

**DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR RED CANYON TOWNHOMES,  
A COLORADO COMMON INTEREST COMMUNITY**

THIS DECLARATION is made this 1<sup>st</sup> day of October, 1997, by RED CANYON TOWNHOMES, LLC, a Colorado limited liability company ("Declarant"), whose address is 90 Madison Street, Suite 103, Denver, Colorado 80206

**RECITALS**

**WHEREAS**, Declarant is the owner of certain real estate in the Town of Eagle, County of Eagle, State of Colorado, known as Tract D, North Bank, according to the plat thereof recorded in Book 646 at Page 156 of the Eagle County, Colorado real estate records (less the tract dedicated to the Town of Eagle pursuant to the Plat described below).

**WHEREAS**, Declarant has subdivided said property into nine (9) townhome units and associated common elements and other tracts pursuant to the Final Plat of Red Canyon Townhomes, Phase 1A and Tracts C, D1 and D2, North Bank, a Resubdivision of Tracts C and D, North Bank, Town of Eagle, State of Colorado, recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Eagle County, Colorado real estate records (the "Plat").

**WHEREAS**, Declarant anticipates further, phased resubdivision of the land described as Tract D1 and/or Tract D2, North Bank, on the Plat and is reserving certain easements and other rights with respect thereto.

**NOW, THEREFORE**, the Declarant hereby declares that all of the property included within "Red Canyon Townhomes Phase 1A" as shown on the Plat, together with any property subsequently made subject to this Declaration as provided herein, together with all appurtenances thereto and improvements thereon, shall be held, sold, used, improved, occupied, owned, relied upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in such property or any part thereof, their heirs, successors, and assigns.

**ARTICLE 1  
SUBMISSION AND DEFINED TERMS**

**1.01 Submission of Real Estate.**

- (a) Declarant hereby submits the Real Estate described on Exhibit "A" to this Declaration to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as such Act may be amended from time to time (the

"Act"). Red Canyon Townhomes is a Planned Community under such Act. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

- (b) Declarant does further hereby establish a plan for the ownership of real property estates in fee simple consisting of the Units designated on the Plat, and the ownership by the Association (subject to the rights reserved by the Declarant herein) of the Common Elements of Red Canyon Townhomes. Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, grants, limitations and obligations shall be deemed to run with the Real Estate and any other property which is hereinafter added to the Common Interest Community and become subject to this Declaration, and the same shall be a burden and benefit to Declarant, its successors and assigns, and to any person acquiring or owning any interest in the Real Estate and any other real property which is hereinafter added to the Common Interest Community and become subject to this Declaration, their grantees, successors, heirs, executors, devisees or assigns.

**1.02 Definitions.** Each capitalized term in this Declaration not otherwise defined in this Declaration or in the Plat shall have the meanings specified or used in the Act. As used in this Declaration, unless otherwise provided:

- (a) "Allocated Interest" means the percentage liability for Common Expenses and the votes in the Association allocable to a Unit, as may be set or re-allocated from time to time by this Declaration or any subsequent amendments to this Declaration.
- (b) "Association" means Red Canyon Townhomes Owners Association, a Colorado nonprofit corporation, the members of which shall consist of all of the Owners of Units or, following termination of the Common Interest Community pursuant to the Act, shall consist of all former Unit Owners entitled to distributions of proceeds under C.R.S. §38-33.3-218, or the heirs, personal representatives, successors, or assigns of such former Unit Owners. The Board of Directors of the Association is hereinafter referred to as the "Executive Board."
- (c) "Declarant Association Control Period" means the time period between the initial recording of this Declaration in the real property records of Eagle County, Colorado and the last to occur of (1) sixty (60) days after conveyance of seventy-five percent (75%) of the maximum number of Units that may be created pursuant to Section 6.12 below (i.e., 77 units) to Unit Owners other than a Declarant; (2) two years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or (3) two years after any right to add new Units to the Common Interest Community pursuant to Section 6.01 or 6.02 below was last

exercised by Declarant; provided, however, that such time period shall in no event exceed the Declarant Control Period.

- (d) "Building" means a building structure constructed on, containing or including Units and located on the Real Estate or on any other real property, including any portion of the Expansion Property, which is hereafter added to the Common Interest Community and made subject to this Declaration.
- (e) "Common Elements" means (i) all portions of the Project other than within the boundaries of the Units (provided that certain Common Elements described herein may be located wholly or partially within the boundaries of the Units); (ii) the easements for access to and the maintenance and repair of Buildings and other improvements on Units provided for in this Declaration or the Act; (iii) the roofs, fascia, soffits, exterior walls, foundations and other structural portions of Buildings, crawl spaces and drainage facilities beneath Buildings, together with any chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column or other fixture lying wholly or partially within a Unit and which serve another Unit or serve any portion of the Common Elements outside of such Unit; (iv) the Real Estate and easements described on Exhibit "A", except those portions of the Real Estate completely within the boundaries of the Units (provided that certain Common Elements described herein may be located on the Real Estate within the boundaries of the Units); (v) all fixtures, utilities, facilities, improvements and apparatus thereon outside of the Unit boundaries; (vi) public or private paths, tracts or similar facilities within the Project; and (vii) those portions of the Project specifically labeled as Common Elements on the Plat. Common Elements which are not Limited Common Elements are sometimes referred to in this Declaration as "General Common Elements."
- (f) "Common Expenses" means all expenses expressly declared to be Common Expenses by the Act, this Declaration or the bylaws of the Association, together with all funds assessed for or allocated to the creation, funding or maintenance of reserves.
- (g) "Declarant" means Red Canyon Townhomes, LLC, a Colorado limited liability company, and its successors and assigns to the Development Rights and other Special Declarant Rights created or reserved herein.
- (h) "Declarant Control Period" means twenty-five (25) years from and after the initial recording of this Declaration in the real property records of Eagle County, Colorado. Such 25-year period shall be the time limit within which each of the Development Rights provided for in this Declaration must be exercised, in accordance with C.R.S. §38-33.3-201(1)(h). However, the Association, upon the request of the Declarant or the owner of the real estate subject to such Development Right, may agree to an extension of such time period for exercise of

any Development Right or a reinstatement of any Development Right that has lapsed, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of such Development Right, pursuant to and as permitted by C.R.S. §38-33.3-210(5).

- (i) "Declaration" means this instrument and all amendments to this instrument hereafter recorded in the real property records of Eagle County, Colorado, together with the Plat and all amendments, supplements and replats thereof.
- (j) "Expansion Property" means Tract D1 and Tract D2, North Bank as shown on the Plat. The Expansion Property is not subject to this Declaration. However, Declarant has reserved certain Development Rights with respect to Expansion Property pursuant to this Declaration, including the right to add any portion of such property to the Project and create additional Units thereon.
- (k) "First Lienor" means the person who is the beneficiary of or holds the first lien security interest on a Unit, other than the Association with respect to its lien under the Act as described in Section 9.10 of this Declaration.
- (l) "Limited Common Elements" means that portion of the Common Elements, if any, designated in this Declaration, on the Plat, or by the Act, or in any amendment to any of the foregoing, for the exclusive use of one or more but fewer than all of the Units.
- (m) "Mortgagee" means any person who owns, or who holds as beneficiary, any security interest, lien or encumbrance on a Unit, including a First Lienor and including any person owning or holding a non-consensual lien encumbering a Unit, such as (but not limited to) a mechanic's lien or judgment lien. If the security interest is a deed of trust, then the "Mortgagee" is the beneficiary thereof and is not the Public Trustee of Eagle County or the private trustee identified therein.
- (n) "Owner" means any person who is the record owner of an undivided fee simple interest in any Unit, including a contract seller but excluding those having such interest merely as security for the performance of any obligation, and where the context clearly requires, "Owner" also means all co-owners of undivided fee simple interests in such Unit.
- (o) "Plat" means that part of this Declaration and any amendment to this Declaration that is a land survey plat as set forth in C.R.S. §38-51-102, depicts all or any portion of the Project in two dimensions, is executed by a person that is authorized by the Act to execute the Declaration or amendment to the Declaration for the Project, and is recorded in the real estate records of Eagle County, Colorado. The Plat has been recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the

Eagle County, Colorado real estate records. The Plat is not meant to and does not serve to include Tract C, Tract D1 or Tract D2, North Bank, as respectively shown on the Plat in the Project, provided that such inclusion of Tract D1 and/or D2, in whole or in part, may hereafter be effected pursuant to the exercise of the Development Rights reserved pursuant to this Declaration.

- (p) "Project" means the entirety of Common Elements and Units which are from time to time subject to this Declaration, whether on the Real Estate, or on any other property (excluding, however, the Expansion Property unless such Expansion Property or portion thereof is later added to this Declaration pursuant to its provisions and/or the Act).
- (q) "Real Estate" means the real property situated in the County of Eagle, State of Colorado, described in Exhibit "A" to this Declaration, which is hereby submitted to this Declaration, subject to the Development Rights and/or Special Declarant Rights reserved or created herein. Such term does not include Tract D1 or Tract D2 shown on the Plat except to the extent such land or portion thereof is hereafter submitted to this Declaration pursuant to its terms.
- (r) "Unit" means the separate Units designated on the Plat, together with the Allocated Interest in the Common Expenses and votes in the Association allocated to such Unit.

