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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF  
GLEN EAGLE TOWNHOMES ASSOCIATION, INC.

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Sara J. Fisher Eagle County Clerk & Recorder

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF  
GLEN EAGLE TOWNHOMES ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF Glen Eagle Townhomes Association, Inc. (the "Declaration") is made as of November \_\_\_\_, 1995, by Canwest Ventures, Inc. ("Declarant").

RECITALS

A. Declarant is owner of that certain real property located at 236 Eagle Road in Eagle County, Colorado, which is known as Lot 4, Block 4, Eagle-Vail Subdivision Filing No. 1 (the "Property") and which is more particularly described in Exhibit A attached hereto and made a part hereof. The Property is subject to the exceptions to title set forth in Exhibit B.

B. Declarant desires to subdivide the Property into five lots for the purpose of constructing four adjoining townhouse units on four individual lots with a fifth lot to be designated as a common parcel and used for access, parking, utilities and landscaping. Declarant further desires to subject the Property to certain covenants, conditions, restrictions and easements which shall be in addition to, and not in lieu of, the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Eagle-Vail Subdivision Filing Nos. 1 and 2 and Whiskey Hill recorded on July 7, 1992 in Book 584 at Page 244 of the records of Eagle County, Colorado (the "Master Declaration").

C. Declarant hereby declares that the Property (as subdivided in accordance with a final resubdivision plat executed by Declarant on November \_\_\_\_, 1995) shall be held, sold and conveyed subject to following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors and assigns or parties having any right, title, or interest in all or any part of the Property.

Accordingly,

1. Definitions. The following words, when used in this Declaration or in any Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:
  - 1.1 "Act" means the Colorado Common Interest Ownership Act located at CRS §38-33.3-101, *et seq.*, as amended from time to time.
  - 1.2 "Articles" mean the Articles of Incorporation for Glen Eagle Townhomes Association, Inc. currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.
  - 1.3 "Annual Assessment" means the Assessment levied annually and paid on a prorated basis each quarter.
  - 1.4 "Assessments" means the Annual, Special and Default Assessments levied pursuant to Section 11 below.

- 1.5 "Association" means Glen Eagle Townhomes Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.
- 1.6 "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.
- 1.7 "Association-Owned Property" means the Common Parcel as shown on the Plat and all improvements and fixtures of any kind whatsoever located thereon and all other real property and improvements, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.
- 1.8 "Board of Directors" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.
- 1.9 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.
- 1.10 "Common Expenses" means:
- 1.10.1 all expenses expressly declared to be common expenses by this Declaration, any Supplemental Declaration, or the Bylaws of the Association;
  - 1.10.2 all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Association-Owned Property, Party Walls and Exterior Maintenance Area;
  - 1.10.3 insurance premiums for the insurance carried under Section 9; and
  - 1.10.4 all expenses lawfully determined to be common expenses by the Board of Directors of the Association.
- 1.11 "Common Parcel" means the Lot shown on the Plat as the "Common Parcel" and which is Association-Owned Property.
- 1.12 "Declarant" means Canwest Ventures, Inc., individually, and its successors and assigns.
- 1.13 "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of Glen Eagle Townhomes Association, Inc.
- 1.14 "Default Assessment" means the Assessments levied by the Association pursuant to Section 11.6 below.
- 1.15 "Exterior Maintenance Area" means the exterior of any Townhouse Unit(excluding window panes), and the property surrounding the Townhouse Unit and any

improvements on such property within the perimeter of the Lot on which the Townhouse Unit is located.

- 1.16 "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 1.17 "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- 1.18 "Glen Eagle Townhomes" shall mean the planned community created by this Declaration, consisting of the Property, the Townhouse Units, and any other improvements constructed on the Property.
- 1.19 "Lot" means a plot of land subject to this Declaration and designated as a "Lot" on the Plat.
- 1.20 "Manager" mean any person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.
- 1.21 "Member" shall mean every person or entity who holds membership in the Association.
- 1.22 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Townhouse Unit or interest therein as security for payment of a debt or obligation.
- 1.23 "Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person or entity under such Mortgage.
- 1.24 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Townhouse Unit, and "Owner" also includes the purchaser under a contract for deed covering a Townhouse Unit, but excludes those having such interest in a Townhouse Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Townhouse Unit pursuant to foreclosure or other proceedings.
- 1.25 "Party Wall" means a common wall, if any, adjoining two Townhouse Units and shall be deemed to include the footings underlying, the portion of the roof over, and the utility lines within, a common wall.
- 1.26 "Plat" means the final subdivision plat of Lot 4, Block 4, Eagle-Vail Subdivision Filing No. 1 depicting the Property subject to this Declaration and recorded in the records of the Clerk and Recorder of Eagle County, Colorado contemporaneously herewith.
- 1.27 "Property" means and refers to that certain real property described on Exhibit A attached to this Declaration.

