

1.02 Covenants Running With the Land

ARTICLE II DEFINITIONS

2.01 Basic Definitions

2.02 Usage

2.03 Definitions that Reference Statutes

ARTICLE III TOWNHOME LOTS AND GENERAL COMMON ELEMENTS

3.01 Townhome Lots

3.02 Interests in General Common Elements

3.03 Limited Common Elements

3.04 Separate Taxation of Townhome Lots

3.05 Description of Townhome Lots

ARTICLE IV THE ASSOCIATION

4.01 Formation of the Association

4.02 Purposes and Powers

4.03 Association Documents

4.04 Books and Records

4.05 Association Property

4.06 Reserved

4.07 Disclosures to Owners

ARTICLE V VOTING

5.01 Membership

5.02 Voting

5.03 Secret Ballots

ARTICLE VI EXECUTIVE BOARD

6.01 Powers of the Executive Board

6.02 Number and Election of Directors

6.03 Declarant Control Period

6.04 Removal of Directors

6.05 Replacement of Directors

ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments

7.02 Budgets

7.03 General Assessments

7.04 Limited Assessments

7.05 Default Assessments

7.06 Assignment of Assessments

7.07 Assessment Lien

7.08 Waiver of Homestead Exemptions

7.09 Estoppel Certificates; Notices to Mortgagees

7.10 Disputes Regarding Assessments

7.11 Reserve Fund

ARTICLE VIII UTILITY AND OTHER SERVICES

8.01 Gas, Electric, Water and Sewer Services

8.02 Cable Television, Satellite Television, Telephone and Internet

8.03 Other Utilities

ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND TOWNHOME LOTS

9.01 Maintenance of Limited and General Common Elements

9.02 Maintenance of Systems

9.03 Maintenance of Townhome Units

9.04 Maintenance by the Association

9.05 Mechanic's Liens and Indemnification

9.06 Master Association

9.07 Party Walls

ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions

10.02 Association Documents

10.03 Other Documents and Restrictions

10.04 Notice of Conveyance, Assignment or Encumbrance

10.05 Use of Townhome Lots

10.06 Leases

10.07 Use of Common Elements and Association Property

10.08 Alterations, Construction and Improvements

10.09 Nuisances, Hazardous Activities and Unsightliness

10.10 Signs

10.11 Compliance with Laws

10.12 Compliance with Insurance

10.13 Subdivision, Rezoning and Timesharing

10.14 Vehicles and Parking

10.15 Deliveries, Trash Removal and Other Services

10.16 Exterior Storage

10.17 Temporary Structures

10.18 Animals

10.19 Noxious Weeds

10.19 Declarant's Exemption

ARTICLE XI EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over General Common Elements

11.02 Utility Easement

11.03 Association's Easement

11.04 Easements for Encroachments

11.05 Emergency Access Easement

11.06 Recorded Easements and Licenses

ARTICLE XII INSURANCE

12.01 Insurance Required to be Obtained by the Association

12.02 Casualty Insurance for Improvements

12.03 Adjustments

ARTICLE XIII CASUALTY

13.01 Casualty to General Common Elements

13.02 Casualty to a Townhome Lot

13.03 Casualty to Association Property

ARTICLE XIV CONDEMNATION

14.01 Condemnation of All Townhome Lots

14.02 Condemnation of Fewer Than All Townhome Lots

14.03 Condemnation of General Common Elements and the Association Property

ARTICLE XV DECLARANT RIGHTS

15.01 Improvements

15.02 Development Rights

15.03 Sales Offices, Management Offices and Models

15.04 Merger

15.05 Exercising Declarant Rights

15.06 Interference with Declarant Rights

15.07 Rights Transferable

ARTICLE XVI MORTGAGEE PROTECTIONS

16.01 Benefit of Mortgagees

16.02 Notice of Actions

16.03 Consent Required

16.04 Notice of Objection

16.05 First Mortgagee's Rights

16.06 Limitations on First Mortgagee's Rights

16.07 Declarant Rights

ARTICLE XVII ENFORCEMENT AND REMEDIES

17.01 Enforcement

17.02 Attorneys' Fees

17.03 Interest

17.04 Right to Notice and Hearing

17.05 Waiver

ARTICLE XVIII TERM AND AMENDMENTS

18.01 Term

18.02 Termination

18.03 Amendments

ARTICLE XIX ACKNOWLEDGMENTS AND AGREEMENTS REGARDING STRATTON FLATS

19.01 Neighboring Properties and Nuisances

19.02 Assumption of Risk, Release, Waiver and Hold Harmless

ARTICLE XX DISPUTE RESOLUTION

20.01 Procedures for Dispute Resolution

20.02 Dispute Relating to Individual Townhome Lots

20.03 Dispute Relating to General Common Elements or Multiple Townhome Lots

20.04 Procedure for Dispute Resolution

20.05 Exclusiveness of Procedures

20.06 Waiver of Consequential and Punitive Damages

20.07 Construction Defect Action Reform Act

ARTICLE XXI MISCELLANEOUS

21.01 Interpretation of the Declaration

21.02 Severability

21.03 Disclaimer of Representations

21.04 Reference to Declaration and Deeds

21.05 Successors and Assigns of Declarant

21.06 Captions and Titles

21.07 Exhibits

21.08 Governing Law

21.09 Notices

21.10 Priority of the Master Association Documents

21.11 Waivers

21.12 Rule Against Perpetuities

EXHIBITS

- EXHIBIT A - LEGAL DESCRIPTION OF THE STRATTON FLATS PROPERTY**
- EXHIBIT B - LIST OF RECORDED AGREEMENTS AND EASEMENTS**

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
STRATTON FLATS TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STRATTON FLATS TOWNHOME ASSOCIATION, INC. (this "**Declaration**") is made as of January 23, 2009, by Stratton Flats, LLC, a Colorado limited liability company ("**Declarant**").

Recitals

A. Declarant owns the real property located in the Town of Gypsum, Eagle County, Colorado, that is described on Exhibit A attached hereto (the "**Stratton Flats Property**").

B. Declarant desires to create a planned community on Parcels 1, 2, 3, 4, 5, 6 and 13 and 14 of the Stratton Flats Property (collectively, the "**Townhome Parcels**") pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes Sections 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time (the "**Act**").

C. Declarant deems it necessary and desirable to subject each Townhome Parcel which is annexed into the planned community provided for herein to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions set forth in this Declaration.

Declaration

In consideration of the foregoing, Declarant hereby declares as follows:

**ARTICLE I
DECLARATION**

1.01 Declaration.

Declarant hereby creates a planned community named "Stratton Flats Townhomes". Upon the annexation of a Townhome Parcel into the planned community, the Townhome Parcel shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.02 Covenants Running With the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, Declarant's Affiliates, the Owners and the Association (as such terms are defined in Section 2.01), and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II
DEFINITIONS

2.01 Basic Definitions.

As used in this Declaration, the following terms shall have the meanings given to them in this Section 2.01, unless the context expressly requires otherwise:

"Act" has the meaning given to that term in Recital B.

"Affiliate" means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with a Person for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to (i) vote twenty percent (20%) or more of the ordinary voting power of such Person, or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and either alone or in conjunction with others.

"Allocated Interests" means the Common Expense liability and votes in the Association allocated to each Townhome Lot, determined in accordance with the terms and conditions of Section 3.02.

"Applicable Law" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

"Applicable Party" has the meaning given to that term in Section 20.01.

"Area," when reference is made to a Townhome Lot or a Townhome Unit, means the total number of finished square feet thereof as shown on a Map, or if such square footage is not shown on a Map, then "Area," means the total number of finished square feet of such Townhome Lot or Townhome Unit, as determined by the Executive Board in its sole and absolute discretion.

"Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.

"Assessment" means a General Assessment, a Limited Assessment or a Default Assessment levied and assessed pursuant to Article VII.

"Assessment Lien" has the meaning given to that term in Section 7.07.

"Association" means Stratton Flats Townhome Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

"Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

"Association Property" means all of the real and personal property that the Association either owns, leases or otherwise has a right to use at any time and from time to time.

"Bylaws" means the bylaws of the Association, as the same may be amended from time to time.

"Common Elements" means any real estate and any improvements or fixtures located on such real estate that are:

- (i) owned by the Association; or

(ii) owned by a Person other than the Association, but in which the Association has rights of use, possession and/or maintenance and repair obligations pursuant to (A) this Declaration, or (B) a lease, license, easement or other agreement.

The term Common Elements includes General Common Elements and Limited Common Elements.

"Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including costs, expenses and liabilities relating to (i) managing, operating, insuring, constructing, improving, repairing, replacing, altering, renovating and maintaining the General Common Elements and the Association Property; (ii) managing, operating, insuring, constructing, improving, repairing, replacing, altering, renovating and maintaining the exterior of all Townhome Units (except for windows); (iii) managing, operating, insuring, constructing, improving, repairing, replacing, altering, renovating and maintaining the landscaping on all Townhome Lots; (iv) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (v) providing facilities, services and other benefits to Owners; (vi) regulating and managing the Planned Community; (v) providing utilities for the Townhome Lots, to the extent such utilities are not separately metered; (vii) expenses declared to be Common Expenses by the Association Documents or by the Act; (viii) repayment of loans made to the Association, including interest thereon; (ix) expenses agreed upon as Common Expenses by the Association; (x) expenses for performing and observing obligations or conditions to be performed or observed by the Association under this Declaration or any easement, contract, agreement, or other instrument; (xi) expenses for taking any action the Association deems necessary or appropriate to protect the general welfare of Owners, Guests or other Persons; (xii) paying any real estate taxes or assessments levied against the Association Property; (xiii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; and (xiv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the General Common Elements or to any other real or personal property acquired or held by the Association.

"Complaining Party" has the meaning given to that term in Section 20.04.

"Contractor" means any Person, including a general contractor and subcontractors, engaged by the developer of the Planned Community for the construction of the Planned Community.

"CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84=100), Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the Association shall adopt a substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

"CPI Adjustment Factor" means a fraction, the numerator of which is the CPI available for the month in which the adjustment occurs and the denominator of which is the CPI for the same month in the immediately preceding year.

"Declarant" has the meaning given to that term in the introductory paragraph above.

"Declarant Control Period" has the meaning given to that term in Section 6.03.

"Declarant Rights" means any rights reserved to Declarant under this Declaration or any other Association Document, including, without limitation, all Special Declarant Rights.

"**Declaration**" has the meaning given to that term in the introductory paragraph of this Declaration.

"**Default Assessment**" has the meaning given to that term in Section 7.05.

"**Design Consultant**" means any Person engaged by the Contractor or the developer of the Planned Community to assist in the design or construction of any Improvement, including architects, landscape designers, engineers and similar design professionals.

"**Design Review Board**" means the "Design Review Board" described in the Master Association declaration.

"**Director**" means a duly elected or appointed member of the Executive Board.

"**Disputes**" has the meaning given to that term in Section 20.01.

"**Dispute Notice**" has the meaning given to that term in Section 20.04.

"**Eagle County Records**" means the Office of the Clerk and Recorder for Eagle County, Colorado.

"**Executive Board**" means the Association's board of directors.

"**First Mortgage**" means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens that are given priority by statute.

"**First Mortgagee**" means a Mortgagee under a First Mortgage.

"**General Assessment**" has the meaning given to that term in Section 7.03.

"**General Common Elements**" means all of the Planned Community, other than those portions of the Planned Community that are designated by the Act, by this Declaration or by a Map as Townhome Lots, Townhome Units or Limited Common Elements. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitation any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of all Owners

"**Guest**" means any family member, agent, independent contractor, lessee, licensee or invitee of an Owner.