## ARTICLE 2 NAMES; DESCRIPTION OF UNITS

**2.01 Name of Common Interest Community.** The name of the Common interest Community is Red Canyon Townhomes. Red Canyon Townhomes is a Planned Community.

**2.02 Name of Association.** The name of the Association is Red Canyon Townhomes Owners Association, which is a Colorado nonprofit corporation.

**2.03 Real Estate.** The Common Interest Community is located in Eagle County, Colorado. The Real Estate of the Project is described in Exhibit "A" attached hereto. Additional real property may be added to the Common Interest Community pursuant to exercise of the Development Rights reserved to Declarant described herein.

## ARTICLE 3 UNITS

**3.01 Number of Units.** The Common Interest Community shall initially include nine (9) Units, whose boundaries are delineated on the Plat and designated as Units on the Plat. The identifying number of each Unit is shown on the Plat.

**3.02 Boundaries of Units.** The boundaries of each Unit are located as shown on the Plat.

**3.03 Allocated Interests.** The percentage Allocated Interest of Common Expense liability and votes in the Association appurtenant to each Unit described in Section 3.01 is set forth and scheduled in Exhibit "B" to this Declaration. The formula to establish the Allocated Interest of Common Expense liability for each Unit is one (1) divided by the total number of Units then subject to this Declaration. That is, each Unit's share is determined by dividing the number one (1) by the total number of Units within the Project. Each Unit is allocated one (1) vote in the Association. If Units are added to [or withdrawn from] the Project, the Allocated Interest of Common Expense liability for each Unit shall be recalculated by dividing the number one (1) by the total number of Units then included within the Project, and one (1) vote shall be allocated to each Unit then within the Project. Cumulative voting shall not be allowed in electing members of the Executive Board or for any other purpose.

**3.04 Subdivision of Units.** Units may not be further subdivided, provided that any amendment to this Declaration adding additional Units to the Project may provide for the subdivision of such Units.

**3.05 Relocation of Boundaries of Units.** Pursuant to the Act, upon approval by the Executive Board, the boundaries between adjoining Units may be relocated by an amendment to the Declaration, and each Unit whose boundaries are so relocated shall be deemed a separate Unit under this Declaration. In order to relocate the boundaries between adjoining Units, the Owners of such Units shall submit to the Executive Board an application which includes matters required by the Act and such other information as may be reasonably requested by the Executive Board. The Executive Board shall approve, approve upon reasonable conditions, or disapprove such application within a reasonable period of time, and shall communicate promptly to the applying Owners the reasonable conditions of approval or all of the reasons for disapproval, as applicable. Relocation of the boundaries between such Units shall be accomplished by an amendment to the Declaration, prepared in accordance with this Declaration and the Act, executed by the Owners of the Units whose boundaries are relocated and by the president of the Association, and recorded in the Eagle County, Colorado real property records.

**3.06 Alteration of Units.** Subject to the provisions of Article 8 hereof, an Owner may alter such Owner's Unit as permitted in the Act.

**3.07 Use of Units.** The Units listed on Exhibit "B," any Units subsequently created by relocation of the boundaries thereof and any Units subsequently added to the Project shall be used and occupied solely for residential purposes, including (but not limited to) for nightly and transient rentals and for dwelling and lodging purposes. Owners of Units may rent or lease Units to others; provided, however, that each such lease or rental agreement and the use and occupancy of the leased or rented Unit is subject to the Act, this Declaration and the articles of incorporation, bylaws and rules and regulations of the Association.

**3.08 Title.** Title to a Unit may be acquired, held, encumbered and conveyed individually or in any form of concurrent ownership recognized in Colorado.

## **ARTICLE 4 AMENDMENTS TO THE PLAT**

**4.01 Amendments.** The Plat may be amended from time to time pursuant to the Act and this Declaration, and shall be amended upon relocation of the boundaries of adjoining Units, and exercise by Declarant of any Development Rights created or reserved in this Declaration.

## **ARTICLE 5 COMMON ELEMENTS; LIMITED COMMON ELEMENTS; PARTY WALLS; ENCROACHMENTS; UTILITY EASEMENTS**

**5.01 Ownership of Common Elements.** All of the Common Elements shall be owned only by the Association, subject to the Development Rights and other Special Declarant Rights created or reserved in this Declaration and, with respect to any property hereafter added to the Project, such Development Rights and other Special Declarant Rights created or reserved in the amendment to this Declaration by which such property is added or otherwise submitted to this Declaration. The Association has the right and power to cause improvements to be made to or upon the Common Elements, as a part of the Common Elements, subject to Development Rights and Special Declarant Rights. Without limiting the foregoing, as long as the Declarant may exercise any Development Rights in Additional Property, Expansion Property or any subdivision of either, the Association shall not make additional improvements within the Project which adversely affect or impact upon these Development Rights and/or Special Declarant Rights without the Declarant's prior written consent. The Association shall have an easement on, over, across and above all Units for access to and the maintenance, restoration, repair and replacement of existing or future Common Elements and improvements on Common Elements.

**5.02 Use of Common Elements.** Each Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, without hindering, impeding or imposing upon the rights of the other Owners, but subject to this Section and Section 5.04 below, and provided that such use shall be in accordance with rules and regulations duly established from time to time by the Association. Limited Common Elements may be used only by the Owner or Owners to whose Unit(s) such Limited Common Elements are allocated. Notwithstanding the foregoing, the Association may, by rules and regulations or action of the Executive Board, limit or restrict access to or the use of Common Elements located on, above or beneath Buildings in the Project, mechanical areas, utility vaults, drainage facilities and similar items. The Executive Board may, in its discretion, charge reasonable fees and establish reasonable conditions for the use of any recreational facility which is a part of the Common Elements or which is situated on property owned or leased by the Association.

**5.03 Access.** Each Owner of a Unit in the Project, whether such Unit is situated on the Real Estate or on any Additional Property or Expansion Property added to the Project, is vested with and shall have during its period of ownership, for its own use and the use of its tenants, guests, employees, agents and invitees, a non-exclusive easement in common with all other Unit Owners on, over and across all exterior motor vehicle driveways and roads, all pedestrian walkways, trails and sidewalks as are now situated or as may hereafter be constructed by the Declarant or the Association on the Common Elements outside of any Unit, on real property owned by the Association outside of any Unit, and all other parts of the General Common Elements, for purposes of vehicular and pedestrian ingress and egress to such Owner's Unit from Nogal Road and for purposes of pedestrian and non-motorized vehicle ingress and egress to such Owner's Unit from public trails within or adjoining the Project; provided, however, that (i) no Owner shall, by reason of such non-exclusive easement, have any right or privilege to use or occupy any Limited Common Elements which have not been allocated to such Owner's Unit by this Declaration or any amendment hereto, (ii) such easement shall not exist upon or burden or encumber any land under any Unit nor any Expansion Property or Additional Property not then added to the Project, and (iii) such easement is subject and subordinate to reserved Development Rights and other Special Declarant Rights and to the right and authority of the Association to regulate, encumber and convey the Common Elements pursuant to the Act and to construct, locate and place improvements and structures on Common Elements and on real property owned or leased by the Association; provided, however, that a reasonable route of vehicular and pedestrian ingress and egress from each Unit across the General Common Elements to Nogal Road shall never be denied. Such easement shall be appurtenant to each Owner's Unit, shall run with such Unit to the respective successive Owners thereof, and shall be irrevocable by Declarant, the Association, or any other Unit Owner. The Association shall be responsible for maintaining or contributing to the maintenance of the all access ways.

**5.04 Limited Common Elements and Party Walls.** The Units described on Exhibit "B" to this Declaration do not include any Limited Common Elements except as otherwise described in this Section or in C.R.S. §38-33.3-202(1)(b) and (d), if any. Limited Common Elements may be created with respect to additional Units, Expansion Property or Additional Property added to the Project in connection with the exercise of Development Rights. The following provisions shall apply to the adjoining or common walls located on boundaries of the Units described on Exhibit "B" and any adjoining or common walls located on the boundaries of Units subsequently added to the Project (herein "Party Walls"): (i) those portions of Party Walls consisting of foundations, stem walls and structural components of a Building shall be General Common Elements; (ii) the lathe, furring, wallboard, plaster board, plaster, paneling, tiles, wallpaper, paint and other materials constituting a part of the finished surface of a Party Wall and located within the boundary of a Unit is a part of that Unit and not a Common Element, and any such item located outside the boundary of a Unit but serving one Unit only is a Limited Common Element allocated exclusively to that Unit; (iii) any chute, flue, duct, wire, conduit or similar fixture located within a Party Wall and serving one Unit only is a Limited Common Element allocated solely to that Unit, or if serving adjoining Units, is a Limited Common Element allocated equally to such adjoining Units, provided that any such item serving more than two Units shall be a part of the General Common Elements. Each Owner of a Unit on which a Party

Wall is located shall have an easement on the contiguous Unit for the Party Wall and for the purpose of structural support, repair and maintenance of the same, including reasonable access through the contiguous Unit for the repair, maintenance, restoration and replacement of such Building components constituting the Party Wall and situated on the common boundary of the Units. No Unit Owner shall construct, permit or allow the construction or continuation of any openings in any Party Wall without the consent of the adjacent Unit Owner, excepting only as permitted for repair, maintenance, restoration and replacement of Party Wall improvements.

