

***AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
BEAR MOUNTAIN TOWNHOUSES
(a Planned Community)***

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BEAR MOUNTAIN TOWNHOUSES
(a Planned Community)**

THIS AMENDED AND RESTATED DECLARATION is made effective upon recording.

RECITALS

A. Declarant, Bear Mountain Builders, Incorporated, a Colorado corporation, recorded that certain Declaration of Covenants, Conditions and Restrictions in the real property records of Boulder County, Colorado on November 18, 1976, at Reception No. 200234 as amended and supplemented by documents of record, if any, (the "Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Bear Mountain Townhouses ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration.

C. The Original Declaration provides for and allows for this Declaration in Article IX, Section 3, which provides as follows:

This Declaration may be amended...by an instrument signed by the owners of not less than 75% of the lots and 75% of the holders of recorded first mortgages and deeds of trust;

D. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), the required approval of 75% of the Lot Owners for amendment is now void.

E. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), the amendment requirement for this Declaration is now 67% of the Lot Owners.

F. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

G. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

H. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

I. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

J. Pursuant to C.R.S. §38-33.3-217(1)(a), at least 67% of the Lot Owners and 75% of the first mortgagees have approved this Declaration, or alternatively, a Court Order entered by the District Court for Boulder County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

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

ARTICLE 1 DEFINITIONS

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

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

(b) "Architectural Review Committee" or "Committee" shall mean the committee appointed by the Board of Directors of the Master Association pursuant to the Master Declaration and as provided in this Declaration for the purpose of administering the architectural approval and design review provisions contained in the Master Declaration and this Declaration.

(c) "Assessment" shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Lot pursuant to the Master Declaration, this Declaration, or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) "Association" shall mean and refer to Bear Mountain Townhouse Homeowners' Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(e) “Board” or “Board of Directors” or “Executive Board” shall mean the body designated in the Governing Documents to act on behalf of the Association.

(f) “Common Area” or “Common Elements” shall mean all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, and shall include any Common Area located upon any real property which is annexed to the Property.

(g) “Common Expenses” shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(h) “Community” or “Bear Mountain Townhouses Community” shall mean the planned community created by the Original Declaration, as amended and restated by this Declaration, consisting of the Property, Common Area, and any improvements constructed on the Property and the Common Area.

(i) “Development Rights” shall mean those rights set forth in this Declaration and those rights set forth in the Act. “Governing Documents” shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as they may be amended from time to time.

(j) “Governing Documents” shall mean, collectively, this Declaration, the Map, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Bear Mountain Townhouse Homeowners’ Association, Inc., as they may be amended.

(k) “Lot” or “Unit” shall mean and refer to any of the Lots shown upon any recorded subdivision map or plat of the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area.

(l) “Master Association” shall mean and refer to the Devil’s Thumb Homeowners’ Association, a Colorado nonprofit corporation, and its successors and assigns.

(m) “Master Declaration” shall mean and refer to the Devil’s Thumb Homeowners’ Association Amended and Restated Declaration of Covenants and Restrictions recorded May 16, 2002 at Reception No. 2288258 in the records of the Clerk and Recorder for the County of Boulder, State of Colorado, as amended and supplemented from time to time.

(n) “Member” shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

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

(p) “Pet” shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(q) “Plat” or “Map” shall mean and refer to the map(s) and/or plat(s) of the Property and improvements that are subject to this Declaration and which are designated in the Map or Plat recorded in the records of the Office of the Clerk and Recorder of Boulder County. More than one Plat or supplement thereto may be recorded, and, if so, then the term “Plat” shall collectively mean and refer to all of such maps, plats and supplements thereto.

(r) “Property” shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(s) “Rules and Regulations” shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments.

(t) “Townhome” or “Townhouse” shall mean the residential dwelling improvement constructed on a Lot which is designed and intended for use and occupancy as a residence by a single family.

ARTICLE 2 NAMES/DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is “Bear Mountain Townhouses.” The name of the Association is the “Bear Mountain Townhouse Homeowners' Association, Inc.”