"**Improvement**" means any building, structure, landscaping or other improvement (including, without limitation, all fixtures and improvements contained therein) located on the Property.

"**JAG**" has the meaning given to that term in Section 20.04.

"**Limited Assessment**" has the meaning given to that term in Section 7.04.

"**Limited Common Elements**" means those portions of the General Common Elements allocated by this Declaration, a Map or by operation of the Act for the exclusive use of one or more Townhome Lots, but fewer than all of the Townhome Lots, except those Improvements, fixtures and equipment that are owned by a third party, such as a utility or service provider, and are located on the Property pursuant to an easement, license or any other agreement, whether written or oral, shall not be Limited Common

Elements. Without limiting the generality of the foregoing, Limited Common Elements include, without limitation:

(i) any utility systems, mechanical systems, sprinkler systems, drainage facilities, walkways, and other areas and Improvements that are designed to serve fewer than all of the Townhome Lots; and

(ii) any physical portion of the Planned Community that is designated on a Map as "Limited Common Element," "LCE," or otherwise designated on a Map as a Common Element appurtenant to one or more Townhome Lots but less than all the Townhome Lots.

"Majority" means any percentage greater than fifty percent (50%).

"Map" means a Planned Community map for a portion of the Stratton Flats Townhomes which depicts the Townhome Lots and Common Elements for all or a portion of a Townhome Parcel, and which is recorded in the Eagle County Records, as the same may be amended or supplemented from time to time.

"Master Association" means Stratton Flats Master Association, Inc., a Colorado nonprofit corporation, and its successors and assigns as the association of Owners for Stratton Flats.

"Master Association Declaration" means the Declaration of Covenants, Conditions and Restrictions for Stratton Flats Master Association, Inc., recorded in the Eagle County Records under Reception No. 200900985 in the real estate records maintained by the Office of the Clerk and Recorder for Eagle County, Colorado, as amended, supplemented and restated from time to time.

"Master Association Documents" means the Master Association Declaration and the articles of incorporation, bylaws and all rules and regulations of the Master Association, as the same may be amended from time to time.

"Mortgage" means any mortgage, deed of trust or other document pledging any Townhome Lot or interest therein as security for payment of a debt or obligation.

"Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

"Officer" means a duly elected or appointed officer of the Association.

"Owner" means the record holder of legal title to the fee simple interest in any Townhome Lot or any portion thereof. If there is more than one record holder of legal title to a Townhome Lot, each record holder shall be an Owner. The term Owner includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Townhome Lot.

"Party Wall" means any wall which is part of a Townhome Unit and located between two or more Townhome Units and is placed on or immediately adjacent to a Townhome Lot line and which separates two Townhomes Units.

"Person" means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

"Planned Community" means Stratton Flats Townhomes, the common interest community created on the Property by this Declaration, consisting of the Townhome Lots and the Common Elements.

"Property" means collectively each and every Townhome Parcel which is made subject to this Declaration in accordance with the terms and conditions contained herein.

"Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Townhome Lot or portion thereof.

"Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Planned Community.

"Share of Common Expenses" means the share of Common Expenses allocated to each Townhome Lot in accordance with the terms and conditions of Section 3.02.

"Special Declarant Rights" means all "special declarant rights" (as such term is defined in the Act) that Declarant reserves for itself in this Declaration.

"Stratton Flats" means the planned community created by the Master Association Declaration.

"Successor Declarant" means any Person who succeeds to any Special Declarant Right or any other rights reserved to Declarant under this Declaration.

"Total Area of all Townhome Units" means the combined Area of all Townhome Units located within the Planned Community, as determined in accordance with Section 2.01(e).

"Townhome Lot" means the subdivided parcels of land designated by number on a Map and designated for separate ownership or occupancy. "Townhome Lot" shall further have the same meaning as "Unit" under CCIOA. A Townhome Lot shall include the right to nonexclusive use of the General Common Elements appurtenant to such Townhome Lot, plus the right to exclusive or nonexclusive use of the Limited Common Elements appurtenant to that Townhome Lot, if any; plus the right to vote and participate in Association matters as provided for herein.

"Townhome Unit" means shall mean an attached dwelling located on a Townhome Lot and designed to be occupied as a single family residence and not having more than one indoor kitchen facility.

2.02 Usage.

Wherever the context of this Declaration so requires:

- (a) references to one gender include all genders;
- (b) words used in the singular shall include the plural and words used in the plural shall include the singular;
- (c) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted under this Declaration;
- (d) the term "including" is not limiting;
- (e) the term "or" has the inclusive meaning represented by the phrase "and/or";

(f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

(g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified; and

(h) references to any agreement, document or instrument (including this Declaration) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

2.03 Definitions that Reference Statutes.

If a capitalized term used in this Declaration is defined as having the meaning given to that term in a particular Colorado statute, the meaning of that term in this Declaration shall be the meaning given to that term in the particular Colorado statute as of the date of this Declaration, regardless of any later amendments to that particular Colorado statute.

ARTICLE III TOWNHOME LOTS AND GENERAL COMMON ELEMENTS

3.01 Townhome Lots.

(a) The Planned Community will consist of Townhome Lots with any Townhome Units and Improvements constructed thereon, and General Common Elements and Limited Common Elements for the benefit of the Planned Community. The Declarant reserves the right to create up to a total maximum of seventy eight (78) Townhome Lots on the Stratton Flats Townhome Parcels. As Stratton Flats Townhome Parcels are added to the terms and provisions of this Declaration, each such Townhome Parcel will be subdivided into fee simple estates as Townhome Lots. Declarant intends to annex Townhome Parcels and Townhome Lots into the Planned Community by filing of Notices of Applicability in accordance with Section 3.01(b) below

(b) Upon recording in the Eagle County records, this Declaration serves to provide notice that at any time, and from time to time, Townhome Parcels or portions thereof may be subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a Townhome Parcel or a portion thereof upon the recording of a Notice of Applicability describing such Townhome Parcel (or portion thereof) by a legally sufficient description and expressly providing that such Townhome Parcel (or portion thereof) will be considered a part of the Planned Community and will be subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. To be effective, a Notice of Applicability must be executed by the Declarant and contain the following provisions: (i) a reference to this Declaration, which reference will state the recordation information of this Declaration; (ii) a statement that all of the provisions of this Declaration will apply to such Townhome Parcel (or portion thereof); (iii) a legal description of the Townhome Parcel (or portion thereof); (iv) reference to a Map recorded in the real property records of Eagle County, Colorado, which in turn, describes the Townhome Parcel and the boundaries of Townhome Lots within the Townhome Parcel and provides for an assignment of the Townhome Lot number attributable to each Townhome Lot within the Townhome Parcel added to the terms and provisions of this Declaration and sets forth a description of any Common Areas.

(c) To the extent required by applicable law, a Notice of Applicability shall will constitute an amendment to this Declaration and may be executed unilaterally by the Declarant provided that the Declarant is the owner of the real property described in the Notice of Applicability.

(d) No Owner may alter a Townhome Unit, subdivide a Townhome Lot or relocate the boundaries between adjacent Townhome Lots, except as may be provided by this Declaration.

(e) Except as expressly provided to the contrary in this Declaration, the right to use General Common Elements, the right to use Limited Common Elements and the right to vote and participate in Association matters appurtenant to the Townhome Lot may not be partitioned or separated from the Townhome Lot or any part thereof.

(f) Notwithstanding anything to the contrary in Sections 3.01 or elsewhere in this Declaration:

(i) nothing herein shall prevent or limit Declarant's exercise or enjoyment of any Special Declarant Right or any other right reserved to Declarant in this Declaration; and

(ii) an Owner may grant its rights to use any General Common Element or any Limited Common Element allocated to the Owner's Townhome Lot to the Owner's Guests, the Association or another Owner.

3.02 Allocated Interests; Share of Common Expenses.

(a) The Allocated Interests and Share of Common Expenses shall be allocated among the Townhome Lots as set forth in this Section 3.02. The Allocated Interests appurtenant to a Townhome Lot and the Share of Common Expenses assigned to a Townhome Lot shall both be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Allocated Interest; Share of Common Expenses} = \left(\frac{\text{Area of the Townhome Unit}}{\text{Total Area of all Townhome Units}} \right) \times 100\%$$

(b) If any Townhome Lots are added to or withdrawn from the Planned Community, or if the Area of one or more Townhome Units is increased or decreased, the Allocated Interests and Share of Common Expenses for all Townhome Units within the Planned Community after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Section 3.02(a).

3.03 Limited Common Elements.

Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements to the Townhome Lots pursuant to this Declaration or a Map or by operation of the Act may not be altered without the consent of all Owners whose Townhome Lots would be affected by such reallocation, and then only in accordance with the terms and conditions of the Act.

3.04 Separate Taxation of Townhome Lots.

Pursuant to the Act, each Townhome Lot constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.05 Description of Townhome Lots.

To convey, encumber or otherwise affect legal title to a Townhome Lot, an instrument must describe the Townhome Lot substantially as follows:

Townhome Lot ____, Stratton Flats Planned Unit Development, according to: (1) The Preliminary Plat of Stratton Flats Planned Unit Development dated March 19, 2001, (2) The Final Plat of Stratton of Stratton Flats Planned Unit Development dated March 19, 2008 and recorded March 21, 2008 at Reception No. 200606090, Eagle County, Colorado; (3) The First Amendment to Final Plat of Stratton Flats Planned Unit Development dated January 21, 2009 and recorded January 22, 2009 at Reception No. 200900843, Eagle County, Colorado; (4) The Planned Community Map of Stratton Flats Planned Unit Development, Filing __, Parcel __, dated _____ and recorded _____ at Reception No. _____, Eagle County, Colorado; (5) The Declaration of Covenants, Conditions and Restrictions for Stratton Flats Master Association dated January 22, 2009 and recorded January __, 2009 as Reception No. _____, Eagle County, Colorado; and (6) The Declaration of Covenants, Conditions and Restrictions for Stratton Flats Townhome Association dated January 22, 2009 and recorded January ____, 2009 as Reception No. _____, Eagle County, Colorado.

ARTICLE IV
THE ASSOCIATION

4.01 Formation of the Association.

On or before the date on which Declarant first conveys a Townhome Lot to a Purchaser, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are:

(i) to manage, operate, insure, construct, improve, repair, replace, alter, renovate and maintain the General Common Elements and the Association Property;

(ii) to insure, improve, repair, replace, alter, renovate and maintain the exterior of all Townhome Units (except for windows);

(iii) to manage improve, repair, replace, alter, and maintain the landscaping on all Townhome Lots;

(iv) to provide and maintain certain facilities, services and other benefits to Owners and their Guests;

(v) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(vi) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(vii) to establish, publish, administer, amend and modify the Rules and Regulations as the Association deems necessary or desirable consistent with this Declaration, the Articles, the Bylaws and the Act;

(viii) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with one or more condominium associations, the Master Association, or governmental or quasi-governmental entities, which provide for the sharing of expenses between or among the Association and such other Persons for improvements, facilities and services that serve the Association and such other Persons;

(ix) to regulate and manage the Planned Community; and

(x) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners and their Guests.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including, without limitation, the hiring and terminating of employees, agents and independent contractors;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

(c) Without in any way limiting the generality of Section 4.02(b), the Association may, but unless otherwise required elsewhere in this Declaration, is not obligated to:

(i) acquire, sell, lease and grant easements over, across and through General Common Elements;

(ii) acquire, own, sell, lease and grant easements over, across and through the Association Property and any other real property;

(iii) borrow monies and grant security interests in the General Common Elements, the Association Property and the other assets of the Association as collateral therefor;

(iv) make capital improvements, repairs and replacements to the General Common Elements and the Association Property; and

(v) hire and terminate managing agents and other employees, agents and independent contractors.