**5.05 Reallocation of Common Elements as Limited Common Elements.** Any portion of the Real Estate designated as a Common Element and which is not a Limited Common Element may be subsequently allocated by the Declarant as a Limited Common Element.

**5.06 Reallocation of Limited Common Elements Among Units.** Pursuant to the Act, upon approval by the Executive Board, a Limited Common Element may be reallocated between or among Units. In order to reallocate any Limited Common Element between or among Units, the Owners of such Units shall submit to the Executive Board an application for approval of the proposed reallocation which includes matters required by the Act and such other information as may be reasonably requested by the Executive Board. The Executive Board shall approve, approve upon reasonable conditions, or disapprove such application within a reasonable period of time, and shall communicate promptly to the applying Owners the reasonable conditions of approval or all of the reasons for disapproval, as applicable. Reallocation of the Limited Common Element between or among such Units shall be accomplished by an amendment to the Declaration, prepared in accordance with this Declaration and the Act, executed by the Owners of the Units between or among whose Units the reallocation is made and by the president of the Association, and recorded in the Eagle County, Colorado real estate records.

**5.07 Encroachments.** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of any Building, or if any such encroachment shall occur as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same shall exist. In the event any Building, any Unit, or any Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

**5.08 Utility Easements.** Utility providers serving the Project, their successors and assigns, shall have non-exclusive easements within the Project for utility purposes, including the installation, maintenance, repair, use and removal of utilities and facilities therefor, together with the non-exclusive right of access to all areas of the Project as necessary for utility purposes.

**ARTICLE 6**  
**RESERVATION OF DEVELOPMENT RIGHTS**

**6.01 Expansion Rights on Additional Property.** Declarant expressly reserves the right to add to the Project all or any part of the Additional Property described on Exhibit "C" to this Declaration and to subject all or any part of such Additional Property to the provisions of this Declaration.

**6.02 Creation of Units, Common Elements and Limited Common Elements on Expansion Property.** Declarant expressly reserves the right to create additional Units, Common Elements and Limited Common Elements (the "Additional Improvements") on all or any portion of the Expansion Property. If any Additional Property is added to the Project and submitted to this Declaration, and if any part thereof is identified and labeled on the amendment to the Plat as "Expansion Property," then the reserved Development Right of Declarant in this Section 6.02 shall also apply to such added property as well.

**6.03 Creation of Limited Common Elements.** Declarant expressly reserves the right to allocate as a Limited Common Element Common Elements not previously so allocated.

**6.04 Easements Benefitting Expansion Property.** Without limiting Declarant's easement rights pursuant to C.R.S. §38-33.3-216, Declarant shall have and hereby reserves easements on, over and across the Common Elements of the Project as necessary to allow Declarant to exercise the Special Declarant Rights reserved herein, including Development Rights, which easements shall include, without limitation, easements for access, utility facilities and service, construction, storage and maintenance.

**6.05 Creation of Interval Ownership, Townhome or Condominium Units.** In connection with the exercise of the Development Rights reserved pursuant to Section 6.01 or 6.02, Declarant expressly reserves the right to create Interval Ownership, townhome and/or condominium units on the Expansion Property or any portion thereof and to subject such units to this Declaration or a separate declaration.

**6.06 Reserved.**

**6.07 No Consent Required; No Assurances.** The consent or joinder of the Association, any existing Unit Owner, any First Lienor, any other Mortgagee of any Unit or property then subject to this Declaration, or any other person, shall not be required for any exercise by Declarant of any reserved Development Right described in Sections 6.01 through 6.06 above, inclusive. Declarant may exercise any or all of such reserved Development Rights with respect to Expansion Property and Additional Property at different times and from time to time, without limitation, at Declarant's sole option, and in whatever order of development or action Declarant, in Declarant's sole discretion, determines. There are no assurances made by Declarant with respect to boundaries of those portions of such Expansion Property and Additional Property with respect to which reserved Development Rights will or may be exercised

or the order in which those portions may be subjected to the exercise of such Development Rights. If any reserved Development Right is exercised in any such portion, Declarant has no obligation, direct or implied, to exercise that Development Right in all or in any other portion of the remainder of the real property to which such Development Right may be exercised.

**6.08 Exercise of Development Rights.** To exercise any reserved Development Right, Declarant shall make, execute, acknowledge and record an amendment to the Declaration (including where applicable an amendment to the Plat), containing such information and provisions as are required or permitted by this Declaration or the Act.

**6.09 Reserved.**

**6.10 Interpretation.** Recording of amendments to the Declaration and Plat shall automatically:

- (a) Vest in the Owner or Owners of each existing Unit the reallocated Allocated Interests appurtenant to the Unit of such Owner or Owners; and
- (b) Vest in each existing Mortgagee a perfected security interest or lien in the reallocated Allocated Interests appurtenant to the encumbered Unit, of the same character and priority as such Mortgagee had prior to such amendment.

Upon the recording of an amendment to the Declaration adding Additional Property or Expansion Property to the Project, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Project, as expanded. All conveyances of Units after such expansion shall be effective to transfer rights in the Project as expanded, whether or not reference is made to any amendment to the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all amendments to the Declaration and Plat without specific reference thereto.

**6.11 Maximum Number of Units.** The maximum number of Physical Units in the Project, including the maximum number of Units that the Declarant has reserved the right to create, shall not at any time exceed seventy seven (77) physical units located on Phase 1A and the Expansion Property and not more than 20 units on the Additional Property. Declarant shall not be required or obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

**6.12 Termination of Development Rights.** The Development Rights reserved to Declarant and the successors and assigns of Declarant, shall lapse and expire at the end of the Declarant Control Period. Upon the lapse and expiration or other termination of the Development Rights, any Unit then subject to Development Rights shall remain a Unit owned by the Owner or Owners thereof and shall not under any circumstances become Common Elements.

**6.13 No Requirement to Create Units or Submit Additional or Expansion Property.** Nothing in this Declaration or in any other instrument or in the Act shall be deemed or construed to require Declarant or any owner of any part of the Expansion Property or Additional Property to create Units on Additional or Expansion Property or to add any part of such Additional or Expansion Property to the Project or to subject any part of such Additional Property or Expansion Property to this Declaration, nor shall this Declaration or the Plat be deemed or construed to be an encumbrance, detriment or burden on any part of the Expansion Property or on any part of the Additional Property until and unless actually added to the Project and made subject to this Declaration.

## ARTICLE 7

### THE ASSOCIATION; ADMINISTRATION, MANAGEMENT AND VOTING

**7.01 Association Authority.** The affairs of Red Canyon Townhomes shall be administered and managed by the Association, pursuant to the Act and this Declaration, and pursuant to the articles of incorporation, bylaws, and rules and regulations of the Association.

**7.02 Powers.** The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Project. The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting of the Association called for that purpose.

**7.03 Declarant Control of Association's Executive Board.** Subject to C.R.S. §38-33.3-303(6), the Declarant hereby reserves, and shall have, the Special Declarant Right for Declarant, or any person designated by Declarant in writing delivered to the Executive Board, to appoint and remove the members of the Executive Board and the officers of the Association at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, but only during the Declarant Association Control Period. Declarant may voluntarily surrender the right to appoint and remove the members of the Executive Board and the officers of the Association before termination of the Declarant Association Control Period, but in that event the Declarant may require, for the duration of the Declarant Association Control Period, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by the Declarant, shall be approved by the Declarant before such actions become effective.

**7.04 Managing Agent.** The Executive Board of the Association may contract with or employ any managing agent for the Association (including Declarant or any affiliate of Declarant), to perform inter alia any of the duties, services, powers and responsibilities of the Association set forth in the Act or in this Declaration or in its articles of incorporation or bylaws.

**ARTICLE 8**  
**MAINTENANCE AND REPAIRS;**  
**ALTERATIONS AND ARCHITECTURAL CONTROL**

**8.01 Maintenance of Units.** Except as otherwise expressly provided in Section 8.02, each Owner shall be responsible for maintenance and repair of such Owner's Unit, any Limited Common Elements allocated exclusively to such Unit, and any windows, doors, patios, decks, window sills, door jambs and other interior or exterior improvements located on or in such Owner's Unit. Unit Owners shall be responsible for the removal of snow from stairs, steps, patios, porches, balconies and decks located upon such Owner's Unit. Maintenance of exterior portions of Units (portions located outside of Buildings) shall be in accordance with the requirements established by the Association's Executive Board for uniformity of materials, colors, quality and other visual features and shall be subject to all provisions of Article 8 hereof.