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- 1.28 "Special Assessment" means an assessment levied pursuant to Section 11.5 below on an irregular basis.
- 1.29 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.
- 1.30 "Townhouse Unit" means any separate townhouse unit in the multi-family residential structure constructed on the Property and all associated improvements and appurtenant interests as well as all easements and rights-of-way incident thereto.

2. Division of Real Property.

- 2.1 Division of Real Property into Four Lots. The Property is hereby divided into five Lots designated Townhouse Units A through D, inclusive, and the Common Parcel, all as shown on the Plat. The Declarant reserves no rights to create additional Lots.
- 2.2 Planned Community. The Property is a common interest community and is neither a condominium nor a cooperative. Rather, the Property is a "Planned Community" as defined under Colorado Revised Statute §38-33.3-103(22).
- 2.3 Exception from General Provisions of Colorado Common Interest Ownership Act. Pursuant to Colorado Revised Statute §38-33.3-116, the Property is not subject to the general provisions of the Colorado Common Interest Ownership Act.
- 2.4 Ownership of Lots. Title to a Townhouse Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an owner with respect to the Townhouse Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only four Owners, the Owners of Townhouse Units A, B, C, and D. The parties, if more than one, having the ownership of a Townhouse Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Townhouse Unit in which they own an interest.
- 2.5 Legal Description. Any contract of sale, deed, lease, mortgage, will or other instrument affecting a Townhouse Unit may describe it by its Townhouse Unit letter, 236 Eagle Road, Eagle-Vail, Colorado, or by reference to the Plat and this Declaration and the recording information thereof in the real property records of Eagle County, Colorado.
- 2.6 Separate Assessment. Each Townhouse Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. The Common

Parcel shall not be assessed separately but shall be assessed with the Townhouse Units as provided pursuant to Colorado Revised Statute Subsections 39-1-103(10) and 38-33.3-105(2).

- 2.7 No Partition. No Owner of a Townhouse Unit shall bring any action for partition or division of the Association-Owned Property.
- 2.8 Residential Use. Each Townhouse Unit shall be used solely for dwelling or lodging purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant is authorized to maintain a model Townhome and on-site sales office within any unsold Townhouse Unit. A model Townhome, if any, maintained by Declarant shall be designated one of the separate fee simple Townhouse Units.
- 2.9 Lease of Unit. An Owner shall have the right to lease his Townhouse Unit upon such terms and conditions as the Owner may deem advisable; provided, however, the (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Townhouse Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease enforceable by the Association.

3. Membership and Voting Rights; Association Operations

- 3.1 The Association. Every Owner of a Townhouse Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse Unit.
- 3.2 No Alienation. An Owner shall not transfer, pledge, or alienate his membership in the Association in any manner other than upon the sale or encumbrance of his Townhouse Unit, and then only to the purchaser or Mortgagee of his Townhouse Unit.
- 3.3 Classes of Membership.
- 3.3.1 Class A. Class A Members shall be all Owners, with the exception of Declarant, and, except as otherwise provided for in this Declaration, shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Townhouse Unit owned. When more than one person holds an interest in any Townhouse Unit, all such persons shall be Members. The vote for each Townhouse Unit shall be exercised by one person or an alternative person (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Townhouse Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Townhouse Unit which is leased may assign his voting right to the tenant, but a copy of a proxy appointing the tenant must be furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one

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Townhouse Unit. Following the expiration of Class B memberships, the Board of Directors shall consist of four (4) members and the Owner of each Townhouse Unit shall be entitled to appoint one (1) Director to the Board of Directors.

3.3.2 Class B. The Class B Member(s) shall be Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant. The Class B Member(s) shall be entitled to appoint all of the members of the Association's Board of Directors during the period of Class B Membership. The Class B membership shall terminate on the earlier of the following events:

3.3.2.1 when Declarant has conveyed four (4) of the Townhouse Units; or

3.3.2.2 six (6) months after Declarant has conveyed three (3) of the Townhouse Units; or

3.3.2.3 the date on which Declarant voluntarily relinquishes its Class B membership, evidenced by a notice recorded in the office of the Clerk and Recorder for Eagle County, Colorado.