(d) Without in any way limiting the powers of the Association as described in Section 4.02(b), the Association may, but is not obligated to, charge use fees for the use of any Common Element, for the use of any portion of the Association Property, and for the use of any facilities or services provided by the Association.

(e) The Association may provide facilities and services itself or it may contract with the Master Association or other private, governmental or quasi-governmental Persons to provide facilities or services.

4.03 Association Documents.

(a) This Declaration creates the Planned Community and sets forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Townhome Parcels. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Planned Community.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Master Association Declaration, the terms and conditions of the Master Association Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

4.04 Books and Records.

(a) The Association shall keep as permanent records each of the following:

- (i) minutes of all meetings of Owners and the Executive Board;
- (ii) a record of all actions taken by the Owners or Executive Board by written ballot or written consent in lieu of a meeting;
- (iii) a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Association; and
- (iv) a record of all waivers of notice of meetings of Owners and waivers of notice of meetings of the Executive Board or any committee of the Executive Board.

(b) The Association shall keep a copy of each of the following records at its principal office:

- (i) the Articles;
- (ii) this Declaration;
- (iii) the Bylaws;
- (iv) any resolutions adopted by the Executive Board relating to the characteristics, qualifications, rights, limitations and obligations of Owners;
- (v) the minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three (3) years;

(vi) all written communication from the Executive Board to Owners generally as Owners within the past three (3) years;

(vii) a list of names and business or home addresses of its current Directors and Officers;

(viii) the most recent annual report of the Association, if any; and

(ix) all financial audits or reviews of the Association during the immediately preceding three (3) years.

(c) Upon request, during normal business hours and under other reasonable circumstances, the Association shall allow any Owner, First Mortgagee or their respective agents to inspect current copies of (i) the Articles, the Bylaws, this Declaration and the books, records, budgets and financial statements (including any audits thereof) of the Association, (ii) any written communications from the Executive Board to Owners generally during the previous three (3) years, and (iii) lists of the names and addresses of the current Directors and Officers of the Association. The Association may charge a reasonable fee for copying such materials which may be collected in advance. The fee shall not exceed the Association's actual expenses incurred for such copying.

(d) The minutes of any Executive Board or Owners' meeting shall be available for inspection within fifteen (15) days after any such meeting.

(e) The Association shall cause to be maintained a record of all Owners, by name and address, which lists the total number of votes each Owner is entitled to vote.

(f) The books and records of the Association shall be subject to an audit (using generally accepted accounting standards) or a review (using statements on standards for accounting and review services) by an independent and qualified person selected by the Executive Board. The Executive Board, in its sole discretion, shall determine whether to conduct an audit or a review. The audit or review report, as the case may be, shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

(g) Notwithstanding Section 4.04(f), an audit shall be required only if both of the following conditions are met:

(i) the Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) an audit is requested by the vote of thirty-three percent (33%) or more of the Owners.

(h) Notwithstanding Section 4.04(f), a financial review shall be required only if requested by the vote of thirty-three percent (33%) or more of the Owners.

(i) A membership list or any part thereof may not be obtained or used by any person for any purposes unrelated to an Owner's interest as an Owner without prior written consent of the Executive Board.

4.05 Association Property.

The Association shall, on behalf of all Owners, hold title to all Association Property in its name, and no Owner shall have any right, title, or claim thereto. The Association shall have the exclusive right to deal with Association Property for all purposes.

4.06 Reserved.

4.07 Disclosures to Owners.

(a) Within ninety (90) days after the expiration of the Declarant Control Period the Association shall make available to Owners the following information upon reasonable notice by such Owners: (i) the name, address and telephone number of the Association; (ii) the name, address and telephone number of the property manager or, if there is no property manager, the Association's designated agent; (iii) the name of Stratton Flats; and (iv) the recording date and reception number of this Declaration. If the address of any of the Association, designated agent or management company changes, the Association shall make updated information available within ninety (90) days after such change.

(b) Pursuant to Section 6.03(e), the Association shall make available to Owners the information described therein within the time period required thereby.

ARTICLE V
VOTING

5.01 Membership.

Every Owner shall be a member of the Association, and a Person who is not an Owner may not be a member of the Association.

5.02 Voting.

(a) Each Townhome Lot shall be allocated one (1) vote which may not be separated from the Townhome Lot. The vote shall be held by the Owners of such Townhome Lot and may be transferred or encumbered only in connection with the conveyance or encumbrance of the fee simple interest in such Townhome Lot. Any transfer or encumbrance of any votes in the Association, other than as permitted in this Section 5.02(a), shall be null and void and have no force or effect.

(b) Notwithstanding the terms and conditions of Section 5.02(a), an Owner may appoint an agent to vote the votes allocated to such Owner's Townhome Lot by a duly executed proxy, in such form as the Association may reasonably require.

(c) Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

(d) Each Townhome Lot shall be allocated one (1) vote, regardless of the number of Owners of that Townhome Lot. If the Owners of a Townhome Lot cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Townhome Lot casts the vote for that Townhome Lot, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Townhome

Lot, unless an Owner of that Townhome Lot makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than one (1) vote is cast for any Townhome Lot, none of such votes shall be counted and all of such votes shall be deemed null and void.

5.03 Secret Ballots.

When any vote is taken by the Owners for the election of a Director, such election shall be held by secret ballot. In addition, at the discretion of the Executive Board or upon the request of twenty percent (20%) of the Owners who are present at a meeting or represented by proxy, if a quorum has been achieved, any other vote to be taken by the Owners shall be conducted via secret ballot. The results of any vote taken by the Owners shall be counted by a neutral third Person or a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the person presiding during that portion of the meeting. The volunteers shall not be members of the Executive Board and, in the case of a contested election, shall not be candidates for a position on the Executive Board. In announcing the results of any vote taken by secret ballot, no identifying information of Owners participating in such vote shall be disclosed by the Association.

ARTICLE VI
EXECUTIVE BOARD

6.01 Powers of the Executive Board.

- (a) Except as provided by Applicable Law or in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.
- (b) The Executive Board may not act on behalf of the Association to:
 - (i) amend this Declaration;
 - (ii) terminate the Association, this Declaration or the Planned Community;
 - (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term as set forth in Section 6.05; or
 - (iv) determine the qualifications, powers, duties or terms of office of Directors.

6.02 Number and Election of Directors.

- (a) The Executive Board shall consist of three (3) Directors elected by the Owners, or appointed by Declarant pursuant to Section 6.03.
- (b) The terms of the Directors elected by the Owners shall be staggered. At the initial election of the Directors by the Owners, the Directors shall be divided into two (2) groups: Group One and Group Two. Group One will consist of a single Director and Group Two will consist of two (2) Directors.
- (c) The initial Group One Director shall hold office until the election or appointment of his successor at the next annual meeting held in a year ending in an odd number. Thereafter, subject to the terms and conditions of Sections 6.04 and 6.05, the Group One Director will hold office for a term of

two (2) years and the Owners shall elect a successor at the annual meeting held in years ending in an odd number.

(d) The initial Group Two Directors shall hold office until the election or appointment of their successors at the next annual meeting held in a year ending in an even number. Thereafter, subject to the terms and conditions of Sections 6.04 and 6.05, the Group Two Directors will hold office for a term of two (2) years and the Owners shall elect successors at the annual meeting held in years ending in an even number.

(e) In any election of Directors to the Executive Board, each Owner shall be entitled to the number of votes that is equal to the product obtained by multiplying:

(i) the number of votes allocated to that Owner in accordance with Section 5.02, by

(ii) the number of Directors to be elected.

6.03 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.03(b) and (c), but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Officers and Directors during the Declarant Control Period. The phrase "**Declarant Control Period**" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) the date that is sixty (60) days after conveyance to Purchasers of seventy-five percent (75%) of the maximum number of Townhome Lots that may be created by Declarant under this Declaration;

(ii) the date that is two (2) years after the last conveyance of a Townhome Lot by Declarant or a Successor Declarant in the ordinary course of business; or

(iii) the date that is two (2) years after any right to add new Townhome Lots was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before such actions become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.03(a), not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Townhome Lots that may be created under this Declaration to Purchasers, one Director appointed by Declarant (as selected by Declarant) shall be replaced with a duly qualified Director elected by Owners other than Declarant.

(d) Notwithstanding anything to the contrary contained in Section 6.03(a), during the thirty-day (30-day) period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect a new Executive Board of three (3) Directors, at least a majority of who must be Owners other than Declarant or designated representatives of Owners other than Declarant. Upon termination of the Declarant Control Period the new Executive Board shall take office.

(e) Not later than sixty (60) days after the end of the Declarant Control Period, Declarant shall deliver to the Association all property of the Owners and the Association then held or controlled by Declarant, including the following:

(i) the original, or a certified copy, of this Declaration and any amendments hereto;

(ii) the Articles of Incorporation, Bylaws, Rules and Regulations, minutes of meetings of the Association or Executive Board and any other books and records maintained by Declarant for the Association;

(iii) an accounting for Association funds and financial statements, beginning on the date the Association first received any funds and ending on the date the Declarant Control Period expires, as more particularly described in the Act;

(iv) the funds of the Association or control thereover;

(v) all of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association, if any, or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements and inventories of the same;

(vi) a copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of, or improvements to, the Common Elements constructed or installed by Declarant or at Declarant's direction;

(vii) all insurance policies then in force, in which the Owners, the Association or Directors and Officers are named as insured persons;

(viii) copies of any certificates of occupancy that may have been issued with respect to the Common Elements;

(ix) any other permits issued by governmental bodies applicable to the Common Elements that are then in force or that were issued within one (1) year prior to the end of the Declarant Control Period;

(x) written warranties, if any, that are still effective of contractors, suppliers, and manufacturers for any Common Elements;

(xi) a roster of Owners and known Mortgagees and their addresses and telephone numbers, if known;

(xii) employment contracts in which the Association is a contracting party, if any; and

(xiii) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services described in such contract.

(f) Not later than ninety (90) days after the end of the Declarant Control Period and continuing thereafter, the Association shall make available the following information for review by the Owners:

- (i) the date on which the Association's fiscal year begins;
- (ii) the budget for the current fiscal year;
- (iii) a list of all of the Association's current General Assessments, Limited Assessments, and Default Assessments;
- (iv) the Association's annual financial statement, which shall include any amounts held in reserve;
- (v) the results of any financial audit or review of the Association conducted during the previous fiscal year;
- (vi) a list of all insurance policies carried by the Association, which list shall include carrier name, policy limits, policy deductibles, any additional insureds and the expiration dates for such policies;
- (vii) the Bylaws, Articles and Rules and Regulations;
- (viii) the minutes of the Executive Board and Owner meetings for the previous fiscal year; and
- (ix) the Association's "Responsible Governance Policies" required to be adopted pursuant to Section 38-33-209.5 of the Act.

6.04 Removal of Directors.

Notwithstanding any provision of this Declaration or any other Association Document to the contrary:

- (a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.
- (b) Each Director, other than Directors appointed by Declarant, may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote of all votes allocated to Townhome Lots represented and entitled to vote at any meeting at which a quorum of the Owners is present.