Section 2.2 Property. The Community is located in the County of Boulder, State of Colorado. The Property of the Community is described in *Exhibit A* of this Declaration, in the Original Declaration, in the Plat, and/or as is consistent with the common scheme and plan for the creation and operation of the Community. The Property currently consists of 10 Lots. Easements for utilities and other purposes over and across the Lots and Common Area may be as shown upon a recorded Map and on any recorded map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Easement for Encroachments. Each Townhome and the property included in the Common Area shall be subject to an easement for encroachments created by the original construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Townhomes is partially or totally destroyed, and then rebuilt, the owners of the Townhomes so affected agree that minor encroachments of parts of the adjacent Townhome or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2.4 Blanket Easement.

(a) Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, and employees to enter in or to cross over the Common Area and any Lot to perform the duties of operation, installation, maintenance, repair and replacement of the Lot, Townhome or Common Area provided for in this Declaration.

(b) Utility Easement. A blanket easement is granted to the Association upon, across, over and under all of the Lots for ingress, egress, installation, replacing, repairing and maintaining any utilities, including but not limited to water, sewers, gas, telephones, electricity, cable, and a master antenna system, to the extent the Association is responsible for such utilities. By virtue of this easement, the Association shall have the authority to permit a utility company to affix and maintain wires, circuits, conduits, meters and similar equipment on, across and under the Townhomes. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Common Area or Lots, except as approved by the Board of Directors. The easements provided for in this paragraph shall in no way affect any other prior recorded easements on the premises.

Section 2.5 Easement for Common and Party Walls. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of common wall maintenance and repair, in accordance with the party wall provisions contained in this Declaration, upon reasonable notice to the Owners of the common wall. Any damage occasioned to the adjacent Lot or improvements, including the dwelling thereon, in exercising this easement, shall be the responsibility of the Owner whose negligent or wrongful acts or omissions caused the damage.

Section 2.6 Access. For the purpose of performing the maintenance referred to in this Declaration and the Master Declaration, and inspections related thereto, both the Association and the Master Association, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Master Association, the Association, or its agents, contractors or employees, may enter without notice at

any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, neither the Master Association nor the Association shall be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 2.7 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Lot with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Area, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Lot. The Association may pay any sums necessary to eliminate any lien filed against Common Area not benefitting from the labor and/or materials furnished and all sums paid shall be an Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

Section 2.8 Licensing of Use of Common Area. The Association, acting through the Board, may license use of parts of the Common Area to Owners on such terms and conditions as determined by the Board.

Section 2.9 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Area;
- (c) the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (e) the right of the Association to transfer or convey ownership of the Common Area, or any portion thereof, subject to the prior approval of 67% of the total Association vote;

(f) the right of the Association to suspend the voting rights and the right to use of any Common Area for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;

(g) the right of the Association to close portions of the Common Area for maintenance, repair, replacement, and improvement; and

(h) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.10 Delegation of Use. Owners may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Board of Directors, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property. If the Owner delegates rights to use the Common Area and facilities to tenants or contract purchasers who reside on their Lot, the Owner shall not be entitled to use the Common Area and facilities.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is an Owner shall be a Member of the Association. Owners shall also be members of the Master Association, as provided in the Master Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Each Lot shall be entitled to cast one vote in the Association, and one vote in the Master Association. Fractional and cumulative voting are prohibited.

Section 3.2 Allocated Interests.

(a) The Common Expense liability and votes in the Association allocated to each Lot are set as follows:

(i) the percentage of liability for Common Expenses, equally; and

(ii) the number of votes in the Association, equally, with one vote per Lot.

(b) The Common Expense liability and votes in the Master Association allocated to each Lot are set as follows:

(i) the percentage of liability for Common Expenses, equally; and

(ii) the number of votes in the Master Association, equally, with one vote per Lot.

Section 3.3 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.4 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on 30 days notice, with or without cause, and without a cancellation fee. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

ARTICLE 4 MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 4.1 Association Maintenance and Service Responsibilities. The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities.

- (a) The Association shall maintain and keep in good repair as a Common Expense the following:
- (i) all Common Area;
 - (ii) periodic painting, staining and/or cleaning of exterior surfaces of the Townhomes, exterior window frames, and entry doors and door frames of a Townhome, on a schedule to be determined by the Association;
 - (iii) all sewer lines, pipes and other utility lines up to the point such pipes and lines enter the Lot;
 - (iv) all vehicle entry garage doors in the Community;
 - (v) all fences and walls in the Community, including but not limited to any fence or wall enclosing a patio or deck;
 - (vi) all exterior light fixtures and light bulbs within such fixtures, except inside of patios;
 - (vii) trash removal; and
 - (viii) snow clearing; provided that the Board shall have the discretion to determine the amount of snow on sidewalks and roads that will require removal.