**8.02 Maintenance of Certain Exterior Features.** The Association shall be responsible for the maintenance and repair of the siding, shutters, porches, balconies, and painted surfaces on the exterior of Buildings, Building foundations, structural components, Building roofs, crawl spaces and drainage facilities but not Unit decks or patios. In addition, the Association shall be responsible for the maintenance of lawns and landscaping located on Units and Common Elements and for the removal of snow from sidewalks leading up to stairs, steps, decks or porches. The Association shall also be responsible for repairing, maintaining and/or irrigating the following: (i) any and all fencing located on or within the Project as well as that fencing erected on Tract F or Tract E, North Bank, pursuant to the Subdivision Improvement Agreement recorded at Book 646, Page 217, Eagle County, Colorado records, and/or the Development Agreement, Red Canyon Townhomes Tracts D and E, North Bank Subdivision, Town of Eagle, County of Eagle, State of Colorado recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Eagle County, Colorado records; and, (ii) any and all landscaping within Tract F or Tract E, North Bank Subdivision, Eagle County, Colorado placed or planted by Declarant pursuant to the Subdivision Improvement Agreement recorded at Book 646, Page 217, Eagle County, Colorado records and/or the Development Agreement, Red Canyon Townhomes Tracts D and E, North Bank Subdivision, Town of Eagle, County of Eagle, State of Colorado recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, Eagle County, Colorado records. Expenses of maintenance and repair incurred in connection with the foregoing shall be Common Expenses of all Owners. The Association, its managing agent and the employees and contractors of each shall have access to any Unit at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of carrying out the maintenance and repairs specified in this Section.

**8.03 Maintenance of Common Elements.** Except as otherwise provided in this Section or in Section 8.05, the Common Elements shall be administered, insured, conserved, managed, maintained, operated, cleaned, repaired, reconstructed and replaced by the Association, and all of the costs and expenses of such administering, insuring, conserving, managing, maintaining, operating, cleaning, repairing, reconstructing, and replacing are Common Expenses of all Owners. Notwithstanding the foregoing, (i) Limited Common Elements allocated solely to

one Unit pursuant to this Declaration or the Act shall be maintained, cleaned, repaired, reconstructed and replaced solely by the Owner of such Unit, and (ii) those portions of Limited Common Elements serving two adjacent Units (including improvements in Party Walls) shall be maintained, repaired, reconstructed and replaced jointly by the Owners of the contiguous Units, and each Owner shall pay one-half the cost thereof within fifteen (15) days after billing, and in the event the same is not paid when due, said sum shall be collected by the Association as a special assessment of the non-paying Owner only.

**8.04 Failure of Owner to Maintain.** In the event an Owner fails for any reason, after reasonable notice from the Association, to accomplish any maintenance, cleaning, repair or replacement for which such Owner is responsible, then the Association may do so and the Common Expense therefore shall be a liability and obligation, as a special assessment, of such Owner only.

**8.05 Damage by Owners or Occupants.** If any Owner or occupant causes damage to the Common Areas, any other property owned by the Association, or property which the Association is otherwise obligated to maintain or repair, the Common Expense incurred in the cleaning, repair or replacement thereof shall be a liability and obligation, as a special assessment, of the Owner of the Unit who, or whose occupants, caused the damage. If any Owner or occupant causes damage to a Party Wall or to Limited Common Elements which another Owner or Owners are obligated to maintain or repair, the expenses incurred in the cleaning, repair or replacement thereof shall be the liability and obligation of the Owner of the Unit who, or whose occupants, caused the damage, which shall be due and payable within fifteen (15) days after billing, and in the event the same is not paid when due, said sum shall be collected by the Association as a special assessment against such Owner only.

**8.06 Access to Units.** The Association and its managing agent, and the employees and contractors of each, shall have access to any Unit at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of administering, conserving, managing, maintaining, repairing, renovating or replacing the Common Elements, taking action pursuant to Section 8.04 or otherwise exercising its powers and carrying out its purposes. Without limiting the foregoing, the access ways to crawl spaces beneath Buildings are Common Elements, and the Association and its managing agent, and the employees and contractors of each, shall have access to crawl spaces beneath Buildings at any time during an emergency, and otherwise from time to time during business hours and after reasonable notice to the Owner thereof, for purposes of administering, conserving, managing, installing, maintaining, repairing, renovating or replacing any improvements located in the crawl spaces.

**8.07 Architectural Controls.** No improvement of any nature, including decks, patios, sheds, fences, pet shelters, lights, satellite dishes, antennas, sidewalks, landscaping or signs, shall be erected, placed, altered or rebuilt on any Unit, nor shall there be any alteration of the exterior, attic, foundations, subfloor or structural components of any Building or other structure on any Unit, including without limitation any alteration of colors, materials or landscaping, unless such

action shall have been approved in writing by the Executive Board. The Executive Board shall have the right to charge a reasonable fee and/or collect reimbursement of its expenses incurred in reviewing any action or matter for which consent or approval of the Executive Board is required. The Executive Board may condition the issuance of consent or approval upon payment of its fees and reimbursement of expenses or upon the applicant's agreement to make modifications to the proposed action or matter. Prior to the commencement of any action or matter requiring approval of the Executive Board, the applicant shall submit to the Executive Board plans and specifications of the proposed work in such detail as the Executive Board shall require. The decision of the Executive Board shall be made within thirty (30) days after receipt by the Executive Board of all materials required by the Executive Board, unless such time is extended by mutual agreement. The vote of at least two (2) members of the Executive Board shall be necessary to approve any action or matter. Any action or matter approved by the Executive Board shall be promptly completed in accordance with the terms and conditions of the approval and the materials submitted to the Executive Board upon which the approval was based. In considering any such action or matter, the Executive Board may consider, among other factors it deems relevant, the compatibility and consistency of the proposed action or matter with the remainder of the Project. Notwithstanding any other provision of this Declaration or any rule of law, the Executive Board shall have no obligation to give consent or approval to any proposed addition or modification to roofs, attics, foundations, subfloors or structural components of Buildings, any alteration of the exterior of a Building, or any item which the Association has an obligation to maintain. The Executive Board, its representatives, employees and agents, shall not be liable to any owner, occupant or any party for any matter resulting from mistakes in judgment, negligence, nonfeasance or any other action related to approval, disapproval or failure to approve any action or matter, and in no event shall the Executive Board or its representatives be responsible for the design, construction or any other matter related to the action or matter approved.

**ARTICLE 9**  
**ASSESSMENTS FOR COMMON EXPENSES; UTILITIES; LIEN;**  
**COLLECTION OF ASSESSMENTS; REMEDIES OF ASSOCIATION; AND**  
**ESTOPPEL CERTIFICATE OF ASSESSMENTS**

**9.01 Association to Levy Assessments.** The Association shall assess the Owners for payment of the Common Expenses. The Association shall fix, determine, assess and collect general Common Expense assessments from the Owners of all Units on an annual basis, based upon the Association's advance budget of the cash requirements needed by it to provide for the management of the Project and the administration and performance of the Association's duties during such assessment year, and to fund and contribute to any reserves deemed appropriate by the Executive Board of the Association, including (without limitation) a capital reserve for repairs, maintenance, replacement and acquisition of Association property and Common Elements (herein called the "Capital Reserve Fund") and an operating reserve to meet unanticipated Common Expenses and to permit payment of Common Expenses in advance of receipt of assessments (herein called the "Operating Reserve"). Assessments permitted hereunder to the Capital Reserve Fund shall be made on a regular and periodic basis as part of

the Association's annual budget. The Association may also fix, determine, assess and collect special Common Expense assessments authorized by the Act, this Declaration or in the bylaws of the Association, subject to any limitations provided by the Act, this Declaration or the bylaws. Common Expense assessments shall begin on the first day of the month following the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. Until the Association makes a Common Expense assessment, the Declarant shall pay all Common Expenses.

**9.02 Obligation to Pay Assessments.** Pursuant to C.R.S. §38-33.3-315(6), each Owner is liable for assessments made against such Owner's Unit during the period of ownership of such Unit. Declarant covenants and agrees for each Unit from time to time owned by Declarant, and each Owner of a Unit, by acceptance of a deed of conveyance for such Unit, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree with and for the benefit of the Association to pay to the Association all of the assessments for Common Expenses levied and made to such Unit by the Association, and all and any fines levied by the Association against the Owner or any person occupying any part of the Unit with the consent of the Owner, for violation of the rules and regulations of the Association.

**9.03 Apportionment.** Common Expenses shall be assessed against all Units in accordance with the Allocated Interest of each Unit for Common Expenses as set forth in Exhibit "B" to this Declaration (or as reallocated by any proper amendment to this Declaration), except as provided in Section 9.05(c) below and except that the following Common Expenses shall be apportioned and assessed to one or more but less than all of the Units as follows:

- (a) Common Expenses for repairing, renovating and replacing a Limited Common Element, other than the Limited Common Elements described in C.R.S. §38-33.3-202(1)(b) serving more than one Unit, and costs of utility services to a Limited Common Element, shall be assessed and collected by the Association from only the Owner or Owners of the Unit or Units to which use and enjoyment of such Limited Common Element has been assigned and allocated, allocated among such Units in the proportion that the Allocated Interest appurtenant to each such Unit bears to the total of the Allocated Interests appurtenant to all Units to which use and enjoyment of such Limited Common Element has been assigned and allocated;
- (b) If any Common Expense is caused by the misconduct of any Unit Owner, its tenants, guests, invitees or agents, the Association may assess that expense exclusively against such Owner's Unit as a special Common Expense assessment. If any fine is levied by the Association for violation of this Declaration or the bylaws or rules and regulations of the Association against an Owner, or against any person occupying such Owner's Unit with the consent of such Owner, such fine shall be a special Common Expense assessment to such Owner's Unit only; and

- (c) Any assessments required by the Act to be made to the Owners of one or more but less than all of the Units shall be the responsibility of only such Owners.