6.05 Replacement of Directors.

- (a) Vacancies on the Executive Board created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.
- (b) Except with respect to a Director appointed by Declarant, a vacancy on the Executive Board created by the removal, resignation or death of a Director shall be filled by a Director elected by the Owners.
- (c) Any Director appointed or elected pursuant to this Section 6.05 shall hold office for the remainder of the unexpired term of the Director that such Director replaced.

ARTICLE VII
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Townhome Lot (regardless of whether it may be expressly stated in such deed), shall be deemed to have covenanted and agreed to pay to the Association all Assessments and other charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Townhome Lot pursuant to this Declaration or any other Association Document.

(b) Notwithstanding the definition of the term "Owner":

(i) a Person who acquires a Townhome Lot in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Townhome Lot or on the Owner of that Townhome Lot commencing on the date of the foreclosure sale; and

(ii) a Person who acquires a Townhome Lot by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Townhome Lot or on the Owner of that Townhome Lot commencing on the date on which the Owner executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any Assessment or other charges levied on such Owner or such Owner's Townhome Lot by waiving the use or enjoyment of any Common Element or any portion of the Association Property or by abandoning a Townhome Lot against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Townhome Lot during the period of such Owner's ownership of the Townhome Lot. If there is more than one Owner of a Townhome Lot, each Owner shall be jointly and severally liable with the other Owners of the Townhome Lot for all Assessments and other charges levied on the Townhome Lot or any Owner.

(e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

(f) The obligation of an Owner to pay Assessments to the Association shall not commence until the date that the first Townhome Lot within the Planned Community is conveyed to a Purchaser. With respect to any Stratton Flats Townhome Parcel subjected to this Declaration after the date hereof, the obligation of an Owner of a Townhome Lot located within such Townhome Parcel to pay Assessments to the Association shall not commence until the date that the first Townhome Lot within such Townhome Parcel is conveyed to a Purchaser.

(g) Notwithstanding anything to the contrary contained in this Declaration, the Association and the General Common Elements shall be exempt from all Assessments.

7.02 Budgets.

(a) Prior to the first levy of General and Limited Assessments, and thereafter on or before November 1 of each calendar year, the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:

- (i) the Executive Board's estimate of Common Expenses for the next calendar year;
- (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments;
- (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Limited Assessments; and
- (iv) the amount of funds the Executive Board proposes to raise through Assessments for the maintenance of reserve funds, as described in Section 7.11.

(b) Within ten (10) days after adopting a proposed annual budget, the Executive Board shall deliver a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed annual budget to the Owners. The proposed annual budget shall not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at that meeting by sixty-seven percent (67%) of all votes within the Association, whether or not a quorum is present. In the event the proposed annual budget is vetoed, the annual budget last proposed by the Executive Board shall be deemed renewed for the next calendar year and shall remain in full force and effect until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.03(b), the Executive Board may adopt a proposed amendment to the annual budget, and within ten (10) days after adopting a proposed amendment to the annual budget, the Executive Board shall deliver a summary of the proposed amendment to the annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment to the annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed amendment to the annual budget to the Owners. The proposed amendment to the annual budget shall not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at that meeting by sixty-seven percent (67%) of all votes within the Association, whether or not a quorum is present.

(d) If the Owners ratify an amendment to an annual budget pursuant to Section 7.02(c), the amount of the General and Limited Assessments levied against each Townhome Lot shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

(e) If the Owners fail to ratify an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of General and Limited Assessments to the Association at the rate payable during the prior calendar year until such time as the Owners ratify a new annual budget for the then current calendar year. Once the Owners ratify a new annual budget, the Association shall levy against each Townhome Lot the General and Limited Assessments for the then current calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new General and Limited Assessments in equal periodic installments over the

remainder of such calendar year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such calendar year.

7.03 General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 7.02(b), the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Townhome Lot. The amount of the General Assessment levied against a Townhome Lot shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by

(ii) the Share of Common Expenses allocated to that Townhome Lot pursuant to Section 7.02.

(b) The Owners shall pay the General Assessments levied against their respective Townhome Lots in such periodic installments as may be required by the Association.

(c) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Townhome Lot.

7.04 Limited Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.04 are referred to in this Declaration as "**Limited Assessments.**"

(b) Notwithstanding anything to the contrary contained in Section 7.03, if any Common Expense or other charge incurred by the Association is attributable to (i) the provision of utility or similar services to one or more but fewer than all of the Townhome Lots or Owners, or (ii) the management, operation, construction, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Association may levy an Assessment for such Common Expense or other charge against the Townhome Lot or Owner to which the Limited Common Element is allocated or to which such Common Expense or other charge is attributable, and if such Common Expense or other charge is attributable to more than one Townhome Lot or Owner, then all such affected Owners shall pay their proportionate share thereof based on square footage formulas or in any other equitable proportion as the Association reasonably deems appropriate.

(c) Additionally, notwithstanding anything to the contrary contained in Section 7.03, if any Common Expense or other charge incurred by the Association is solely attributable to a capital improvement to the Planned Community for a proposed amenity of the Planned Community which is not specifically contemplated herein (as opposed to a Common Expense or other charge incurred by the Association with respect to its repair, replacement, and maintenance obligations hereunder), then the Association shall levy a Limited Assessment for such Common Expense, and an Owners' pro rata share of such Common Expense shall be an amount equal to the then current assessed valuation of such Owner's Townhome Lot and Townhome Unit divided by the then current total assessed valuation of the all of the Townhome Lots and Townhome Units, with such "assessed valuation" being the assessed value of a Townhome Lot and Townhome Unit as determined by the Eagle County Assessor from time to time.

(d) Each Limited Assessment levied against any Townhome Lot shall be shown on an annual budget, or an amendment to an annual budget ratified by the Owners pursuant to Section 7.02, and shall be paid as and when required by the Association.

(e) The failure of the Association to levy a Limited Assessment shall not be deemed a waiver, modification, or release of an Owner's liability for the Common Expense for which such Limited Assessment is or would be attributable.

7.05 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense or other expense incurred by the Association is caused by:

- (i) the negligence or misconduct of an Owner or an Owner's Guest; or
- (ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest,

the Association may recover such Common Expense or other expense from such Owner by levying an additional assessment against the Owner's Townhome Lot. Any such assessment levied by the Association and each fine, penalty, or fee imposed upon an Owner for the violation of any covenant or condition of any Association Document are each referred to herein as a "**Default Assessment.**"

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.02.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

7.06 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.07 Assessment Lien.

(a) The Association shall have a lien on each Townhome Lot for any Assessment levied against that Townhome Lot and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Townhome Lot under any Association Document (the "**Assessment Lien**"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Townhome Lot, except:

- (i) liens and encumbrances recorded prior to the recordation of this Declaration;

(ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Act provides otherwise;

(iii) liens for real estate taxes and other governmental assessments or charges against the Townhome Lot; and

(iv) liens for charges against the Townhome Lot imposed pursuant to the Master Association Documents.

(c) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Townhome Lot. No further recordation of any claim of any Assessment Lien is required.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(e) This Section 7.07 does not prohibit:

(i) actions or suits to recover sums secured by an Assessment Lien; or

(ii) the Association from taking a deed-in-lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

7.08 Waiver of Homestead Exemptions.

By acceptance of the deed or other instrument of conveyance of a Townhome Lot, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

7.09 Estoppel Certificates; Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee within fourteen (14) days after the mailing or delivery of written request by such party, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered address, a statement setting forth any or all of the following information as may be requested by such party:

(i) the amount of unpaid Assessments currently levied against the Owner's Townhome Lot;

(ii) whether, to the knowledge of the Association, the Owner or the Owner's Townhome Lot is in violation of any of the provisions of the Association Documents;

(iii) the amount of the Assessments, including installment payments thereof paid by the Owner during the fiscal year in which the request is received;

(iv) the amount of any delinquent Assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Townhome Lot as provided by the Association Documents;

(v) whether all insurance requirements established by this Declaration are being satisfied; and

(vi) a listing of each of the Association Documents, and amendments thereto, with recording information, if applicable.

If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Townhome Lot for unpaid Assessments that were due as of the date of the request.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Townhome Lot subject to a First Mortgage held by that First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Townhome Lot that remain unpaid for more than sixty (60) days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Townhome Lot for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.10 Disputes Regarding Assessments.

The Executive Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Association and the Owners.

7.11 Reserve Fund.

(a) The Association shall have the right to maintain (i) a capital reserve fund for the repair, restoration and replacement of General Common Elements and the Association Property and (ii) a general operating reserve fund.

(b) If the Association maintains one or more reserve funds, as provided for in this Section, up to, but not exceeding, ten percent (10%) of all monies received from Common Assessments and Limited Assessments may be retained by the Association to maintain such reserve funds. To the extent that Declarant pays any Common Assessments or Limited Assessments, Declarant shall be exempt from any obligation to contribute to such reserve funds and the Association shall calculate Declarant's Assessments accordingly.

(c) Upon the sale of a Townhome Lot by an Owner, the Association shall not be obligated to return to the transferor any funds held in the reserve funds.

ARTICLE VIII
UTILITY AND OTHER SERVICES

8.01 Gas, Electric, Water and Sewer Services.

The Association shall be responsible for obtaining gas, electric, water and sewer services for the General Common Elements. In connection with its construction of the Townhome Units, Declarant has installed certain utility lines. Each Owner of a Townhome Lot shall be responsible for obtaining gas, electric, water and sewer services for its Townhome Unit and the Limited Common Elements appurtenant thereto and shall pay all costs and expenses, fees, rates and other charges incurred in connection therewith, including but not limited to any connection fees, directly to the utility provider.

8.02 Cable Television, Satellite Television, Telephone and Internet.

(a) In connection with its construction of the Townhome Units, Declarant has installed telephone, internet and cable television lines that service all portions of the Planned Community.

(b) Each Owner shall be responsible for obtaining cable television, satellite television, telephone and internet services, if any, for its Townhome Unit and the Limited Common Elements appurtenant thereto and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees or satellite installation fees, directly to the utility or service company providing the same.

(c) The Association shall determine what, if any, cable television, satellite television, telephone and internet services are necessary for the Limited Common Elements designed to serve more than one Unit and shall be responsible for obtaining those services. The Common Expenses, if any, incurred by the Association for those services shall be allocated among such Townhome Lots as Limited Assessments in accordance with Section 7.05.

(d) The Association shall determine what, if any, cable television, satellite television, telephone and internet services are necessary for the General Common Elements and shall be responsible for obtaining those services. The Common Expenses, if any, incurred by the Association for those services shall be allocated among the Townhome Lots as General Assessments in accordance with Section 7.04.

8.03 Other Utilities.

If the Association incurs Common Expenses for any other utility service not described herein, or if the manner of providing or metering any utility service described herein changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner approved by at least sixty-seven percent (67%) of all of votes allocated to all Owners.

ARTICLE IX
MAINTENANCE OF COMMON ELEMENTS, TOWNHOME LOTS, AND TOWNHOME UNITS

9.01 Maintenance of Limited and General Common Elements.

Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the General Common Elements and the Association Property in good order and repair and

shall otherwise manage and operate the General Common Elements and the Association Property as it deems necessary or appropriate. In this regard, the Association may:

- (a) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Element or the Association Property;
- (b) plant and replace trees, shrubs and other vegetation on any Common Element and the Association Property;
- (c) control noxious weeds in accordance with the requirements of the Town of Gypsum's weed control management plan;
- (d) place, maintain and replace signs upon any Common Element and the Association Property;
- (e) upon reasonable notice to the Owner, enter into an Owner's Townhome Unit or Townhome Lot to perform maintenance on General Common Elements that are accessible most efficiently from within an Owner's Townhome Unit or Townhome Lot;
- (f) adopt and enforce Rules and Regulations regulating the use of General Common Elements and the Association Property; and
- (g) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the General Common Elements and the Association Property.