After termination of the Class B Membership, Declarant and any designated Successor Declarant shall be entitled to one vote as a Class A Member for each Townhouse Unit which either of them may own.

3.4 Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Townhouse Unit for the benefit of all other Townhouse Units and for the benefit of Declarant's adjacent properties.

3.5 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

3.6 Manager. The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

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- 3.7 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any other right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.
4. Powers of the Board of Directors of the Association. The Board of Directors shall have power to take the following actions:
- 4.1 Adopt and publish rules and regulations governing the use of the Association-Owned Property, including any recreational facilities which may be constructed on such property, Party Walls and the Exterior Maintenance Area, and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;
- 4.2 Suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association as provided in the Articles. Such rights may also be suspended after notice and hearing for a period not to exceed ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days after the infraction is cured. No such suspension shall affect the rights of a First Mortgagee; and
- 4.3 Exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws or as provided by law.
5. Association-Owned Property. The Association shall maintain and keep the Association-Owned Property in good repair, and the cost of such maintenance shall be funded as provided in Section 11. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements located in the Association-Owned Property.
6. Mechanic's Liens.
- 6.1 No Liability. If any Owner shall cause any material to be furnished to his Lot or unit thereon or any labor to be performed therein or thereon, no Owner of any Townhouse Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Lot, unit thereon or any improvements thereon or therein. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Association-Owned Property or any Lot or unit thereon other than of such Owner with any

mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given), the right and power to charge any lien or encumbrance of any kind against the Association-Owned Property or against any Owner or any Owner's Lot or unit thereon for work done or materials furnished to any other Owner's Lot or unit thereon is hereby expressly denied.

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

6.3 Association Action. Labor performed or materials furnished for the Association-Owned Property, if fully authorized by the Association, in accordance with this Declaration or its bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law of equal amount against each of the townhouse Units. In the event a lien is filed under these circumstances, the Owners of the separate Townhouse Units may remove their Townhouse Units from the lien by payment of the fractional or proportional amount attributable to each of the Townhouse Units affected. Upon such payment, the Townhouse Unit shall be released from the applicable lien. Any partial payment or satisfaction shall not prevent the lienor from proceeding to enforce his rights against any Townhouse Unit not so released or discharged.

7. Property Rights of Owners and Reservations by Declarant.

7.1 Owner's Easement of Enjoyment. Every Owner has a right and easement of enjoyment in and to the Association-Owned Property, which shall be appurtenant to and shall pass with the title to every Townhouse Unit subject to the following provisions. Every Owner shall have a right of access to and from his Townhouse Unit over and across those portions of the Association-Owned Property on which driveways are located. No Owner shall impede or permit his guest to impede reasonable access by any other Owner and his guest to any Townhouse Unit and parking areas.

7.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements granted by the Declarant in this Declaration.

7.3 Other Easements.

7.3.1 Each Lot shall be subject to an easement for encroachments created by construction, settling and overhang or as a result of previously existing improvements or as a result of any addition or improvements created or

constructed pursuant to this Declaration. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Townhouse Unit due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

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

7.3.3 There is hereby created an easement upon, across, over, in and under those portions of the Property containing mechanical equipment and utilities servicing all Townhouse Units, and there is also hereby created a blanket easement upon, across, over, in and under the Property, each for the benefit of the Townhouse Units and the structures and improvements situated thereon, including the Party Walls, if any, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. These easements include and accommodate future utility services not presently available to the Townhouse Units which may reasonably be required in the future. By virtue of the above-described blanket easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Townhouse Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the areas surrounding the Property. Notwithstanding the foregoing, all such utility equipment, wires, circuits and conduits will be placed on the Lot benefitted thereby to the extent practicable, and if placed on any other Lot, will be placed underground if possible, and to the extent practicable will be placed as close to the lot line as practicable. Any Owner shall have the right to relocate within his Lot any utility at his sole cost and expense.

7.3.4 The Townhouse Units shall have one (1) common driveway located upon the Common Parcel. There is granted hereby a non-exclusive easement to each individual Townhouse Unit for ingress and egress purposes over and across those portions of the Common Parcel which are used as a driveway serving the applicable Townhouse Unit. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Townhouse units and parking areas. Parking for the Owners, guests and invitees of any particular Townhouse Unit shall not utilize more than one-fourth of the available parking in the Common Parcel.