(b) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(c) Maintenance of Common Area by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or any portion of the Lot that is Association maintenance responsibility by an Owner or occupant shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(d) Damage to Lot by Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Area or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(A) for injuries or damages arising after the Owner of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(B) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Lot or such Owner's tenant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area.

(iii) The Association shall not be liable to any Owner, or any Owner's tenant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 4.2 Owner's Maintenance Responsibility. Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Lot. Such maintenance shall include, but not be limited to the following:

(a) all glass surfaces, windows, window screens, window frames (except for periodic painting and/or staining of the exterior window frames), casings and locks (provided, however, no changes that affect the exterior appearance of the windows may be made unless prior written approval is obtained from the Board) and window wells;

(b) all doors, doorways, door frames, hardware and locks and door chimes that are part of the entry system of the Lot (except for periodic painting and/or staining of exterior doors);

(c) any fireplace serving the Townhome and all components of the fireplace, including the chimney box, flue and chimney cap, if any;

(d) any skylight serving the Townhome;

(e) any patio, balcony, yard or deck, whether or not the same are enclosed;

(f) any portion of the heating and air conditioning system, including the air conditioning compressor, the fan coil, and the water heater serving the Townhome, whether located on the Lot or on the Common Area;

(g) any pipes, lines, ducts, conduits or other apparatus which serve only the Lot, from the point where the utilities enter the Lot;

(h) all utility meters, breaker boxes, or other apparatus serving only the Lot whether located within or without the boundaries of the Lot;

(i) all communications, television, telephone and electrical lines, receptacles and boxes serving any Lot whether located within or without the boundaries of the Lot;

(j) all garage interiors, garage service doors, and garage openers appurtenant to a Lot (except for and excluding the vehicle entry garage door, which shall be the Association's obligation pursuant to this Declaration);

(k) all porch light fixtures and light bulbs for such fixtures which are located within a patio's boundaries which are appurtenant to a Lot;

(l) any Association approved additions or alterations made by the Owner to the Lots.

Section 4.3 Owner Responsibilities. Each Owner shall have the responsibility to:

(a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Townhomes;

(b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment; and

(d) An Owner shall be liable for all injuries or damages to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Lot.

Section 4.4 Mold. Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Townhome, and the Common Area, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Townhome; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Lot and personal property, to any other Lot or the

Common Area, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Lot, to any other Lot or to the Common Area if the Owner fails to meet the requirements of this Section.

Section 4.5 Inspection, Repair and Replacement of Designated Owner Maintenance Components. The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations. If, in the Board of Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement (even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Townhome served by such component pursuant to this Declaration.

Section 4.6 Failure to Maintain. If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (I) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Lot, shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 4.7 Maintenance and Insurance Chart. As a Common Expense, the Association may periodically cause to be prepared a chart summarizing the repair, replacement, maintenance and insurance obligations of Owners and the Association, as outlined in this Declaration. Such repair, replacement, maintenance and insurance chart shall be provided to all Owners.

ARTICLE 5 PARTY WALLS

Section 5.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Townhome upon the Property and placed on the dividing line between Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 5.2 Sharing of Repair and Maintenance. The cost of reasonable repair, replacement and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 5.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5.4 Liability for Negligence. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for in this Declaration, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and damages as a result of failure to do so.

Section 5.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5.6 Dispute Resolution. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties shall submit the dispute to mediation. If the dispute cannot be resolved through mediation, the parties may pursue the dispute in arbitration or through a legal proceeding before a court.

ARTICLE 6
COVENANT FOR ASSESSMENTS

Section 6.1 Master Association Assessments. Assessments for the Master Association shall be due and payable as set forth in the Master Declaration and shall be collectible as set forth in the Master Declaration.

Section 6.2 Creation of Association Lien, Master Association Lien, and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration and the Master Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

Section 6.3 Basis of Assessments. Common Expense Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed to provide for the administration and performance of duties during such Assessment year, as set forth in this Declaration.