The allocation of Common Expense liability among the Units has been calculated on the basis of the respective Allocated Interests for Common Expenses allocated to each Unit, which has been calculated on the basis described in Section 3.03 above.

**9.04 Liability of Co-Owners.** Each Owner is liable, and if a Unit is owned at any time by two or more persons in undivided interests pursuant to a form of concurrent co-ownership recognized by Colorado law, then each co-Owner of such Unit is jointly and severally liable with all other co-Owners of such Unit, to the Association for payment of all Common Expenses, assessments, fees (including attorney's fees), interest and charges levied against or with respect to such Unit, and for the performance and observance of all of the duties and responsibilities of an "Owner" with respect to the Unit.

**9.05 Apportionment of Utility and Service Expenses.**

- (a) Utility Facilities. The expense of connecting, maintaining, operating, repairing and replacing facilities within the boundaries of a Unit which are connected or may be connected to utility lines, such as telephones, electrical appliances, gas fixtures, and the like, shall be the obligation and liability of the Owner or Owners of such Unit, and shall not be a Common Expense, regardless of the time at which such connection, repair or replacement is made.
- (b) Utilities Metered to Individual Units. Service charges for utilities that are separately metered or charged by the supplier to individual Units shall be billed directly to the Owner or Owners of each Unit. Such service charges shall not be Common Expenses but shall be paid and discharged directly by such Owner or Owners. It is anticipated that electricity, gas, water/sewer, cable television and telephone service will be separately metered or charged to each Unit.
- (c) Utilities Metered to a Group of Units. Service charges for utilities, if any, that are metered or charged by the supplier to more than one but less than all of the Units shall be billed to the Association and shall be a Common Expense, provided that such Common Expense shall be assessed to and payable by the Owners of the Units receiving the utility for which the service is made available. Such charges shall be allocated among the Owners obligated therefor in the proportion that the total Allocated Interest appurtenant to each such Unit bears to the total of the Allocated Interest appurtenant to all the Units for which the service is made available.

- (d) Utilities Not Metered or Metered to Project as a Whole. Service charges for utilities that are not metered or charged to any Unit or group of Units, or which are metered or charged to the Project as a whole shall be billed to the Association and shall be a Common Expense of all Owners.
- (e) Utilities to Common Elements. Electric street lights, if any, irrigation water and/or pump electricity, trash removal services, lawn maintenance, and similar items supplied to or within Common Elements which are not Limited Common Elements shall be metered or charged to the Association, and all of the charges for such common services or utilities shall be included as part of the Common Expenses assessed to all Units and apportioned among the Units in accordance with their Allocated Interests.
- (f) Advance Billing. The Association may assess Owners of Units quarterly for utility service charges which are metered to a group of Units or to the entire Project, in advance based upon an annual budget, or in arrears based upon actual billings from the respective utility suppliers. Such billings by the Association shall be deemed to be special Common Expense assessments to the affected Units, and the Association shall collect the same and account for and pay collections over to the respective utility suppliers. If such user charges are so billed and collected by the Association in advance, the Association shall adjust the accounts of the Owners at least annually, based upon actual metered usage of the utility services and the apportionment rules set forth above.

**9.06 Procedures for Payment.** The bylaws of the Association shall establish the procedures by which the general and special Common Expense assessments shall be made known to and paid by the Owners. Such procedures may include the determination and levying of such assessments as a periodic (but not less often than quarter annual) installment billing of the annual general Common Expense assessment based upon the annual budget of the Association (including funding of reserves), in which event the general Common Expense assessment shall be deemed to have been severally incurred as of the respective dates of the installment billings.

**9.07 Suit.** An action may be brought by the Association in a court of competent jurisdiction to recover unpaid general and special Common Expense assessments, late payment charges, and accrued interest from the Owner or Owners liable for payment thereof, with or without foreclosing the lien of the Association described in Section 9.10 below. In any such action the Association shall also be entitled to recover judgment from such Owner or Owners for all of the Association's attorney's fees, costs of discovery and court costs incurred in connection with such suit. All of such attorney's fees and costs incurred after delinquency of general or special Common Expense assessments shall be a special assessment to the Unit of the delinquent Owner in any event.

**9.08 Interest; Late Charges.** Unpaid general and special Common Expense assessments shall bear interest from and after the date the same are due until paid at the interest rate set from time to time by the Association, but not to exceed twenty-one percent (21%) per annum. If the Association shall not have set such interest rate, then the interest rate shall be twenty-one percent (21%) per annum, compounded annually. The bylaws of the Association may also empower the Association to levy reasonable late charges against a delinquent Owner and such Owner's Unit for late payment of any general or special Common Expense assessment.

**9.09 Suspension of Voting Rights.** The Association may, during the period any general or special Common Expense assessment is past due and unpaid by an Owner, suspend the voting rights and privileges in the Association allotted to such Unit; provided, however, that such suspension may be imposed only after at least three (3) days' advance written notice given by the Association to the delinquent Owner and to the First Lienor of the affected Unit; and provided, further, that no suspension of voting rights shall affect the rights of any First Lienor to vote pursuant to a proxy granted in a first lien security interest on the affected Unit.

**9.10 Lien.** All unpaid general Common Expense assessments (including, but not limited to, funds budgeted for contributions to any reserves approved by the Executive Board of the Association), all unpaid special Common Expense assessments (including, but not limited to, Common Expenses incurred for Limited Common Elements, and utility charges metered to a group of Units or the Project as a whole or Limited Common Elements), all fines for violations of the Declaration or rules and regulations or bylaws of the Association which are levied against an Owner of a Unit, accrued interest on and any late charges levied with respect to any unpaid general or special Common Expense assessment or fine, attorney's fees and costs of discovery and suit incurred in connection with enforcement of any unpaid general or special Common Expense assessment or fine (whether or not suit is brought), and unpaid fees and charges for the use, rental or operation of the Common Elements other than Limited Common Elements, shall each and all constitute a continuing lien on such Unit pursuant to and as granted by C.R.S. §38-33.3-316, and shall also constitute a continuing lien on and security interest in the furniture, furnishings, appliances, equipment and fixtures in such Unit, in favor of the Association, as secured party. Such lien of the Association on the Unit shall be prior and superior to all other security interests and non-consensual liens and encumbrances on the Unit EXCEPT as provided in C.R.S. §38-33.3-316(2), as amended from time to time.

The Association's continuing lien shall be perfected and attach to each Unit from the date of the initial recording of this Declaration in the real property records of Eagle County, Colorado. The Association's lien shall also attach to the furniture, furnishings, appliances, equipment and fixtures within a Unit from the date any such personally or fixtures became situated in such Unit or from the date of the initial recording of this Declaration in the real property records of Eagle County, Colorado, whichever date is later, but such lien shall be inchoate until any assessment levied against such Unit has become past due. Declarant and each successive Owner of an interest in a Unit, by acquiring title to such interest, grants and is hereby conclusively deemed to have granted to the Association, as secured party, a security interest in all furniture, furnishings, appliances, equipment and fixtures at any time situated in such Unit, to secure payment of all

assessments, charges, fees, interest and other sums at any time due and unpaid to the Association with respect to such Owner's interest in such Unit. This Declaration shall constitute a financing statement when a copy hereof is filed with the Colorado Secretary of State or with the Eagle County Clerk and Recorder. Such security interest in favor of the Association shall be governed by the Colorado Uniform Commercial Code and shall, nevertheless and whether or not a financing statement for this security interest has been filed, be junior, inferior and subordinate at all times to a perfected security interest in any of such furniture, furnishings, appliances, equipment and fixtures to secure purchase money financing thereof or in favor of the First Lienor of the Unit, as secured party.

No recordation of any claim or lien by the Association after the initial recordation of this Declaration is required. However, the Association may, in its sole discretion, determine to record in the real property records of Eagle County, Colorado a notice of such claim of lien, setting forth therein (i) the amount of the unpaid sums (itemized showing general and special Common Expense assessments, fines, interest, fees and charges), (ii) the name of the Owner or reputed Owner and the legal description of the Unit against which such lien is asserted, and (iii) a statement that such lien extends to reasonable attorney's fees and costs of the Association incurred in enforcing such lien. Failure of the Association to record any such notice shall not, however, defeat such lien nor affect its priority.

If an assessment is payable in installments, and if an Owner shall default and fail to pay any installment, then unless the Act requires otherwise, the Executive Board may elect, by notice to the defaulting Unit Owner, to accelerate payment of the full amount of the assessment and to require the full amount of such assessment to be immediately due and payable. In the event of such acceleration, the full amount of the assessment is a lien from the time of the acceleration of the assessment by the Executive Board.