7.4 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under, and across the Association-Owned Property, together with the right to store materials on the Association-Owned Property, to build and maintain temporary walls, and to make such other use of the Association-Owned Property as may be reasonably necessary or

incident to the construction of improvements on the Lots or other improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Property or to any Townhouse Unit by the Owners.

- 7.5 Reservation of Easements, Exceptions, and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Association-Owned Property, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Owners and the Association.
- 7.6 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.
- 7.7 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Townhouse Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.
- 7.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Association-Owned Property to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.
8. Party Walls, Exterior Maintenance Area and Special Easement.
- 8.1 Party Walls.
- 8.1.1 The cost of reasonable repair and maintenance of any Party Wall shall be a Common Expense of the Association. However, the Association shall have the right to levy assessments against only the Owners of the affected Units in order to pay for repair and maintenance of less than all of the Party Walls. The Association shall have sole discretion to determine the time and manner in which such maintenance shall be preformed. The Association shall have a perpetual easement in and to that part of the Property on which a Party Wall is located, for Party Wall purposes, including maintenance, repair and inspection. No Owner shall alter or change a Party Wall in any manner, interior decoration excepted, and a Party Wall shall always remain in the same location as when erected.

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- 8.1.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the Association shall, as a Common Expense, repair or rebuild said wall to its previous condition which specifically includes the previous sound transmission coefficient, and appropriate Owners, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair and reconstruction.
- 8.1.3 The Association shall have the right to break through a Party Wall for the purpose of repairing or restoring sewage, water, utilities, or other services. In this event, the Association shall have the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, at the Common Expense of the Association. The Association shall also be obligated to pay for any damage sustained by any Owner as a result of such action. Owners shall have the right to make use of their adjoining Party Walls provided such use does not impair the structural support or the sound transmission coefficient of the Party Wall.
- 8.2 Exterior Maintenance Area. In order to maintain a uniform appearance and a high standard of maintenance for the Property, the Association shall maintain the Exterior Maintenance Area as more fully set forth below.
- 8.2.1 Townhouse Unit Exteriors. The Association shall maintain the exterior of all Townhouse Units including, but not limited to, painting of the exterior (including decks and porches), roof repair, and window washing. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain each Townhouse Unit. The affected Owner shall be responsible for repair or replacement of broken window panes.
- 8.2.2 Landscaping, Sidewalks and Driveways. The Association shall maintain landscaping of the Lots surrounding the perimeter of each Townhouse Unit and the Association-Owned Property, including, but not limited to, lawns, trees, shrubs and property signage. The Association shall also maintain all walls, gates, sidewalks and driveways. The maintenance provided under this Section (which shall specifically include snow plow services) shall be performed at such time and in such a manner as the Association shall determine.
- 8.2.3 Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Townhouse Unit to the respective Townhouse Unit Owner, and the Townhouse Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is made in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by each Owner.

- 8.3 Special Easement. Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use the Exterior Maintenance Area and the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Declaration and any rule or regulation hereafter promulgated by the Association.
- 8.4 Maintenance Contract. The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Association-Owned Property, Party Walls and Exterior Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. The Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty power, or function so delegated by written instrument executed by or on behalf of the Board.
- 8.5 Owner's Responsibility. The Owner shall be responsible for maintaining all portions of the Owner's Townhouse Unit other than the Party Walls (except for interior decoration, for which the Owner is responsible) and Exterior Maintenance Area, unless modified by Section 8.2.2; provided, however, that the Owner shall also be responsible for the maintenance of any balcony, patio, or deck area of his Townhouse Unit. The Association shall have the right and power to prohibit storage or other activities deemed unsightly by the Board of Directors on any balcony, patio, deck or other area which is visible from another Townhouse Unit or its balcony, patio or deck area. No Owner shall make any addition or other alteration to the Party Walls or any portion of the Exterior Maintenance Area without the express consent of the Association. The Association shall be entitled to reimbursement for the cost of repair resulting from any damage caused by an Owner or his tenant, employee or guest to the Party Walls, the Exterior Maintenance Area or the Association-Owned Property.
- 8.6 Owner's Failure to Maintain or Repair. In the event that a Townhouse Unit and the improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Townhouse Unit lies with the Owner of the Townhouse Unit, or in the event that the improvements on the Townhouse Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Townhouse Unit to perform such work as is reasonably required to restore the Townhouse Unit and the building and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the repair or restoration shall be reimbursed upon demand to the Association by the Owner of the Townhouse Unit. All unreimbursed costs shall be a lien upon the Townhouse Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Section 11 of this Declaration.