In addition, the Association, or its duly designated agent, shall ensure that all Common Elements are sufficiently maintained to assure year round access for emergency equipment.

9.02 Maintenance of Systems.

The Association shall enter into and shall at all times maintain such service and maintenance contracts with qualified Persons for the maintenance and repair of all Improvements owned or controlled by the Association as are reasonably required to maintain such Improvements in good working order and repair. The failure by the Association to maintain such contracts for any such Improvement shall constitute a waiver by the Association and all Owners to assert any design defect or construction defect regarding that Improvement against an Applicable Party pursuant to Article XX.

9.03 Maintenance of Townhome Units.

(a) Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair the interior of its Townhome Unit (including all fixtures located therein) and all windows on the exterior of such Townhome Unit, and the Limited Common Elements allocated solely to that Townhome Lot, other than those Limited Common Elements that the Association chooses to maintain for reasons of uniformity or structural considerations. In the event that a Townhome Unit is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Townhome Unit lies with the Owner of the Townhome Unit, or in the event the Townhome Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Townhome Unit for which the Owner is responsible to substantially restore those portions damaged or destroyed to the same condition on which they existed prior to the damage or destruction, then the Association, after

notice to Owner and with the approval of the Executive Board shall have the right to enter upon the Owner's Townhome Lot and the Townhome Unit to perform such work as is reasonably required to restore the Townhome Unit to a condition of good order and repair. All costs incurred by the Association in connection with such restoration shall be reimbursed to the Association by the Owner of the Townhome Unit, upon demand. All unreimbursed costs shall be a lien upon the Townhome 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 7 of this Declaration.

(b) Without limiting the generality of Section 9.03(a), each Owner shall be responsible for replacing all light bulbs that serve the Townhome Unit or the Limited Common Elements allocated solely to that Townhome Lot.

9.04 Maintenance by the Association.

The Association shall be responsible for the maintenance and repair of the exterior of all Townhome Units (except for windows), landscaping on all Townhome Lots, and all General and Limited Common Elements (unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's Guest), and such maintenance and repairs shall be the Common Expense of all Owners. The maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, fences (if any), gates, signage, irrigation systems, sidewalks, and improvements, if any, located in the Common Elements.

9.05 Mechanic's Liens and Indemnification.

No labor performed or materials furnished and incorporated into a Townhome Lot or Townhome Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis for filing a lien against the Townhome Lot of any other Owner not expressly requesting or consenting to the same or the General Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagees thereof from and against all liability arising from any claim or lien against the Townhome Lot of any other Owner or against the General Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Townhome Lot at the Owner's request. The Association may enforce such indemnity by collecting from the Owner who suffers or allows such a lien the amount necessary to discharge the lien and all costs of enforcement incidental thereto. If such amount is not promptly paid, the Association shall have all rights and remedies available to it for a failure to pay an Assessment.

9.06 Master Association.

The rights and obligations of the Association and the Owners under this Article IX are subject to the rights and obligations of the Master Association under the Master Association Documents.

9.07 Party Walls.

(a) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Townhome Lots which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Townhome Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(b) To the extent not inconsistent with the provisions of this Section 3.16, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(c) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Townhome Units sharing the Party Wall. If the Owner of one Townhome Unit sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against the Townhome Lot, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(d) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Townhome Units sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(e) Notwithstanding any other provision of this Section 3.16, an Owner who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(f) The right of any Owner to contribution from any other Owner under this Section 3.16 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(g) Notwithstanding any other provision of this Section 3.16, the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Townhome Lots containing Townhome Units benefited by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one or more Owner(s) in which case the Owner(s) causing the damage shall pay for all costs of repairs.

ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this Article X shall apply to all Units and Common Elements.

10.02 Association Documents.

Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Townhome Lot.

10.03 Other Documents and Restrictions.

Each Owner shall comply with, and shall ensure that its Guests comply with, and each conveyance of the fee simple interest in and to a Townhome Lot or any lessee's interest under a lease of a Townhome Lot shall be subject to, the following, as the same may be amended from time to time:

(a) the terms and conditions of the Association Documents, as the same may be amended from time to time;

(b) the terms and conditions of the Master Association Documents, as the same may be amended from time to time;

(c) any and all protective covenants, easements, reservations and restrictions of record, as the same may be amended from time to time; and

(d) Applicable Law.

10.04 Notice of Conveyance, Assignment or Encumbrance.

Promptly after a conveyance of a fee simple interest in a Townhome Lot or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.

10.05 Use of Townhome Lots.

(a) Except as otherwise expressly permitted by this Declaration, no Owner of a Townhome Lot shall conduct any business, profession, occupation or trade from its Unit.

(b) Notwithstanding the restrictions set forth in Section 10.05(a):

(i) an Owner may use its Townhome Unit as its private office, on the condition that the Owner does not invite others to its Townhome Unit to conduct business; and

(ii) the Association and, during the Declarant Control Period, Declarant may use one or more Townhome Units owned or leased by it as a management office, a sales office, a model home or a combined management office and residence for a resident manager, for the Planned Community.

10.06 Leases.

(a) An Owner shall have the right to lease such Owner's Townhome Unit subject to the terms and conditions of any restrictions upon such Townhome Unit by either the Town of Gypsum or the County, and the following terms and conditions:

(i) any such lease shall be in writing, with a copy delivered to the Association, and shall provide that the lease is subject to the terms of this Declaration, the Association Documents and the Master Association Documents;

(ii) any such lease shall state that the failure of the lessee to comply with the terms of this Declaration, any Association Document or Master Association Document shall constitute a default for which such lessee shall be liable to Declarant or the Association, as applicable, as if such lessee were an Owner; and

(iii) in the event of the failure of the lessee to comply with the terms of this Declaration, any Association Document or Master Association Document, the Owner shall be responsible and liable to Declarant or the Association, as applicable, as if the Owner was the party that failed to comply with the terms of this Declaration, any Association Document or Master Association Document, and at the request of Declarant or the Association, the Owner shall, at the Owner's sole cost and expense, terminate the lease and commence eviction proceedings to evict the lessee from the Townhome Lot.

10.07 Use of Common Elements and Association Property.

All Owners and their Guests may use the General Common Elements, the Limited Common Elements allocated to serve their Townhome Lots, and the Association Property for the purposes for which the Common Elements and the Association Property are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element or any portion of the Association Property in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements or the Association Property, as the case may be. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Element or any portion of the Association Property. The Owners' rights to use the Common Elements and the Association Property are subordinate and subject to all of the rights and powers of the Association with respect to the Common Elements and the Association Property, including, without limitation, the Association's right and power to adopt rules regulating the use of the Common Elements and the Association Property.

10.08 Alterations, Construction and Improvements.

(a) Except as otherwise expressly provided in this Declaration, an Owner of a Townhome Lot may not make any improvement or alteration to a Common Element or any improvement or alteration to its Townhome Lot or Townhome Unit that affects any Common Element or any other Townhome Lot or Townhome Unit, without the prior written consent of the Association.

(b) No new Improvement shall be constructed on the Property and no construction, alteration, installation or other work affecting the exterior surface of any existing Improvement shall be made, except as required or approved by the Association and the Design Review Board, and then only in strict accordance with the terms and conditions of the Association Documents and the Master Association Documents.

(c) Except as otherwise expressly provided in this Declaration, an Owner of a Townhome Lot may not, without the prior written consent of the Association, install or erect any improvement, mechanical system or fixture that either:

- (i) protrudes beyond the boundaries of the Owner's Townhome Lot; or
- (ii) is located wholly outside the Owner's Townhome Lot (even if located within a Limited Common Element that is allocated solely to the Owner's Townhome Lot).

(d) The Association shall perform or make, or cause to be performed or made, any improvement, construction, alteration, installation or other work on, to or affecting the exterior of any Improvement on the Property which the Design Review Board or the Master Association requires, in writing, be performed or made.

10.09 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Property that creates a nuisance. Without limiting the generality of the foregoing:

(i) no lights shall be emitted that are unreasonably bright or cause unreasonable glare;

(ii) no gas or electric powered landscaping equipment shall be used between the hours of nine o'clock in the morning and six o'clock in the evening; and

(iii) no odor shall be emitted that is unreasonably offensive.

(b) No Person shall conduct any activity on the Property that is or might be hazardous to any Person or property. Without limiting the generality of the foregoing:

(i) no open fires shall be allowed to exist, unless specifically permitted by the Association Documents or approved by the Association;

(ii) no firearms may be discharged; and

(iii) no hunting may be conducted.

(c) No unsightliness shall be permitted at the Property. Without limiting the generality of the foregoing:

(i) all exterior mechanical equipment lines, wires, pipes and other facilities shall either be buried or enclosed within a structure permitted by the Association Documents or approved by the Association; and

(ii) with the exception of garbage collection days, all garbage shall be kept in covered containers and any such container shall be kept within an enclosed structure.

(d) Owners shall be responsible for removing snow and ice from the driveways, walkways and balconies appurtenant to such Owner's Townhome Lot. Each Owner shall ensure that its Townhome Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Townhome Unit.

(e) No electrical device creating overloading of standard circuits may be used without permission from the Executive Board. Misuse or abuse of appliances or fixtures within a Townhome Lot which affects other Units or the General Common Elements is prohibited. Total electrical usage for any Townhome Lot shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(f) No antenna or satellite reception dish of any type designed to service a Townhome Lot shall be allowed on the Common Elements, except as may be approved by the Design Review Board.

(g) There shall be no obstruction of the General Common Elements by any Person except with the prior written consent of the Executive Board. Persons shall neither store nor leave any of

their property in the General Common Elements except with the prior written consent of the Executive Board.

(h) There shall be no solicitation by any Person anywhere on the Property for any purpose whatsoever without the prior written consent of the Executive Board.

(i) Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.09.

(j) The Association shall have the power to grant variances from the terms and conditions of this Section 10.09 from time to time as it deems necessary.

10.10 Signs.

(a) Subject to Section 10.10(c), no signs or banners whatsoever shall be erected or maintained on the Property, except signs or banners required by legal proceedings and those permitted by this Declaration or approved by the Design Review Board and the Association. In addition, any such required or permitted signs or banners shall comply with all Applicable Laws, ordinances, rules and regulations imposed by the Town of Gypsum.

(b) Without limiting the generality of Section 10.10(a), no "For Sale" or "For Rent" signs shall be displayed on a Townhome Lot or the exterior or interior (including windows) of a Townhome Unit.

(c) Notwithstanding anything to the contrary set forth in this Section 10.10, but subject to the limitations of this Section 10.10(c), the Association shall not prohibit any Owner from displaying an American flag, military service flag or political signage in a window or on a balcony or patio of its Townhome Unit or the yard of its Townhome Lot. The display of an American flag, military flag or political signage shall be restricted as follows:

(i) An Owner or Owner's Guest may place an American flag on the balcony or patio adjacent to its Townhome Unit without the prior consent of the Association, however no flag poles or supports shall be affixed to the exterior portions of the Planned Community except in such areas as the Association may designate. No Person shall display any American flag from any window, balcony or patio that is larger than 48" in length without the prior consent of the Association. No flag shall be displayed or hung from any balcony or window in such a manner as to encroach into the sightline of any other Townhome Lot or Townhome Unit in the Planned Community.