Section 6.4 Annual Assessment. The budget for annual Assessments for the Association shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the total Association vote. Assessments for the Master Association shall be determined as set forth in the Master Declaration. Assessments for the Association shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be

deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.5 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 6.6 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: Lot insurance; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (b) any extraordinary maintenance, repair, improvement or replacement costs of any area which the Association maintains required on fewer than all the Lots;
- (c) any extraordinary insurance costs incurred as a result of the value of a particular Owner's Townhome or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);
- (d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 6.7 Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 6.8 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

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

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.9 Assignment of Rents. If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Lot are more than 30 days delinquent, the Association may collect, and the occupant or lessee shall pay to the Board, the rent for any Lot owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Association's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Lot or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of a Lot. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Lot in the same manner as any other Assessment under this Declaration.

Section 6.10 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.11 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.

ARTICLE 7 USE RESTRICTIONS

Section 7.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Bear Mountain Townhouses Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 7.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (d) All fines imposed are collectable as Assessments.

Section 7.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and does not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

If the Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing the name(s) of the person(s) who will occupy the Lot. The designated person(s) shall not be changed more frequently than once every 12 months, and any such change must be designated in writing within 10 days of the change.

Section 7.4 Leasing and Occupancy. In order to preserve the character of the Community as predominantly Owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Lots shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Lots shall be prohibited. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Lot by the child or parent of an Owner. For purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing under this Declaration.

(a) General. Owners desiring to lease their Lots may do so only if they have applied for and received from the Association either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such leasing is in strict accordance with the terms of the permit and this Section. The Association shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All Leasing Permits and Hardship Leasing Permits shall be valid only as to specific Owners and Lots and shall not be transferable between either Lots or Owners; provided, however if a valid lease is in place at the date of transfer of the Lot, that lease may continue until the expiration of the lease term or for a maximum of one year, whichever is earlier.

(b) Applicability. Those Owners who are leasing their Lots upon the effective date of this Declaration shall be entitled to a Leasing Permit, notwithstanding the percentage limitations set forth herein. However, upon expiration of the current lease in effect at the time of recording of this Declaration, such Lot shall be subject to the provisions and restrictions of this Section.

(c) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than 20% of the total Lots in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) subject to the terms of subsection (a) above, the sale or transfer of the Lot to a person or entity other than the Owner (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of an Owner to lease his or her Lot within 180 days of the Leasing Permit having been issued; or (3) the failure of an Owner to have his or her Lot leased for any consecutive 180 day period thereafter. The Board may make an exception to the 180 day provision upon written application from the Owner at least 30 days prior to the expiration of the 180 day period that shows the Owner made reasonable efforts to rent

the Lot, but has been unable to do so due to market conditions or if the Owner demonstrates an abnormal or hardship reason for the vacancy. If current Leasing Permits have been issued for more than 20% of the total Lots, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of outstanding current Leasing Permits falls below 20% of the total Lots in the Community. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to 20% or less of the total Lots in the Community. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(d) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Association for a Hardship Leasing Permit. The Association shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Community if the permit is approved, (3) the number of Hardship Leasing Permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) an Owner must relocate his or her residence outside the greater Denver metropolitan area and cannot, within six months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if, during the term of the permit, the Owner is approved for and receives a Leasing Permit.

(e) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(i) Notice. At least 10 days prior to entering into the initial lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If the Board approves the form of lease, the Owner agrees not to change the lease form without submitting the new lease form to the Board for approval. In the event a lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any Rules and Regulations adopted pursuant thereto.

(ii) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than twelve months, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within 10 days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner may redact financial terms of the lease. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Rules and Regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) Compliance with Declaration, Bylaws and Rules and Regulations and Use of Common Elements. Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease.