9. Insurance.

9.1 Comprehensive General Liability and Property Damage Insurance.

Comprehensive general liability and property damage insurance shall be purchased by the Board of Directors and shall be maintained in force at all times, the premiums thereon to be paid by the Association as a Common Expense. If Declarant pays the premium it shall be entitled to reimbursement from the Association. The insurance shall be carried with reputable companies authorized to do business in the State Of Colorado in such amounts as the Board Of Directors may determine. The named insureds in the policy or policies shall include all the Owners and the Association. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant's Class B membership has terminated. The policy or policies shall insure against loss arising from perils in the Association-Owned Property and shall include coverage to protect against such liabilities as may arise under the contractual and other exposures of the Association or the Board of Directors.

9.2 Fire and Hazard Insurance on Association-Owned Property.

Fire and other hazard insurance for the buildings and any other improvements designated as or located within the Association-Owned Property shall be purchased by the Board of Directors and shall thereafter be maintained in force at all times, the premiums thereon to be paid by the Association as a Common Expense. Policies shall provide for a standard noncontributory mortgagee clause in favor of each First Mortgagee whether or not named therein, and shall provide that the policy cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each Owner and each First Mortgagee. The policies shall also provide that the interest of each First Mortgagee in the insurance shall not be invalidated by any action or neglect of the Board of Directors, Owners or their tenants or agents. The policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee clause invalid by reason of failure of the Mortgagee to notify the insurer of any hazardous use or vacancy with respect to the Association-Owned Property and any requirement that the Mortgagee pay the premium thereon. The policy or policies shall insure against loss from perils therein covered to all of the improvements in the Association-Owned Property, except such as may be separately insured. Such policy or policies shall contain extended coverage, vandalism and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction where the Association makes a decision not to rebuild. The policy or policies shall name as insureds all of the Owners, the Association and the Declarant so long as Declarant remains a Class B Member of the Association. The policy or policies shall also cover personal property owned in common by the Owners and shall further contain a waiver of subrogation rights by the carrier as to negligent Owners. If Declarant pays the premium for said policy or policies, it shall be entitled to reimbursement from the Association.

9.3 Physical Damage Insurance. The Board of Directors shall obtain and maintain in full force and effect physical damage insurance on all insurable improvements located on or constituting part of the Property (including, without limitation, the

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permanent fixtures initially installed in each Townhouse Unit and replacements thereof up to the value of those initially installed by Declarant, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by Owners), together with all heating equipment and other service machinery contained therein and covering the interests of the Owners and their Mortgagees, as their interests may appear. The insurance shall be carried in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage).

9.4 Other Insurance. The Board of Directors may purchase and maintain in force as a Common Expense, debris removal insurance, fidelity bonds, directors and officers liability insurance and other insurance or bonds that it deems necessary. The Board of Directors shall purchase and maintain Workmen's Compensation Insurance to the extent that the same shall be required by law.

9.5 Insurance Obtained by Owners. Each Owner shall obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Townhouse Unit, personal property (furnishings, improvements, additions or other personal property supplied by or installed by Owner) and personal liability and for any exterior improvements which Owner has constructed (except to the extent any such Townhouse Unit is encumbered by an easement conveyed to the Association as Association-Owned Property). The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. The policy or policies shall name as additional insureds the Association and the Declarant so long as Declarant remains a Class B Member of the Association. In addition, an Owner may obtain such other and additional insurance coverage on the Townhouse Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Townhouse Unit. No Owner shall obtain separate insurance policies on the Association-Owned Property. An Owner shall file copies of all policies with the Association within thirty (30) days after purchase of the coverage.

10. Incidents of Ownership.

10.1 Inseparability. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Townhouse Unit shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance respectively of the entire Townhouse Unit, including each easement, license, and all other appurtenant rights created by law or by this Declaration.

10.2 Residential Use/Declarant's Use. A Townhouse Unit may be used for permanent or short-term occupancy by its Owner, its family, servants, agents, guests, invitees, and tenants, and such Owner shall be allowed to rent or arrange for rental of his Townhouse Unit for any length of time and on such terms and conditions as are permitted under the Master Declaration and under the rules and regulations promulgated by the Association. No Townhouse Unit may be used as an office or for any other commercial purpose. Notwithstanding the foregoing, Declarant is authorized to maintain a sales office or property management office within any unsold Townhouse Unit, as well as other facilities (including signs and model units) which, in the sole opinion of Declarant, may be reasonably necessary, convenient or incidental for constructing sales or property management purposes.