**9.11 Foreclosure.** The Association's lien against a Unit as described in Section 9.10 above may be foreclosed by the Association in like manner as foreclosure of a mortgage on real estate under Colorado law. The Association shall be entitled to purchase the Unit at the foreclosure sale, and thereafter to acquire, hold, lease, mortgage or convey the same. The Association's lien and security interest in all furniture, furnishings, appliances, equipment and fixtures in a Unit may be foreclosed by the Association in the manner provided in the Colorado Uniform Commercial Code.

**9.12 Receiver.** In any action by the Association to collect assessments or to foreclose the lien of the Association for unpaid assessments, the court may appoint a receiver of a Unit pursuant to C.R.S. §38-33.3-316(9), and may also order such receiver to take possession of all furniture, furnishings, appliances, equipment and fixtures in such Unit, and to collect all of the rents, income and profits therefrom, during the pendency of such action and until such assessments, and all interest, charges, fees and costs, are paid in full. The Association shall be entitled to appointment of such receiver as a matter of right without regard to the solvency or insolvency of the then Owner of said Unit and personal property and without regard to the value thereof, and such receiver may be appointed by the Eagle County District Court upon ex parte

application of the Association and without notice, notice being hereby expressly waived by all Owners. All rents, income and profits therefrom shall be applied by such receiver according to the law and the orders and directions of the court, and the court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the receivership action to the extent of the Association's general and special Common Expense assessments. All Owners tenants, occupants and lienors of a Unit shall be deemed to have confessed the jurisdiction of the Eagle County District Court to appoint a receiver for the Unit and the furniture, furnishings appliances, equipment and fixtures therein.

**9.13 Conditional Assignment of Rents.** Each Owner hereby conditionally assigns to the Association as additional security for unpaid general and special assessments, charges, interest, fees and costs, all rights in and to any rental management contract affecting the Owner's Unit and all net rents and net income otherwise payable to the Owner for occupancy of his Unit for and during all periods any assessments or other sums remain unpaid to the Association after the same were due, and during such periods the rental management agent for the Unit of the delinquent Owner shall forthwith pay over to the Association upon its written demand all rents and income otherwise payable to the delinquent Owner, but not to exceed the amounts due and unpaid to the Association. All net rentals and net income received by the Association pursuant to this Section 9.13 shall be paid and applied as follows: first, to the expenses incurred by the Association in obtaining such rentals and income (including attorney's fees incurred); second, to payment to the Association of late payment charges and attorney's fees owed to it by the Owner; third, to payment to the Association of the accrued interest on all unpaid assessments; fourth, to payment to the Association of the delinquent general and special Common Expense assessments levied against such Unit, in the chronological order such assessments became due; and last, to payment to the First Lienor on the first lien security interest encumbering such Unit, if any, and if none, to payment to the delinquent Owner. Any rental management agreement respecting any Unit shall be subject and subordinate to the exercise by the Association of its rights under this Section 9.13.

**9.14 Liability of Transferee.** In case of sale or other voluntary transfer of a Unit or an interest therein with respect to which general or special Common Expense assessments, interest, charges, costs or fees are accrued and unpaid to the Association as of the date of transfer, the purchaser or other transferee shall be jointly and severally liable with the seller or transferor for such unpaid sums and shall be deemed to have personally assumed the obligation for payment of same. Therefore, if any lienor (including the First Lienor) of a Unit obtains title to such Unit by a voluntary deed in lieu of foreclosure, such lienor shall be jointly and severally liable for all unpaid general and special Common Expense assessments, charges, interest, costs and fees accrued against such Unit as of the date of transfer, and such lienor shall be deemed an Owner for all purposes from and after such transfer. However, if the First Lienor obtains title to a Unit by sheriff's deed or public trustee's deed upon foreclosure of the first lien security interest against a Unit, then such First Lienor is not liable for any unpaid assessments, charges, interest, costs or fees which accrued against such Unit prior to the vesting of title in such beneficiary, EXCEPT TO THE EXTENT that C.R.S. §38-33.3-316(2)(b) provides that the Association's lien is prior to the lien of such First Lienor.

**9.15 Estoppel Certificate.** Within fourteen (14) calendar days after written request of any Owner or such Owner's designee or to the holder of a security interest in a Unit or its designee, or of any title insurer, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall issue a written statement to the requesting party setting forth with respect to such Unit the amount of any unpaid general and special Common Expense assessments, interest, charges, fees and costs due with respect to such Unit. Such statement, for which a reasonable fee may be charged, is binding upon the Association in favor of the person or entity who requested such statement and who has relied thereon in good faith, and when such request has been made by a title insurer, shall be binding upon the Association also in favor of the person or entity whose interest in the Unit was insured by such insurer. If the Association fails to issue and mail such statement to the requesting party within fourteen (14) calendar days after actual receipt by the Association's registered agent of such written request, all unpaid general and special Common Expense assessments, charges, fees, interest and costs which became due prior to the date such request was actually received by the Association shall be subordinated to the lien or other interest in the Unit of the person requesting such statement, and when such request has been made by a title insurer, shall be subordinated to the lien or other interest in the Unit of the person whose interest in the Unit was insured by such insurer. In addition, the beneficiary of a first lien security interest, and the insurer or guarantor thereof, who has sent a prior written request to the Association in the manner described above, shall receive timely written notification from the Association of (i) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing the first lien security interest, (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Unit encumbered by the first lien security interest, (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iv) any proposed action that requires the consent of a specified percentage of the First Lienors of Units. The Association shall have current copies of this Declaration and the articles of incorporation, bylaws, and rules and regulations of the Association, and the books, records of receipts and expenditures, and financial statements of the Association, available for inspection by any Owner and any First Lienor during normal weekday business hours upon reasonable notice. If no audited financial statements of the Association are available, then any holder, insurer or guarantor of a first lien security interest shall be allowed to have an audited financial statement prepared at the sole expense of such holder, insurer or guarantor.

**9.16 First Lienor Right to Pay.** Any First Lienor of a Unit may (but shall not be required to) pay any unpaid general or special Common Expense assessments, accrued interest, charges, fees or costs with respect to such Unit, and upon such payment such First Lienor shall be subrogated to the Association's lien on such Unit for the amount so paid, and shall be subrogated to the rights and remedies of the Association to collect such amount.

## **ARTICLE 10 INSURANCE**

**10.01 Policies to be Maintained.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant or an Affiliate of Declarant, the Association shall maintain, to the extent reasonably available:

- (a) Property insurance on the Common Elements and the Units and all fixtures therein (but not including furniture, furnishings or other personal property owned and supplied or installed by a Unit Owner), all structures situated on real property owned by the Association, and all personal property owned by the Association, with extended coverage "all risks" endorsement, in an amount not less than one hundred percent (100%) of the maximum insurable value thereof less applicable deductibles (being 100% of the current replacement cost excluding land, excavations, foundations, and other items normally excluded from such policies);
- (b) Commercial general liability insurance pursuant to the Act, with limits of not less than \$1,000,000 per occurrence and not less than \$1,000,000 aggregate, or with higher limits deemed sufficient in the judgment of the Executive Board;
- (c) Fidelity bond or insurance coverage against dishonest acts on the part of directors, managers, managing agent, trustees, employees or volunteers of the Association responsible for handling funds belonging to or administered by the Association, such bond or insurance coverage to be in the name of the Association and in an amount not less in aggregate than two (2) months' current Common Expense assessments of the Association plus reserves, as calculated from the current budget of the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers; and
- (d) Such additional endorsements to the above policies, and such other insurance, in such amounts or with such provisions as the Executive Board may consider necessary or advisable against such other insurable hazards or in connection with such matters as may from time to time be commonly insured against in the case of similar townhomes in similar locations elsewhere or which the Executive Board deems to be reasonable and proper.

**10.02 Endorsements.** The Executive Board shall make reasonable efforts to obtain policies of casualty insurance providing or containing the following provisions or endorsements: (i) the insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners; (ii) each Unit Owner may obtain additional insurance covering his property interests at such Owner's own expense; (iii) the insurance coverage cannot be canceled, invalidated, reduced or suspended because of the conduct of any one or more Unit Owners or their respective lessees, employees, agents, contractors, invitees and guests; (iv) the insurance

coverage cannot be canceled, invalidated or suspended without at least thirty (30) days' prior written notice to the Association, and if any proposed cancellation, invalidity or suspension is due to the conduct of any officer or employee of the Association or its managing agent, such insurance coverage cannot be so canceled, invalidated or suspended without prior written demand that the Executive Board cure the defect and then only if the defect is not cured within thirty (30) days after demand; and (v) the insurer waives its right of subrogation as to any claims against each Unit Owner. Evidence or certificate of continuing insurance shall be delivered by the Association to any Owner or any First Lienor promptly upon written request.