(A) Compliance with Declaration, Bylaws and Rules and Regulations. The lessee shall comply with all provisions of the Governing Documents adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Governing Documents adopted pursuant thereto, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee. The fine may be assessed against the Owner after both parties are provided notice and an opportunity for hearing. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Governing Documents adopted pursuant thereto by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Colorado law. If the Association requests that the Owner evict the Owner's tenant

based on the terms of this Declaration and the Owner fails to commence such action within 30 days of the date of the Association's notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner for breaches resulting from the violation of the Governing Documents adopted pursuant thereto. If the Association evicts the lessee, any costs, including but not limited to reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(B) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

Section 7.5 Acquisition of Multiple Units. Except as otherwise set forth in this Section, no Owner may own more than two Lots in the Community. Notwithstanding the foregoing, Owners that own or control more than two Lots in the Community at the time of recording of this Declaration, directly or indirectly through an affiliate of the Owner, shall retain such ownership; provided, however, such Owners shall be prohibited from acquiring, whether directly or indirectly through an affiliate of the Owner, any interest in any additional Lot in the Community, whether through purchase, trade, gift, inheritance, lease, merger, consolidation or other means of acquisition. Notwithstanding anything in this Declaration to the contrary, this restriction on acquisition of Lots shall not apply to a mortgagee acquiring title to a Lot subject to a mortgage by foreclosure or deed in lieu of foreclosure. This restriction shall be enforceable by the Association or any Owner by means of an action for injunction to restrain any future acquisition or to require an Owner who has violated this restriction to divest any interest so acquired.

Section 7.6 Use of Patios and Balconies. Nothing shall be hung from or placed outside the Townhome, including patios and balconies, unless allowed in the Rules and Regulations.

Section 7.7 Restrictions on Pets. A reasonable number of Pets, as determined in the sole discretion of the Board of Directors, may be kept on a Lot, *if* the Pet is not a nuisance to other residents. The Association shall have the authority to adopt Rules and Regulations further restricting size, weight, and total number of Pets, in the sole discretion of the Board of Directors. No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or residents in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the resident having control of the

Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. Animals are not permitted in the pool area, on tennis courts, or in the clubhouse. When on other Common Area, Pets must be on a leash and under control. Feces left by Pets upon the Common Area, patios, and balconies must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

Section 7.8 Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

Section 7.9 Tanks. No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill, shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

Section 7.10 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by residents. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 7.11 Vehicular Parking, Storage, and Repairs.

- (a) Parking upon any Common Area shall be regulated by the Association.
- (b) Vehicles parked on the Lot shall be parked inside garages with the garage door in the closed position when not in use. The primary use for all garages in the Community shall be for the storage of vehicles, as determined in the sole discretion in the Board of Directors.
- (c) Parking designated as visitor or guest parking shall not be used by Owners or occupants. All other parking spaces shall be used by the Owners or occupants for self-service parking purposes on a “first come, first served” basis; provided, however, that no Owner or occupant shall park more than one vehicle (owned or leased by such Owner, a member of his or her family or occupant of his or her Lot) on the Common Area parking spaces without the prior written consent of the Association.
- (d) The Association shall have the express authority to license and lease parking spaces in the Community in its sole discretion, as set forth in this Declaration.
- (e) The following may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Association or allowed by Colorado law: oversized vehicles, trucks or pickup trucks over one ton, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for up to 72 consecutive hours for loading or delivery of goods or services. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.
- (f) No unsightly vehicles, as determined in the sole discretion of the Board of Directors, shall be permitted in the Community as may be further set forth in the Rules and Regulations.
- (g) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An “abandoned or inoperable vehicle” shall be defined by Colorado statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(h) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community or interfere with the reasonable needs of other residents to use their driveway, streets, or guest parking within the Community.

(i) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(j) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(k) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(l) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot or Townhome, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(m) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 7.12 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 7.13 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Association.

Section 7.14 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community. No open fires shall be lighted or permitted on any Property within the Community except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations

Section 7.15 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 7.16 Restriction on Signs and Advertising Devices. Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association. Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations. One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding six inches by six inches may be displayed inside a window of a Lot.

Section 7.17 Outbuildings. An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, playhouses, swing sets, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Architectural Review Committee. Further, no outbuilding or temporary structure

shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

Section 7.18 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. The Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 7.19 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 7.20 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Townhome or any Common Area shall be done by any Owner, without the prior written approval of the Architectural Review Committee, including combination of Lots. No improvement to the exterior of a building which includes a Townhome or to the Common Area shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Architectural Review Committee.