(ii) An Owner or Owner's Guest may place a military service flag bearing a star denoting the service of such Owner or Guest, or members of such Owner's or Guest's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict on the inside of any window or door of the Owner's Townhome Unit. No such flag shall exceed 9" by 16" in size.

(iii) Political signs promoting or opposing a candidate for office or a ballot issue may be displayed in the window of a Townhome Unit or the yard of a Townhome Lot not earlier than forty-five (45) days prior to the applicable election day and shall be removed within seven (7) days after such election. Not more than one sign per candidate, office or issue may be so displayed in a window or yard and no such sign shall exceed 36" by 48" in size.

10.11 Compliance with Laws.

Nothing shall be done or kept at the Property in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority having jurisdiction over the Property.

10.12 Compliance with Insurance.

Except as may be approved in writing by the Association, nothing shall be done or kept at the Property that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance.

10.13 Subdivision, Rezoning and Timesharing.

(a) No Townhome Lot may be subdivided, unless the subdivision has been approved by one hundred percent (100%) of the votes allocated to all Townhome Lots and the proposed subdivision otherwise complies with this Declaration and all other Association Documents.

(b) No application for rezoning any portion of the Property, and no applications for variances or use permits, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by one hundred percent (100%) of the votes allocated to all Townhome Lots and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) No Owner shall offer or sell any interest in any Townhome Lot under a "timesharing" or "interval ownership" plan or similar plan.

(d) The covenants, conditions and restrictions set forth in Sections 10.13(a) through (c) shall not apply to Declarant's development of the Property, to Declarant's exercise of any Special Declarant Right or any other right reserved to Declarant in this Declaration, or to Declarant's use or ownership of any Townhome Lot.

10.14 Vehicles and Parking.

(a) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Property, except within an Owner's garage, for more than forty-eight (48) hours.

(b) No Person shall conduct engine overhauling or any dismantling of a vehicle on the Property other than inside the garage within the Owner's Townhome Unit without the prior written consent of the Association.

(c) Each Owner shall park its vehicles, and shall cause its Guests to park their vehicles, in:

(i) the garage located within the Owner's Townhome Unit or the driveway located on the Owner's Townhome Lot; and

(ii) the parking spaces that are designated as General Common Elements, if any.

(d) An Owner may not park its vehicles, and shall not permit its Guests to park their vehicles outside of any designated parking area or on any street or road, or on the shoulder of any street or road located at, on or adjacent to the Property.

(e) The parking spaces that are not designated on a Map as Limited Common Elements, if any, are General Common Elements and available to all Owners and Guests on a "first come, first serve" basis. Notwithstanding the foregoing, an Owner may not use more than one (1) parking space that is a General Common Element, if any, at any time nor park its vehicle in such a parking space for longer than forty-eight (48) hours.

(f) An Owner may not store a motor vehicle in any parking space that is designated as a General Common Element, if any, when neither the Owner nor its Guest is occupying its Townhome Unit.

(g) An Owner may not sell, lease or otherwise convey all or any of the parking rights it has by virtue of its Ownership of a Townhome Lot, except in connection with the sale, lease or other conveyance of its Townhome Lot, and then only to the purchaser or lessor of its Townhome Lot.

10.15 Trash Removal.

(a) The Association does not provide trash removal services, and instead, such services shall be provided by the Master Association. Owners of Townhome Lots and their Guests shall place all trash and other waste from their Townhome Units, and the Limited Common Elements appurtenant thereto, in one of the trash collection facilities designated by the Master Association or otherwise in accordance with the rules, regulations and the requirements of the Master Association.

(b) Owners shall not, and shall not permit their Guests, to litter on the Property. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any area of the Property. No burning of trash, garbage or other waste materials will be permitted at the Property.

10.16 Exterior Storage Structures:

No storage sheds or other exterior storage structures shall be allowed on the Property.

10.17 Temporary Structures.

No temporary structure, trailer, travel trailer, mobile home, camper, motor home, shack or tent or other living unit shall be erected, placed or maintained on the Property except as authorized by the Design Review Board in an area or lot specifically designated for such use by the Design Review Board or as may be necessary and authorized during construction of Improvements.

10.18 Animals.

Subject to the Rules and Regulations, an Owner may keep up to two (2) domestic dogs and two (2) domestic cats per Unit (and offspring not more than four (4) months old). However, in any event, each of the following shall apply:

(a) All such dogs and cats must be kept within an Owner's Townhome Unit and shall not be permitted on other portions of the Property unless leashed and under the control of a responsible individual.

(b) No Owner shall allow his dog or cat to run freely. When the dog or cat of an Owner or the Owner's Guest leaves the Owner's Townhome Lot, such dog or cat must be leashed and under the control of a responsible individual. Leashes shall be no longer than ten (10) feet.

(c) Dogs and cats must be fed inside an Owner's Townhome Unit.

(d) Each Owner shall promptly and thoroughly remove all waste left by its dog or cat on the Property.

Additionally, subject to the Rules and Regulations, an Owner may keep, within an Owner's Townhome Unit, fish, birds, reptiles, amphibians and other animals, if such animals are traditionally kept as household pets. An Owner may not keep animals for commercial breeding purposes.

10.19 Noxious Weeds.

No Owner may allow noxious weeds to grow on the Limited Common Elements appurtenant to their Townhome Lot. "Noxious weeds" are non-native plant species that have a detrimental effect on local ecosystems. The Executive Board shall maintain an up-to-date list of noxious weeds in accordance with the requirements of the Town of Gypsum's weed control management plan. Such list shall be made available to Owners at the Association's principal office or by posting such list in a prominent place within the Planned Community.

10.20 Declarant's Exemption.

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

(a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights reserved to Declarant under this Declaration or any other Association Document; or

(b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Planned Community.

ARTICLE XI EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over General Common Elements.

(a) Declarant hereby reserves for itself and any Successor Declarant(s) a general easement over, across, through and under the General Common Elements and the Association Property to:

(i) discharge Declarant's obligations under this Declaration;

(ii) exercise any of Declarant's rights under this Declaration; and

(iii) make improvements (including as necessary for construction staging) at the Property or any other real estate owned by Declarant.

(b) Declarant hereby reserves for itself and any Successor Declarant(s) the right to:

(i) establish from time to time utility, drainage, access and other easements, permits or licenses over, across, through and under the General Common Elements and the Association Property for Declarant and other Persons; and

(ii) create other reservations, exceptions and exclusions for the benefit of Declarant and other Persons,

on the conditions that (A) the parties benefited by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Property or the Association Property by the Owners to the extent practicable; and (B) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Property or the Association Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby reserves for itself and creates for the benefit of any utility or service company or other Person designated by Declarant a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, storm water drains and pipes, gas, snow melt, telephone, electricity, fiber optic, high-speed internet access, data transmission, cable communication and any similar public or quasi-public improvements or facilities that service the Property or any portion thereof as well as any such lines and systems that service real property owned by the Master Association or Declarant or other buildings or real property designated by the Master Association or Declarant. Declarant may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.02 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, Declarant, the Master Association or any utility or service company or other Person designated by Declarant may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Townhome Lots, the General Common Elements or any real property owned by Declarant or any other party designated by Declarant. Notwithstanding anything to the contrary contained in this Section 11.02, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Property, except as approved by the Association and except in accordance with the terms and conditions of Section 10.08. Declarant, Master Association or any utility or service company or other Person using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant, the Master Association and other utility and service companies.

(c) If Declarant, the Master Association or any utility or service company or other Person furnishing utilities or services to the Property or any portion thereof or any real property owned by Declarant or Master Association or any other party designated by Declarant as permitted under Section 11.02(a) requests a specific easement by separate recordable document, Declarant or the Association, as applicable, shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

11.03 Association's Easement.

(a) The Association shall have a general easement over, across, through and under all of the Property to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Townhome Lot in connection with the easements described in Section 11.03(a) without reasonable prior notice to the Owner thereof, except in cases of emergency.

11.04 Easements for Encroachments.

To the extent that any Townhome Lot or Common Element, as constructed by Declarant, encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct.

11.05 Emergency Access Easement.

Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

11.06 Recorded Easements and Licenses.

The Property shall be subject to (a) all easements and licenses as shown on any recorded plat or Map affecting the Property, and (b) any other easements or licenses of record or of use as of the date of recordation of this Declaration. The recording data for all presently recorded easements and licenses appurtenant to or included in the Planned Community have been set forth on Exhibit B attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

ARTICLE XII
INSURANCE

12.01 Insurance Required to be Obtained by the Association.

The Association shall obtain and maintain:

(a) all insurance required to be obtained and maintained by the Association under the Act;

(b) any additional insurance that the Executive Board deems necessary; and

(c) property insurance insuring against loss or damage to the Common Elements, the exteriors of the Townhome Units, and the Townhome Lots that (i) provides coverage against any peril included within the classification of "all risks"; and (ii) includes a waiver of subrogation rights by the insurer as to the Owners and the Declarant, Contractors and Design Consultants.

12.02 Casualty Insurance for Improvements.

(a) The Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the General Common Elements and Limited Common Elements, including, without limitation, in accordance with the requirements set forth in Section 12.01.

(b) Owners shall be responsible for obtaining and maintaining any casualty insurance that they desire for Improvements located in or forming a part of the interior of their Townhome Units, and for any fixtures, furnishings and equipment, other than fixtures and equipment that are part of the General Common Elements, located within their Townhome Units.

12.03 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

ARTICLE XIII
CASUALTY

13.01 Casualty to General Common Elements.

The Association shall respond to any damage to, or destruction of, any Common Element in accordance with the terms and conditions of the Act.

13.02 Casualty to a Townhome Unit.

To the extent that the Association is not obligated to make any such repairs or replacements, each Owner shall repair or replace any damage to, or the destruction of, the interior of its Townhome Unit, as soon as is reasonably practical after such damage or destruction occurs. The Association shall respond to any damage to, or destruction of, the exterior of any Townhome Unit in accordance with the terms and conditions of the Act.

13.03 Casualty to Association Property.

The Association shall respond to any damage to, or the destruction of, any Association Property in any manner deemed appropriate by the Executive Board.

ARTICLE XIV
CONDEMNATION

14.01 Condemnation of All Townhome Lots.

If the entire Property is taken by condemnation or similar proceeding, the Association shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the terms and conditions of the Act.

14.02 Condemnation of Fewer Than All Townhome Lots.

If one or more Townhome Lots, but less than the entire Property, is taken by condemnation or similar proceeding:

- (a) any condemnation award payable in connection therewith shall be paid;
- (b) the Interest in General Common Elements appurtenant to those Townhome Lots shall be reallocated; and
- (c) the Shares of Common Expenses allocated to the remaining Townhome Lots shall be reallocated,

all in accordance with the terms and conditions of the Act.

14.03 Condemnation of General Common Elements and the Association Property.

(a) If any Common Element or all or any portion of the Association Property is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and used by the Association:

(i) first, to repair any damage to the General Common Elements or the Association Property, as applicable, resulting from the condemnation or similar taking; and

(ii) second, for any other Common Expenses.

(b) The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

ARTICLE XV
DECLARANT RIGHTS

15.01 Improvements.

Declarant hereby reserves for itself and any Successor Declarant the right, but not the obligation, to construct:

- (a) any improvements shown on a Map;
- (b) telephone lines and systems and fiber optic or other computer network lines and systems, together with related facilities and equipment that Declarant desires to construct, install or maintain on the Property; and
- (c) any other buildings, structures or improvements that Declarant desires to construct on the Property or any other real estate owned by Declarant, regardless of whether the same ever become part of the Planned Community.