**10.03 Standards for Insurers.** So long as Best's Insurance Reports is published, each hazard insurance policy carried by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of Class B/VI or better, or by an insurance carrier which has a current rating by Best's Insurance Reports of Class V, provided such carrier has a general policy holder's rating of at least A. Each carrier must be specifically authorized by law to transact business within Colorado. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Owner or any First Lienor; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses not required by the Act (other than insurance conditions) which could prevent the Association or the insurance trustee under C.R.S. §38-33.3-313(5) from collecting insurance proceeds; or (iv) the policy provisions violate the requirements of the Act.

**10.04 Owners' Policies.** Each Owner shall be responsible to obtain and pay premiums for all insurance covering loss or damage to personal property within such Owner's Unit, and is also responsible to obtain and pay premiums for all liability insurance covering injury to persons, death or damage to personal property occurring within such Unit. Any such policy shall contain waivers of subrogation against the Association and shall be so written that the liability of the carriers issuing insurance for the Association shall not be affected or diminished thereby. Each Unit Owner shall be liable for any increase in premiums or coverage for insurance maintained by the Association as a result of improvements or fixtures installed or made by an Owner within his Unit, and each Owner shall promptly notify the Association in writing of any such improvements or fixtures which may cause or require any such increase in premiums or coverage. Each Owner shall bear the sole risk of loss for all improvements and fixtures installed or made to his Unit which were not the subject of written notice to the Executive Board. Any Owner who obtains casualty insurance covering his Unit, other than for only personal property at any time situated within such Unit, shall file a copy of such policy with the Association within thirty (30) days after obtaining such insurance coverage.

**10.05 Premiums.** Premiums on all insurance policies carried pursuant to this Article 10 by the Association shall be Common Expenses, apportioned among the Owners of Units as provided in the Act or in Article 9 above.

**ARTICLE 11**  
**SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves the right, from time to time during the Declarant Control Period, to perform each and all of the acts and to exercise each and all of the special declarant rights hereinbelow specified (the "Special Declarant Rights"). The Special Declarant Rights hereby reserved by Declarant are the following:

**11.01 Completion of Improvements.** The right to complete or make improvements within the Project indicated or shown on the Plat.

**11.02 Exercise of Development Rights.** The right to exercise any Development Right created or reserved in this Declaration including, but not limited to, the right to submit, construct, and market additional Units built in later phases on the Expansion Property or Additional Property.

**11.03 Sales, Management and Marketing.** The right to maintain sales offices, management offices, and model units of any sizes in any of the Units in the Project, and to locate and relocate any such offices and models anywhere within the Project. Such reserved Special Declarant Right extends to any Unit of any size, and there is no limit with respect to the number of such sales offices, management offices, and model units.

**11.04 Signs.** The right to place and maintain signs on the Project advertising the Project, and to relocate and remove such signs.

**11.05 Reserved Easements.** Easements through the Common Elements, and the right to use such easements, as may be reasonably necessary for the purposes of discharging the Declarant's obligations under the Act and this Declaration, for making or completing improvements within the Project, for making or completing improvements within any Additional Property or Expansion Property whether or not added to the Project, and for exercising any reserved Special Declarant Rights, including reserved Development Rights. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other utility facilities on, under and across land within the Project. Without limitation, such easement also includes the right to construct underground utility lines, pipes, wires, ducts, conduits and other utility facilities on, under and across lands within the Project for the purpose of furnishing utility services to buildings and improvements to be constructed on Expansion Property or any part thereof whether or not added to the Project and on any of the Additional Property whether or not added to the Project. Declarant's reserved easement hereunder also includes the right to grant easements to public utility companies and to convey improvements within those easements. If Declarant grants any such easements, Exhibit "A" to this Declaration should be amended by Declarant to include reference to the recorded easement.

**11.06 Master Association.** The right to make the Project subject to a Master Association which is a Colorado nonprofit corporation. If the Project is made subject to a Master Association, then the powers of the Association described in C.R.S. §38-33.3-302 (including but not limited to the power to adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners) shall be deemed delegated to and are exercisable by such Master Association that may exercise those or other powers on behalf of the Unit Owners and unit owners of one or more other common interest communities, provided that the executive board of the Master Association must be elected after the Association Control Period in one of the ways specified in C.R.S. §38-33.3-220(5).

**11.07 Control of Association and Executive Board.** Subject to C.R.S. §38-33.3-303(6), the right for Declarant, or any person designated by Declarant in a writing delivered to the Executive Board, to appoint and remove the officers and members of the Executive Board at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, during the Declarant Association Control Period.

**11.08 Amendment of Declaration.** The right to amend the Declaration (including the right to amend the Plat) in connection with the exercise of any Development Rights.

**11.09 Reservation of Special Declarant Rights on Expansion.** The right to create or reserve Special Declarant Rights on and with respect to any Additional Property or Expansion Property added to the Project by Declarant, by proper amendment to this Declaration.

**11.10 Warranty Work.** The right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and on Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Unit Owner or Mortgagee.

## **ARTICLE 12 ADDITIONAL RESERVED RIGHTS**

In addition to the Special Declarant Rights set forth in Article 11 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

**12.01 Dedications.** The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes of benefiting the Project and the Owners, including but not limited to streets, paths, walkways, skiways, drainage or recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Project.

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

**12.03 Future Amendments to Colorado Common Interest Ownership Act.** The right to amend this Declaration from time to time, without necessity of the consent of Owners, First Lienors, or the Association, if necessary to bring the Declaration and/or the Project into compliance with any amendments to the Act hereafter adopted.

**12.04 Other Rights.** The right to exercise any other reserved right created by any other provision of this Declaration or permitted by the Act.

### **ARTICLE 13 PROHIBITED ACTIVITIES AND REQUIREMENTS**

**13.01 Prohibited Activities.** Without limiting other provisions of this Declaration, the following restrictions, limitations and affirmative obligations shall apply to all Owners and occupants of Units in the Project:

- (a) Noxious, offensive or illegal trades, services or activities shall not be conducted within the Project, nor shall anything be done therein which constitutes a nuisance to the Owners of other Units, or their tenants, by reason of unsightliness, the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.
- (b) Except as otherwise expressly permitted in this paragraph, live animals, livestock or poultry of any kind shall not be raised, bred or kept on or within the Project. Small house pets (such as fish, birds and small amphibians or reptiles) may be kept provided they are at all times within the interior of residential dwellings on Units. Animals larger than dogs or cats shall not be kept or allowed at the Project. Owners of Units occupying their units may keep not more than a total of two dogs and/or cats at their Unit. Occupants of Units other than the Owner of such Unit shall not be allowed to keep dogs and/or cats. All dogs must be leashed when out of doors and shall not be allowed to run at large within the Project, bark excessively or to harass, annoy or disturb others or wildlife. All droppings shall be immediately picked up and properly disposed of by the person responsible for the animal.
- (c) Refuse, garbage, trash, plant clippings, plant waste, compost, scrap or debris of any kind shall not be kept, stored or allowed to accumulate on any Unit and shall be promptly disposed of in receptacles provided for that purpose. There shall be no open fires, incinerators or burning of rubbish or trash within the Project.

- (d) There shall be no outside storage of building materials, supplies, tools or equipment.
- (e) Established drainage patterns within the Project shall not be modified or interfered with.
- (f) There shall be no storage of boats, trailers, campers, recreational vehicles, motorcycles or other equipment at the Project. Abandoned or inoperable vehicles or equipment of any kind shall not be parked or stored within the Project. Vehicles or equipment shall not be repaired or serviced in the Project. The Association may establish rules and regulations limiting the number of vehicles which may be parked at the Project. The Association shall have the right, but not the obligation, to remove improperly parked or stored vehicles at the expense of the owner thereof, and the cost thereof shall become an assessment against the Unit of the Owner who or whose occupant parked or stored the vehicle. The Association and the Declarant shall not be liable for any loss or damage resulting from such removal.

**13.02 Parking.** The Association may assign one parking space for the exclusive use of each Unit. Parking is not permitted in any space exclusively assigned to a Unit except by the Owner or occupant of such Unit. Unassigned parking is available on a first-come, first-served basis. All parked vehicles shall be moved at the times specified by the Association to allow plowing and removal of snow. Without limiting other provisions of this Declaration, the Association may establish and collect fines for violation of rules relating to parking, which fines shall be assessed against the Owner of the Unit who or whose occupant commits the violation.

**13.03 Outdoor Watering Prohibited; Association Responsible for Irrigation System.** Any use of the water supplied through the Town of Eagle's water system for irrigation, outdoor gardening or similar purposes is strictly prohibited. The Red Canyon Townhomes Owners Association shall be solely responsible for owning, operating and maintaining, repairing and replacing the raw water irrigation system for the Project, unless otherwise agreed to by the Town of Eagle. This provision shall not be subject to amendment without the prior written consent of the Town of Eagle.

**13.04 Landscaping Prohibited.** All landscaping of any nature whatsoever within sixty-five (65) feet of the high water mark of the Eagle River (as such mark is determined by a licensed engineer) is strictly prohibited. This provision shall not be subject to future amendment absent prior written approval of the Town of Eagle.