Section 7.21 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 7.22 Compliance with Governing Documents. Each Owner shall comply strictly with the provisions of this Declaration, the Master Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

Section 7.23 Compliance With Other Laws. No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 7.24 Use of the Words Bear Mountain Townhouses and Bear Mountain Townhouse Homeowners' Association, Inc. No resident or Owner shall use the words Bear Mountain Townhouses or Bear Mountain Townhouse Homeowners' Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 8
ARCHITECTURAL APPROVAL/DESIGN REVIEW

Section 8.1 Required Approval. All Owners shall be subject to all architectural review provisions set forth in the Master Declaration. No structures, including Townhomes, residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted under this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed on a Lot, nor shall any alteration or change to the exterior of the improvements, the exterior of a Townhome, to a Lot, or to any structure or any attachment to the exterior of a Townhome (including paint, awnings, patios, decks, or shutters) be commenced by Owners unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee (“Committee”) as set forth in the Master Declaration and as may be outlined in the Rules and Regulations. Only house numbers which were installed by the Association or approved by the Committee shall be used and maintained on any Lot within the Community. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

ARTICLE 9
INSURANCE

Section 9.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of “A” or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 9.2 Real Property Insurance on the Townhomes and Common Areas.

- (a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Areas, the Townhomes, and the other property of the Association.

- (b) The Association shall provide insurance on the Townhomes that shall exclude the finished surfaces of perimeter and partition walls, finished surfaces of floors and ceilings within a Townhome (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering). The insurance obtained by the Association on the Townhomes is not required to include improvements and betterments installed by

Owners, personal property of the Owners, or liability for incidents occurring within the Townhomes or through the Owners' personal actions.

(c) All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Boulder County.

(d) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors.

(e) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent 100% of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(f) At least every three years, the Association may obtain an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents 100% of the replacement value of each Lot and the facilities in the Common Area.

(g) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

Section 9.3 Association Flood Insurance. The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

Section 9.4 Liability Insurance. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Townhomes (excluding liability within each Townhome) and the Common Areas, including structural coverage of the Townhomes, in such limits as the Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 9.5 Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 9.6 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 9.7 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

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

Section 9.9 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

- (a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.
- (c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Owners, holders of First Mortgages and the Association.
- (d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least 10 days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(f) Prior to renewing casualty insurance and not less than every three years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhomes and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

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

Section 9.10 Insurance Obtained by Owners. Each Owner shall be responsible for maintaining insurance which covers his Lot to the extent not covered by policies maintained by the Association. Such insurance shall include, but may not be limited to, furnishings and personal or other property in the Townhome and liability insurance for injury, death or damage in the Townhome or upon the Lot. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 9.11 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.12 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 9.13 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 9.14 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 9.15 Duty to Repair. Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 9.16 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 9.17 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

- (a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Lot and shall be collected as provided in this Declaration.

(b) The Owner shall pay or absorb the deductible for any loss to the Lot that would be the responsibility of the Owner in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible. If a negligent Owner fails to pay the deductible for damage to a Lot, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments. If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 9.18 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners. Notwithstanding the Special Assessment procedure set forth in this Declaration, the insurance Assessment shall be ratified unless vetoed by 90% of the Members pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 9.19 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

Section 9.20 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary in this Declaration, the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in payment of Assessments owed to the Association under this Declaration hereof, then the Association may retain and apply such proceeds recovered to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

ARTICLE 10
DEVELOPMENT RIGHTS OF THE ASSOCIATION

Section 10.1 Development Rights. The Association shall reserve and have, for itself, the following Development Rights, provided the exercise of such Development Rights shall first require the approval of at least 67% of all Owners:

- (a) the right to create Lots from or to convert Common Areas into Lots, convey any Lot created from the Common Areas, subdivide the Common Areas, separately or jointly, with any party as may be jointly granted Development Rights from all Owners with the Association; *provided, further*, that if not expressly assigned to the Association or any other person, the net proceeds from any conveyance of a Lot created by the Association, shall be held by the Association on behalf of Owners, pursuant to their Allocated Interests prior to the new Lot;
- (b) the right to relocate boundaries between adjoining Lots (as allowed in the Act); enlarge Lots; enlarge the Common Areas; eliminate, reduce or diminish the size of Lots owned by it or as applied for by an Owner; reduce or diminish the size of areas of the Common Areas; subdivide Lots; or complete or make improvements, as the same may be indicated on Maps filed of record or filed with the Declaration;
- (c) the right to construct additional Lots, Common Areas as part of the exercise of any Development Rights;
- (d) the right to exercise any Development Rights reserved or allowed in the Act;
- (e) the right to amend the Declaration in connection with the exercise of any development right;
- (f) the right to amend the Maps in connection with the exercise of any development right; and
- (g) the right to exercise any additional reserved right created by any other provision of this Declaration.