15.02 Development Rights.

- (a) Declarant hereby reserves for itself and any Successor Declarant:

(i) the right to amend this Declaration, including the right to add to the Planned Community all or any of the Townhome Parcels or such other additional real estate as permitted pursuant to Section 38-33.3-222 of the Act;

(ii) the right to sell undivided interests in any Townhome Lot owned by Declarant;

(iii) the right to convert any Townhome Lot owned by Declarant into General Common Elements;

(iv) the right to withdraw from the Association any real estate owned by Declarant and located within the Property prior to the conveyance of a Townhome Lot located within the Property to a Purchaser;

(v) the right to amend this Declaration to conform to or take advantage of any amendments to the Act or other Applicable Law; and

(vi) the right to create easements, permits, licenses and other property rights and reservations as described in Article XI.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act.

15.03 Sales Offices, Management Offices and Models.

Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices and models within any Townhome Lot owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Planned Community on any and all General Common Elements.

15.04 Merger.

Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Association with any other association.

15.05 Exercising Declarant Rights.

Declarant may exercise its Special Declarant Rights and any other rights reserved to Declarant in this Declaration at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is ninety-nine (99) years after the date on which this Declaration is recorded in the Eagle County Records. Declarant may exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration. If Declarant exercises any Special Declarant Right or any other right reserved to Declarant in this Declaration with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right or other right reserved to Declarant in this Declaration, as applicable, with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XV and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

15.06 Interference with Declarant Rights.

Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right or any other right reserved to Declarant in this Declaration, without Declarant's prior written consent. Any action taken in violation of this Section 15.06 shall be void and have no force or effect.

15.07 Rights Transferable.

Declarant may transfer any Special Declarant Right reserved to it under this Article XV or any other right reserved to Declarant in this Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVI
MORTGAGEE PROTECTIONS

16.01 Benefit of Mortgagees.

This Article establishes certain standards and covenants which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

16.02 Notice of Actions.

If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the General Common Elements or any Townhome Lot in which an interest is held by the First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

16.03 Consent Required.

Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each Townhome Lot covered by a First Mortgage):

- (a) by act or omission seek to abandon or terminate the Planned Community, except after condemnation or substantial casualty;

(b) except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change any Townhome Lot's Allocated Interest, Share of Common Expenses or votes in the Association;

(c) subdivide, partition, or relocate the boundaries of any Townhome Lot, except as permitted with respect to Special Declarant Rights;

(d) abandon, subdivide, partition, encumber, sell, or transfer the General Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);

(e) use hazard insurance proceeds for losses to any portion of the General Common Elements for other than repair, replacement, or reconstruction of such General Common Elements, except as provided by the Act; or

(f) merge the Planned Community with any other common interest community, except as permitted with respect to Special Declarant Rights.

16.04 Notice of Objection.

Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

16.05 First Mortgagee's Rights.

(a) 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 General Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the General Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Townhome Lot encumbered by its 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.

16.06 Limitations on First Mortgagee's Rights.

No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

(b) prevent the Association or the Executive Board from commencing, intervening or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article XII.

16.07 Declarant Rights.

No provision or requirement of this Article XVI shall restrict or limit any Special Declarant Rights or any other rights reserved to Declarant in this Declaration.

ARTICLE XVII
ENFORCEMENT AND REMEDIES

17.01 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the General Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner or a Townhome Lot shall be enforceable by Declarant or by the Association by:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or
- (iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any General Common Elements and from participation in any Association affairs.

(c) By acceptance of a deed to a Townhome Lot, an Owner agrees to be bound by the terms and conditions of this Declaration. In addition to all other remedies provided to the Association in this Declaration, if an Owner fails to perform or observe any covenant or condition to be performed or observed by such Owner under this Declaration or any other Association Document, the Association shall have the following special rights and remedies:

(i) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty (30) days after the Owner receives a written notice of a Default Assessment therefor from the Association.

(ii) The Association may fine the Owner, as a Default Assessment, an amount not to exceed one hundred dollars (\$100) per day that such violation remains uncured for each violation. The one hundred dollars (\$100) per day maximum fine shall be increased on January 1 of each year by an amount equal to the maximum fine for the prior calendar year multiplied by the CPI Adjustment Factor. The Owner shall pay any such fine to the Association within thirty (30) days after the Owner receives written notice of a Default Assessment therefor from the Association.

(iii) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(d) Notwithstanding anything to the contrary contained in this Declaration, any sums paid to the Association by an Owner shall be applied in the following order: first, to costs incurred by the Association to collect outstanding unpaid sums due to the Association, second, to satisfy any outstanding Default Assessments or other fines, third, to satisfy any outstanding interest accrued on any assessed but unpaid Assessments, and fourth, to satisfy any assessed but unpaid Assessments other than Default Assessments.

(e) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(f) The Association may adopt such Rules and Regulations as the Executive Board deems necessary or appropriate to administer and enforce the terms and conditions of this Declaration and the other Association Documents.

(g) Each provision of this Declaration that is intended to benefit the Declarant shall be enforceable by Declarant by:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or
- (iii) any other remedy at law or in equity available to the Declarant.

All rights and remedies of the Declarant shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

In addition to the foregoing rights and remedies, if an Owner or the Association fails to perform or observe any covenant or condition on such Owner's or the Association's part to be performed or observed under this Declaration or any other Association Document, which covenant or condition is intended to benefit the Declarant, Declarant may, but is not obligated to, cure such failure to comply at the Owner's or the Association's sole cost and expense. If Declarant cures any such failure to comply, the Owner or the Association, as applicable, shall pay to Declarant the amount of all costs incurred by Declarant in connection therewith within thirty (30) days after the Owner receives written notice of such amount from Declarant.

17.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

17.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of eighteen percent (18%) per annum, or such other rate as the Executive Board may establish from time to time (not to exceed twenty-one percent (21%)), from the due date of such unpaid amount until the date paid.

17.04 Right to Notice and Hearing.

Whenever the Association Documents require that an action be taken after "notice and hearing," the procedure set forth in this Section 17.04 shall be observed. The party proposing to take the action, such as the Executive Board or a committee or Officer of the Association, shall give notice of the proposed action to all Owners whose interest the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Owner shall have the right, personally or by representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Executive Board from a decision of a proposing party other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within forty-five (45) days thereafter, giving the same notice and observing the same procedures as were required for the original hearing. All decisions of the Executive Board shall be final and binding.

17.05 Waiver.

Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVIII
TERM AND AMENDMENTS

18.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until the Declaration is terminated pursuant to Section 18.02.

18.02 Termination.

(a) Subject to the rights of Mortgagees under Article XVI, the Owners may terminate the Planned Community and this Declaration, by the affirmative vote of sixty-seven percent (67%) or greater of all votes in the Association. If the necessary votes are obtained, the agreement of the Owners to terminate the Planned Community and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of the Act. Upon recordation of the termination agreement in the Eagle County

Records, the Planned Community shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

(b) Notwithstanding the foregoing, the Owners may not terminate the Planned Community during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(c) Notwithstanding the foregoing, a termination of the Planned Community or this Declaration shall not release the Property from any Declarant Rights or from the easements, covenants, conditions and restrictions set forth in Articles X and XV hereof, and the Declarant Rights and such easements, covenants, conditions and restrictions shall survive the termination of this Declaration, unless Declarant consents to the release thereof in writing.

18.03 Amendments.

(a) Except for provisions of this Declaration regarding the rights and obligations of Declarant or Declarant's Affiliates, which may not be amended without Declarant's prior written consent, Owners may amend any provision of this Declaration at any time by the affirmative vote of sixty-seven percent (67%) or greater of all votes in the Association. If the necessary votes are obtained, the Association shall cause to be recorded in the Eagle County Records an amendment to this Declaration in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period, without the Declarant's prior written consent, which consent Declarant may withhold in its discretion.

(b) Notwithstanding the terms and conditions of Section 18.03(a), Declarant may, without the approval of the Owners, amend:

(i) this Declaration and a Map to correct clerical, typographical, technical or other errors;

(ii) this Declaration to comply with any Applicable Law or the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association; and

(iii) this Declaration or a Map as otherwise provided by this Declaration or the Act.

ARTICLE XIX ACKNOWLEDGMENTS AND AGREEMENTS REGARDING STRATTON FLATS

19.01 Neighboring Properties and Nuisances.

The property neighboring Stratton Flats to the east is zoned to allow for commercial development. The property neighboring Stratton Flats to the south is the Eagle County Municipal Airport. By accepting a deed to a Townhome Lot (whether or not it is expressly stated in the deed), an Owner acknowledges and agrees that any neighboring commercial development, whether to the east of Stratton Flats or otherwise, and the Eagle County Municipal Airport may create nuisances to Owners and their Guests, including, but not limited to, offensive noises, lighting, odors and increased traffic within

Stratton Flats. In addition, during the development of Stratton Flats, construction activities may create certain additional nuisances to Owners and their Guests, including but not limited to, offensive noises, lighting, odors, dust and increased traffic within Stratton Flats.

19.02 Assumption of Risk, Release, Waiver and Hold Harmless.

(a) By accepting a deed to a Townhome Lot (whether or not it is expressly stated in the deed), an Owner acknowledges, accepts and agrees that:

(i) the location of the Townhome Lot in Stratton Flats may result in the nuisances, inconveniences, disturbances and other risks described in Section 19.01;

(ii) neither Declarant or the Association nor any of their respective Affiliates, employees, agents, invitees, licensees, contractors, successors and assigns shall be responsible or accountable for, or have any liability for any claims, causes of action, losses, damages, costs (including attorneys' fees) or expenses for any nuisance, inconvenience, disturbance or other risks described in Section 19.01.

By accepting a deed to a Townhome Lot (whether or not it is expressly stated in the deed), each Owner agrees to indemnify and hold harmless Declarant and the Association and their respective Affiliates, shareholders, members, partners, agents, officers, directors, employees, contractors, successors and assigns of, from and against any and all losses, damages, costs, expenses or liabilities related to or arising in connection with, any claims, actions, causes of action, liability, suits or demands of or by the Owner or its family members or Guests for any disturbance, inconvenience, noise, nuisance or other risk described in Section 19.01, including without limitation, any of the activities, occurrences, conditions, state of facts, events or situations related thereto.

ARTICLE XX
DISPUTE RESOLUTION

20.01 Procedures for Dispute Resolution.

Any and all (a) claims by an Owner or the Association against (i) Declarant or any Affiliate thereof, (ii) a Contractor, or (iii) a Design Consultant (individually, an "Applicable Party"); and (b) disputes between or among an Owner or the Association and one or more Applicable Parties, including any such claims or disputes arising out of or relating to the design or construction of any portion of the Property (collectively, "Disputes") shall be resolved in accordance with the procedures set forth in this Article XX. By accepting a deed to a Townhome Lot, each Owner agrees that the procedures for resolving Disputes set forth in this Article XX shall be the exclusive procedures and shall provide the exclusive remedy for resolving Disputes and specifically waives any and all other rights or remedies such Owner may have against any Applicable Party at law, in equity or otherwise with respect to all Disputes.

20.02 Dispute Relating to Individual Townhome Lots.

For any Dispute that is unique to a single Townhome Lot, meaning that the circumstances of such Dispute are not shared by any other Owner or the Association with respect to another Townhome Lot or Common Element in the Association, the exclusive procedures and remedies for the Owner of such affected Townhome Lot to pursue such Dispute against the Applicable Parties shall be those procedures set forth in Section 20.04.