**ARTICLE 14**  
**GENERAL**

**14.01 Rights Transferable.** Any Special Declarant Right and any Additional Reserved Right created or reserved pursuant to this Declaration for the benefit of Declarant, or created or reserved in any proper amendment to this Declaration, may be transferred to any person by an instrument describing the right transferred and recorded in the real property records of Eagle County. Each such instrument of transfer shall be executed by the transferor Declarant and the transferee. After transfer, the transferee shall be deemed to be the "Declarant" for purposes of exercising the transferred Special Declarant Right or Additional Reserved Right.

**14.02 Quality of Work.** Any repairs, renovation, improvement or restoration of any portion of the Common Elements by the Association, or by any Owner pursuant to any right or permission granted pursuant to this Declaration or the Act, shall be done and performed diligently, in good faith, and in a good and workmanlike manner, using good quality materials, all consistent with the quality of workmanship, materials and style of the Project as constructed by Declarant, to the extent then reasonably and economically feasible.

**14.03 Amendment.** Except in cases of amendments that may be executed by the Declarant or the Association pursuant to the provisions of this Declaration or the Act, this Declaration may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of votes in the Association are allocated.

**14.04 Property of the Association.** The Association may acquire, by purchase, lease or otherwise, and may develop, improve, manage, lease, operate, use, encumber and hold for the common use and benefit of all the Owners, real property and all kinds of structures and improvements on and interests in real property, and tangible and intangible personal property, and may sell, convey and dispose of all of such property or any portion thereof or interests therein. Title to all such property shall be in the name of the Association or a nominee for the Association. Each Owner may use property of the Association in accordance with the purposes for which it is intended, without hindering, impeding or imposing upon the rights of the other Owners, but in accordance with Association rules and regulations and subject to the right of the Association to allocate any such property for the exclusive use of the Owners of one or more but less than all of the Units, to impose and receive payments, fees, or charges for the use, rental or operation of such property, and to regulate the use of such property. All costs and expenses of acquiring, developing, improving, managing, leasing, operating, using, holding, selling and disposing of such real and personal property, including (without limitation) all sums paid as fees, costs, interest or payments (whether in installments or otherwise) on any loan or promissory note or any mortgage or other security arrangement or encumbrance securing such loan or promissory note, made or entered into by the Association to finance or pay for all or any part of such acquisition, development, improvement, management, leasing, operating, using, holding, selling and disposing, shall be Common Expenses. Any property acquired by the Association, and any development, improvement, management or lease thereof, shall conclusively be deemed to be for the common use and benefit of the Owners if such property is made available by the Association

for the use by the Owners in the manner for which the same is intended, subject to reasonable rules and regulations and the imposition and receipt of payments, charges, and fees of the Association duly established from time to time for the use, rental or operation thereof, irrespective of whether or not any particular Owner does in fact use such property.

**14.05 Registration by Owner of Mailing Address.** Each Owner and each First Lienor shall register its mailing address with the Association as provided in its articles of incorporation or bylaws, and shall register with the Association all changes in such mailing address, so that the Association will at all times have a current mailing address of all Owners and First Lienors. If an Owner or First Lienor fails to so register his mailing address, or if such registration occurred more than one year before a notice is given, then either the mailing address shown in the deed to such Owner or in the security interest of such First Lienor, or the mailing address of such Owner or First Lienor as contained in the records of the Eagle County Treasurer, shall also conclusively be deemed to be the mailing address of such Owner or First Lienor, respectively. Periodic statements for general assessments, notices of special assessments, notices of meetings, and other routine notices from the Association to an Owner shall be sent by regular mail, postage prepaid, addressed to the name of the Owner at the most current mailing address of such Owner in the records of the Association. Any Owner may give written notice to other Owners in the same manner. All other notices or demands intended to be served by the Association upon an Owner shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the name of the Owner at his most current mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the registered address of the registered agent of the Association. The Association or managing agent for the Association shall at all times keep and maintain up-to-date records of the names and addresses of all First Lienors of Units.

**14.06 Remedies.** The Association, and any aggrieved Unit Owner, shall have the right of action in equity and at law against any Unit Owner (including Declarant) who fails to comply with the provisions of this Declaration or the articles of incorporation, bylaws, rules or regulations of the Association or the Act. In addition, any Unit Owner shall have the right of action in equity and at law against the Association if the Association fails to comply with the provisions of this Declaration or the articles of incorporation, bylaws, rules and regulations of the Association or the Act.

**14.07 Invalidity.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

**14.08 Reserved**

**14.09 Supplemental to Colorado Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

**14.10 Gender and Number.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

**14.11 Heading.** The headings of sections and paragraphs in this Declaration are for convenience of reference only, and shall not be deemed to expand, limit or define any of the provisions hereof.

**14.12 Limitations on Declarant's Obligations.** Nothing contained in this Declaration or in the articles of incorporation, bylaws, or rules and regulations of the Association shall be deemed to impose upon Declarant or the successors or assigns of Declarant any obligation to build, construct, or provide any buildings or improvements or to warrant any buildings or improvements which are in fact constructed. All obligations upon Declarant of this nature, if any, shall arise only from any executed purchase agreement signed by Declarant and a prospective Unit Owner.

**14.13 Easements of Record.** The recording data for recorded easements and licenses appurtenant to or included in the Real Estate or to which any portion of such Real Estate is or may be subject are set forth in Part II of Exhibit "A" to this Declaration, as may be amended from time to time.

**14.14 Incorporation of Exhibits.** All exhibits referenced in this Declaration are incorporated herein by this reference.





**EXHIBIT "A"**

**ATTACHED TO THE AMENDED AND RESTATED DECLARATION  
OF CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR RED CANYON TOWNHOMES,  
A COLORADO COMMON INTEREST COMMUNITY**

**PART I**

**DESCRIPTION OF PROPERTY SUBJECTED  
TO THIS  
DECLARATION**

Red Canyon TownhomesPhase 1A,

as shown on the Final Plat of Red Canyon Townhomes, Phase 1A and Tracts C, D1, and D2, North Bank Subdivision,a Resubdivision of Tracts C and D, North Bank Subdivision, Town of Eagle, State of Colorado, recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of Eagle County, Colorado.

**PART II**

**THE RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES  
APPURTENANT TO OR INCLUDED IN THE ABOVE-DESCRIBED PROPERTY  
OR TO WHICH ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY  
IS OR MAY BECOME SUBJECT IS AS FOLLOWS:**

1. Easements shown or noted on the Plat.
2. Easements provided for in this Declaration.
3. Reservations and exceptions in patents and in acts authorizing their issuance as the same may affect the subject property and specifically, the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as set forth in United States Patent recorded February 21, 1895 in Book 48 at Page 451, and recorded March 22, 1929 in Book 106 at Page 519.
4. Terms, conditions and provisions as contained in that certain Grant recorded September 11, 1970 in Book 218 at Page 641.
5. Easements, conditions, restrictions and reservations as shown or reserved on the recorded Plat of North Bank Subdivision.

6. Terms, conditions and provisions contained in Subdivision Improvements Agreement, North Bank Subdivision, recorded in Book 646 at Page 217.
7. Terms, conditions and provisions contained in Development Agreement, Red Canyon Townhomes Tracts D and E, North Bank Subdivision, Town of Eagle, County of Eagle, State of Colorado recorded at Book \_\_\_\_\_, Page \_\_\_\_\_.
8. Subdivision agreement Red Canyon Townhomes, Phase 1A and North Bank Subdivision Tracts C, D1 and D2 Town of Eagle, County of Eagle, State of Colorado, recorded at Book \_\_\_\_\_, Page \_\_\_\_\_, of the Eagle County Colorado records.

**EXHIBIT "B"**

**ATTACHED TO THE AMENDED AND RESTATED DECLARATION  
OF CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR RED CANYON TOWNHOMES,  
A COLORADO COMMON INTEREST COMMUNITY**

**UNIT DESIGNATIONS AND TABLE OF ALLOCATED INTERESTS**

<u>Unit No.</u>	<u>Percentage Share of Common Expenses</u>	<u>Votes in the Affairs of the Association</u>
1	11.11%	1
2	11.11%	1
3	11.11%	1
4	11.11%	1
5	11.11%	1
6	11.11%	1
7	11.11%	1
8	11.11%	1
9	11.11%	1

**EXHIBIT "C"**

**ATTACHED TO THE AMENDED AND RESTATED DECLARATION OF  
CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR RED CANYON TOWNHOMES,  
A COLORADO COMMON INTEREST COMMUNITY**

**DESCRIPTION OF PROPERTY WHICH MAY HEREAFTER BE  
ADDED TO THIS PROJECT AND SUBJECTED TO THIS DECLARATION  
UNDER DECLARANT'S RESERVED DEVELOPMENT RIGHTS  
(THE "EXPANSION PROPERTY")**

Tract D1, North Bank and Tract D2, North Bank

as respectively shown on the Final Plat of Red Canyon Townhomes Phase 1A and North Bank Subdivision Tracts C, D1 and D2, a Resubdivision of Tracts C and D, North Bank Subdivision, Town of Eagle, State of Colorado.

**ADDITIONAL PROPERTY**

Tracts E and F, North Bank, respectively,

according to the Plat thereof recorded in Book 646 at Page 156 of the Eagle County, Colorado real estate records.