Section 10.2 Construction and Access Easement. In addition to the rights set forth above, Association shall have and also reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas in Common Areas, and the future right to control such work and repairs, and the right of access thereto. All work may be performed without the consent or approval of any Owner or holder of a security interest. The Association and its assignees have such an access easement through the Common Areas and an access easement through the Community as may be reasonably necessary for exercising reserved rights in this Declaration.

Section 10.3 Utility Reservations. The Association hereby creates and reserves to itself, a blanket easement upon, across, over and under the Property, the Community and the Lots for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems or subsequent utility as may be desired or provided. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association liable for any damage caused by any third party, including, without limitation, any utility company.

Section 10.4 Development of the Community — Supplemental Declarations. Before another Lot is created and conveyed by the Association to an Owner, and before any Lot owned by the Association is eliminated or withdrawn, a Supplemental Declaration must be authorized by the Board of Directors and recorded, which may supplement the covenants, conditions and restrictions contained in this Declaration. Upon recordation of a Supplemental Declaration, all of the Property shall be subject to or no longer bound by all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, as amended or supplemented by a Supplemental Declaration, as applicable.

Supplemental Declarations may include the following: (a) the Supplemental Declaration may be executed and acknowledged by the Association (acting through the Board of Directors) or by the Owner or Owners of a Lot covered by the Supplemental Declaration; (b) the Supplemental Declaration must contain the executed and acknowledged written consent of authorized officers of the Association; (c) the Supplemental Declaration may contain a legal description of the property subject thereto; (d) the Supplemental Declaration may contain a reference to this Declaration; and (e) Supplemental Declarations may impose, on the portion of the Property effected thereby, or any existing portion of the Community, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the property covered thereby.

Section 10.5 Restrictions on Subordinate Covenants and Maps. The prior written consent of the Association shall be required by any Owner or with regard to any Lot (a) before junior or subordinate covenants may be filed of record against all or any portion of a Lot, and (b) before any map, plat or re-subdivision may be filed of record against all or any portion of a Lot.

In the event an Owner records covenants against all or any part of a Lot without the written consent required by the provisions of this Section, or in the event an Owner records any map, plat or re-subdivision against all or any part of any Lot without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void by the Association upon the Association recording a notice to that effect.

Section 10.6 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of the Association may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County of Boulder, State of Colorado. Such instrument shall be executed by the Association and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of security interest on a Lot. Any rights created or reserved under this Article or the Act for the benefit of the Association may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Boulder County, State of Colorado. Such instrument shall be executed by the transferor and the Association. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. §38-33.3-210 and C.R.S. §38-33.3-209(6) with the consent of the appropriate Owner(s) or any holders of a security interest on a Lot.

Section 10.7 Required Approval. The approval of 67% of the Owners shall be required to exercise any reserved Development Rights in this Declaration. Upon obtaining such approval, the Association (acting through its Board of Directors) or its assignees may proceed without limitation at their sole option, and the Association or its assignees may exercise any reserved Development Rights on all or any portion of the property in whatever order determined. The Association or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

Section 10.8 Amendment of the Declaration or Map. If the Association or any assignee elects to exercise any reserved rights, such party shall comply with the Act.

Section 10.9 Interpretation. Recording of amendments to the Declaration and the Map pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Lot; and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional improvements, and

the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Areas, whether or not reference is made to any Amendment of the Declaration Map. Reference to the Declaration or Map in any instrument shall be deemed to include all Amendments to the Declaration or Map without specific reference thereto.

ARTICLE 11 DISPUTE RESOLUTION PROCEDURES

Section 11.1 Alternate Dispute Resolution. The (a) Association (including its officers, directors and committee members), (b) all Owners, and (c) any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a "Bound Party") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the rules and regulations of the Association, the design or construction of any improvements on the Property, or otherwise relating to the Community (the "Claims") to the dispute resolution procedures set forth in this Article, with the exception of the "Exempt Claims" described in this Article.