20.03 Dispute Relating to General Common Elements or Multiple Units.

For any Dispute regarding more than one Unit or any Common Element, (i) the Association shall have the exclusive right to pursue such Dispute on behalf of the Owners and to seek redress against the appropriate Applicable Parties; and (ii) individual Owners shall not be permitted to pursue such Dispute or seek redress against the appropriate Applicable Party on their own behalf or on the behalf of any other Person. In such event, the Association shall comply with the procedures set forth in Section 20.04. Notwithstanding the foregoing, the Association may not pursue any such Dispute unless, at a special meeting of the Owners held in accordance with the provisions of the Bylaws, more than sixty-seven percent (67%) of all the votes in the Association are cast in favor of pursuing such Dispute. In the event that sixty-seven percent (67%) of all of the votes in the Association do not vote in favor of so pursuing the Dispute, no Owner shall be entitled to pursue the Dispute or seek redress against any Applicable Party on such Owner's own behalf or on behalf of the Association or other Owners. By accepting a deed to a Townhome Lot, each Owner hereby irrevocably grants to the Association a power of attorney to pursue a Dispute in the manner set forth in this Article XX and to settle such Dispute on the Owner's behalf without further consent or action by such Owner.

20.04 Procedure for Dispute Resolution.

In the event that either the Association or an Owner (each, a "**Complaining Party**") elects to pursue a Dispute as provided in Sections 20.01, 20.02 or 20.03, as applicable, then the following procedure shall be followed by such party.

(a) The Complaining Party shall first give the Applicable Parties written notice of the Dispute describing in reasonable detail the factual circumstances giving rise to the Dispute (the "**Dispute Notice**"). Within sixty (60) days after receiving a Dispute Notice, those Applicable Parties and the Complaining Party shall meet to inspect, evaluate, investigate and discuss the facts and circumstances giving rise to the Dispute and shall attempt in good faith to resolve the Dispute. Notwithstanding the foregoing, if the Dispute concerns any matter subject to the provisions of the Construction Defect Action Reform Act, Section 13-20-801 *et seq.*, Colorado Revised Statutes, then in lieu of the other requirements of this Section 20.04(a), the Complaining Party shall comply with the notice of claim process described in Section 13-20-803.5 of the Colorado Revised Statutes and the Complaining Parties and the Applicable Parties shall proceed to attempt to resolve the Dispute as provided in Section 13-20-803.5 of the Colorado Revised Statutes.

(b) If the Applicable Parties and the Complaining Party are not able to resolve the Dispute following the applicable negotiation process described in Section 20.04(a), the Dispute shall be submitted to non-binding mediation. Such mediation shall be conducted by the Judicial Arbitrator Group ("**JAG**") in Denver, Colorado, or any other location mutually acceptable to the Applicable Parties and the Complaining Party, pursuant to the mediation standards established by JAG. Such mediation shall be governed by the laws of the State of Colorado. The parties shall select a mediator and shall conduct and complete the mediation within forty-five (45) days after the date JAG is first contacted by either party. Notwithstanding anything to the contrary set forth herein, the mediator shall not have the authority to impose a settlement on the parties.

(c) In the event that the Complaining Party and the Applicable Parties are not able to resolve the Dispute after the mediation proceedings described herein, the parties shall submit to binding arbitration conducted by JAG in Denver, Colorado, or any other location mutually acceptable to the Applicable Parties and the Complaining Party, pursuant to the provisions of the Colorado Arbitration Act, Colorado Revised Statutes Sections 13-22-201 *et seq.* The arbitration shall be governed by the laws of the State of Colorado. The arbitrator shall be a neutral and impartial third party and, if the Dispute concerns the design or construction of any portion of the Planned Community, no such arbitrator selected shall have less than six (6) years experience litigating or presiding over disputes based on or related to the

design or construction of real property improvements. If the parties cannot agree on an arbitrator to conduct the arbitration, then the Complaining Party and Applicable Parties shall each select one (1) arbitrator and such arbitrators shall then select a third arbitrator. The third arbitrator shall serve as the arbitrator for the arbitration. Judgment upon an award rendered by the arbitrator must be entered by a court having competent jurisdiction. The prevailing party in such arbitration proceeding shall be entitled to recover from the nonprevailing party all of its costs and expenses incurred in connection therewith, including the fees and disbursements of the arbitrator and any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party. All statements or admissions, whether oral or written, made in the course of the arbitration by any Person shall be deemed confidential and shall not be disclosed outside of the arbitration proceedings by any Person receiving such statements or admissions. The decision of the arbitrator shall be final and binding upon the Applicable Party, the Complaining Parties, the Association and all Owners.

20.05 Exclusiveness of Procedures.

Without in any way limiting the provisions of Section 20.03, in the event that the provisions of Section 20.03 shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the provisions of Section 20.02 shall be deemed applicable for the resolution of all Disputes and such determination by the court of competent jurisdiction shall not be construed to vitiate the exclusiveness of this Article XX as the sole procedure for resolving all Disputes against the Applicable Parties.

20.06 Waiver of Consequential and Punitive Damages.

Notwithstanding anything to the contrary set forth in this Declaration, no Applicable Party shall be liable to any Complaining Party for any consequential, incidental, punitive, or indirect damages from, relating to, or otherwise in connection with any Dispute even if such Applicable Party has been advised of the possibility of or could have foreseen such damages. This waiver applies regardless of the form of action, whether in contract, tort, or otherwise. By accepting a deed to a Townhome Lot, each Owner waives its right and covenants not to assert any constitutional right to trial by jury for any Disputes against an Applicable Party and covenants and agrees that the waiver of jury trial described herein shall be binding upon its successors and assigns and upon all Persons asserting rights or disputes or otherwise acting on such Owner's behalf.

20.07 Construction Defect Action Reform Act.

Except as may be permitted under Applicable Law and as expressly provided for herein, nothing herein shall be interpreted to supersede the provisions of the Construction Defect Action Reform Act, Sections 13-20-801 *et seq.*, Colorado Revised Statutes.

ARTICLE XXI
MISCELLANEOUS

21.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

21.02 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

21.03 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Planned Community can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, regardless of whether it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is at any time used for a particular use, that such use will continue in effect.

21.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Townhome Lot or any other part of the Planned Community may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

21.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

21.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

21.07 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

21.08 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of law provisions thereof.

21.09 Notices.

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

address of the Townhome Lot shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to such address. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Stratton Flats Townhome Association, Inc.
408 Aspen Business Center, Suite 209
Aspen, Colorado 81611

21.10 Priority of the Master Association Documents.

This Declaration and the other Association Documents shall be subject and subordinate to the Master Association Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration or any of the other Association Documents and the terms and conditions of the Master Association Documents, the terms and conditions of the Master Association shall control. The terms and conditions of this Section 21.10 may not be amended or deleted without the prior written consent of the Master Association.

21.11 Waivers.

No waivers by the Association of any right of the Association shall constitute a waiver by Declarant or the Master Association of any right of Declarant or the Master Association.

21.12 Rule Against Perpetuities.

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Barack H. Obama, the current President of the United States and George W. Bush, the former President of the United States.

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EXHIBIT A

(Attached to and forming a part of the Declaration of Covenants, Conditions
and Restrictions for Stratton Flats Townhomes)

LEGAL DESCRIPTION OF THE STRATTON FLATS PROPERTY

PARCEL A, AMENDED LEHMANN PARCELS, ACCORDING TO THE "AMENDED EXEMPTION
PLAT, LEHMANN PARCELS" FILED JUNE 30, 2006 AT RECEPTION NO. 200617646, COUNTY
OF EAGLE, STATE OF COLORADO, AND THE RESUBDIVISION THEREOF ACCORDING TO
THE PRELIMINARY PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT,
RECORDED MARCH 21, 2008 UNDER RECEPTION NO. 200806089, EAGLE COUNTY,
COLORADO, FINAL PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT,
RECORDED MARCH 21, 2008 UNDER RECEPTION NO. 200806090, EAGLE COUNTY,
COLORADO, AND THE FIRST AMENDMENT TO FINAL PLAT OF STRATTON FLATS
PLANNED UNIT DEVELOPMENT RECORDED JANUARY 22, 2009 AS RECEPTION NO.
200900843, EAGLE COUNTY, AND ANY SUPPLEMENTS AND/OR AMENDMENTS THERETO.

EXHIBIT B

(Attached to and forming a part of the Declaration of Covenants, Conditions
and Restrictions for Stratton Flats Townhomes)

LIST OF RECORDED EASEMENTS

Effect of inclusion of the Property in the Gypsum Fire Protection District as disclosed by Findings, Order and Decree recorded April 29, 1983, in Book 358 at Page 691.

Effect of inclusion of the Property in the Western Eagle County Metropolitan Recreation District as disclosed by Amended Order for Inclusion of Land recorded January 3, 1994, in Book 629 at Page 173.

Deed of Aviation Agreement made by and between Gypsum Airpark, LLC, a Colorado limited liability company, D/B/A Gypsum Commercial Park, the County of Eagle and the Town of Gypsum recorded June 3, 1997, in Book 728 at Page 330.

Plat of Lehmann Parcels filed February 26, 1998, at Reception No. 648253.

Easement and Right of Way for Gas Lines and Related Appurtenances, as granted by Gypsum Airpark, LLC, D/B/A Gypsum Commercial Park, a Colorado limited liability company to KN Energy, Inc., a Kansas corporation by instrument recorded September 10, 1999, at Reception No. 708260.

Easement and Right of Way for Access, Utility and Public Road Purposes, as granted by Ernst Lehmann to Town of Gypsum by instrument recorded July 17, 2001, at Reception no. 762354.

Easement and Right of Way for Electric Line and Related Appurtenances, as granted by Gypsum Airpark, LLC to Holy Cross Energy by instrument recorded August 23, 2001, at Reception No. 765572.

Easement and Right of Way for Electric Line and Related Appurtenances, as granted by Ernst Lehmann to Holy Cross Energy by instrument recorded August 23, 2001, at Reception No. 765573.

Annexation Agreement with the Town of Gypsum recorded June 30, 2006 at Reception No. 200617643 and first amendment thereto recorded March 21, 2008 at Reception No. 200806081.

Town of Gypsum Ordinance No. 2006-05 (zoning and sketch plan) recorded June 30, 2006 at Reception No. 200617644.

Plat of Amended Lehmann Parcels, according to the "Amended Exemption Plat Lehmann Parcels" filed June 30, 2006 at Reception No. 200617646.

Deed of Avigation Easement recorded June 30, 2006 at Reception No. 200617647.

Subdivision Improvements Agreement recorded March 21, 2008 under Reception No. 200806082.

Planned Unit Development Guide recorded March 21, 2008 at Reception No. 200806083.

Dry-Up Covenant recorded March 21, 2008 at Reception No. 200806085.

Long Term Water Lease Agreement recorded March 21, 2008 at Reception No. 200806084.

Trench, Conduit and Vault Agreement recorded August 13, 2008 as Reception No. 200817162.

Stratton Flats Housing Plan and Development Assistance Agreement recorded August 15, 2008 at Reception No. 200817301.

Preliminary Plat of Stratton Flats Planned Unit Development recorded March 21, 2008 at Reception No. 200806089.

Final Plat of Stratton Flats Planned Unit Development recorded March 21, 2008 at Reception No. 200806090.

First Amendment to Final Plat of Stratton Flats Planned Unit Development recorded January 22, 2009 at Reception No. 200900843.

Declaration of Covenants, Conditions and Restrictions for Stratton Flats Master Association recorded January 26, 2009 at Reception No. 200900985