Section 11.2 Exempt Claims. The provisions of this Article shall not apply to, and the term "Claims" shall not include, any of the following: (a) the imposition and collection of Assessments or other charges levied under the Assessments section of this Declaration, including actions to foreclose assessment liens; (b) a suit by the Association to obtain a injunctive relief; (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it; (e) claims of the Association; and (f) claims against a non-Bound Party.

Section 11.3 Claim Resolution Procedures. All Claims other than Exempt Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent's role in the Claim, (ii) the basis of the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(d) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or such other mediator upon which the Parties may agree.

(e) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons or entities not a Party to the foregoing proceedings.

(f) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(g) Each Party shall, within 10 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(h) Subject to subsection (i) below, if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 20 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

(i) If a Claim alleges that any improvements located on the Properties suffer from construction or design defects, the following additional requirements must be satisfied before such a Claim may be submitted to arbitration: (a) if the Claim relates to one or more Lots, the written approval of the Owner of each such Lot and the First Mortgagee on each such residence shall be obtained; (b) if the Claim relates generally to improvements on the Common Areas, the written approval of at least 67% of all Owners must be obtained, together with the written approval of First Mortgagees holding First Mortgages on at least 67% of the Lots; and (c) if the Claim is to be pursued by the Association, the Association shall hold a meeting of the Members no sooner than 10 days following the Association providing a written statement to all Owners and First Mortgagees discussing the potential Claim. Such written statement must include at least the following information: (I) a statement of the Claim and the Respondent's response thereto, including any settlement offer; (II) an estimate of the time and costs of pursuing such Claim, (III) the potential impact of the Claim on the marketability of the Lots; and (IV) a statement advising the Owners of their duty to disclose the Claim or alleged defect to prospective purchasers of their Lots. Such written statement shall also be sent to the Respondent at least 10 days before such meeting and the Respondent shall have the right to attend and make a presentation at such meeting.

(j) This Article is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(k) If the Claims are resolved through negotiation or mediation as provided above, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorney fees and mediation expenses, unless the Bound Parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claims go to binding arbitration, the "Prevailing Party" shall receive as a part of its Award from the opposing Party(ies) all of its costs, including attorney fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article.

(l) For purposes of subparagraph (k) above, if the Award is equal or more favorable to Claimant than Claimant's Settlement Demand, the Claimant shall be deemed to be the Prevailing Party; if the Award is equal to or less favorable to Claimant than any Respondent's Settlement Offer, such Respondent shall be deemed to be the Prevailing Party. If neither of the above apply, neither party shall be deemed a Prevailing Party and each shall bear its own costs and expenses, including attorney fees.

(m) If the Parties agree to resolve any Claim through negotiation or mediation as set forth above, and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article. In such event, the Party taking action to

enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorney fees and costs.

ARTICLE 12 MISCELLANEOUS AND GENERAL PROVISIONS

Section 12.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) suspending the right to vote or use Common Area;

(iii) exercising self-help or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action.

Section 12.2 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.3 Covenants to Run. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 12.4 Termination. Termination of this Common Interest Community shall be in accordance with the Act.

Section 12.5 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs, without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner, shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 12.6 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least 51% of the votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The

amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Boulder County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.7 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law, and/or to bring the Declaration into compliance with applicable rules and regulations of the Federal National Mortgage Association (“Fannie Mae”), the Department of Housing and Urban Development (“HUD”) and the Veterans Administration (“VA”) pursuant to federal law.

Section 12.8 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.9 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.10 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.11 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 12.12 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.13 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

Section 12.14 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.15 Master Declaration. All Owners in the Community shall be subject to the Master Declaration. The provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association and the Rules and Regulations of the Association are subject and subordinate to the Master Declaration.

EXHIBIT A

PROPERTY

Lots 95 through 104, inclusive, and Outlots A-1 and A-2, a replat of a portion of Devils Thumb Subdivision, Filing No. 6, Boulder County, Colorado.

AFTER RECORDING RETURN TO:

HindmanSanchez P.C.
5610 Ward Road, Suite 300
Arvada, CO 80033
Attn: MCK