11. Assessments.

- 11.1 Obligation. Declarant, for each Townhouse Unit owned by Declarant, hereby covenants, and each Owner, by accepting a deed for a Townhouse Unit, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Association-Owned Property, Party Walls and Exterior Maintenance Area and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Townhouse Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.
- 11.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property for maintenance of the Party Walls, if any, and Exterior Maintenance Area, and for the improvement and maintenance of the Association-Owned Property, as more fully set forth in this Section below.
- 11.3 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Association-Owned Property, Party Wall and Exterior Maintenance Area; expenses of management; taxes and special governmental assessments pertaining to the Association-Owned Property, Party Walls and Exterior Maintenance Area and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Association-Owned Property and Exterior Maintenance Area; routine repairs and renovations relating to Association-Owned Property, Party Walls and Exterior Maintenance Area; wages; common water and utility charges for the Association-Owned Property and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements relating to the Association-Owned

Property, Party Walls and Exterior Maintenance Area on a periodic basis, as needed.

Annual Assessments shall be payable on a prorated basis each quarter in advance and shall be due on the first day of each quarter. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

- 11.4 Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Townhouse Units.
- 11.5 Special Assessments. In addition to the Annual Assessments authorized by this Section, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or improvements within the Association-Owned Property, Party Walls or Exterior Maintenance Area, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. When acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 11.4, subject, however, to the requirements that any extraordinary maintenance, repair or restoration work to Party Walls or the Exterior Maintenance Area on fewer than all of the Townhouse Units shall be borne by the Owners of those affected Townhouse Units only and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Townhouse Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given.
- 11.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner, or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Townhouse Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.
- 11.7 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment

installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- 11.7.1 Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- 11.7.2 Assess an interest charge from the date of delinquency at the yearly rate of eighteen percent (18%), or such other rate as the Board of Directors may establish or as may be required by law;
- 11.7.3 Suspend the voting rights of the Owner during any period of delinquency;
- 11.7.4 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- 11.7.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- 11.7.6 File a statement of lien with respect to the Townhouse Unit and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Townhouse Unit shall constitute a lien on such Townhouse Unit, including the Townhouse Unit and any other improvements on the Townhouse Unit. To evidence the lien created and under this Section 11.7, the Association may, but shall not be required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Townhouse Unit, and (v) a description of the Townhouse Unit. The notice shall be signed and acknowledged by the President or a Vice President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by certified mail to the address of the Townhouse Unit or to such other address as the Association may have in its files for such Owner. After the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Eagle County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Townhouse Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Townhouse Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

- 11.8 Personal Obligation. The amount of any Assessment chargeable against any Townhouse Unit shall be a personal and individual debt of the relevant Owner. No Owner may exempt himself from liability for the Assessment by abandonment of his Townhouse Unit or by waiver of the use or enjoyment of all or any part of the Association-Owned Property. Suit to recover a money judgment for unpaid

Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

- 11.9 Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Townhouse Unit, except as provided in Sections 11.10 or 11.12 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Townhouse Unit without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Townhouse Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 11.12 below.
- 11.10 Subordination of Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to (a) the lien of real estate taxes and special governmental assessments, (b) liens and encumbrances recorded before the recordation of the Declaration, including liens for assessments pursuant to the Master Declaration and, (c) liens for all sums unpaid under a first Mortgage of record that was recorded before the date on which the lien for Assessments was recorded. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. The transfer of any Townhouse Unit shall not affect the Association's lien. However, the sale or transfer of any Townhouse Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation of forfeiture shall extinguish the Association's liens which do not have priority under the scheme described in this Section. The amount of such extinguished lien may be reallocated and assessed to all Townhouse Units as a Common Expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Townhouse Unit from liability for, or the Townhouse Unit from the lien of, any Assessments made after the sale or transfer.
- 11.11 Notice to Mortgagee. The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, but only if such Mortgagee has furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Townhouse Unit may pay any unpaid Assessment payable with respect to such Townhouse Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Townhouse Unit for the amounts paid with the same priority as the lien of the Mortgage.
- 11.12 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Board of Directors and upon the written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Townhouse Unit, the Board of Directors of the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Townhouse Unit. Unless such statement shall be issued (which

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shall include posting in the United States mails) within fourteen (14) business days, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Townhouse Unit subsequent to requesting such statement. If the request is made by a prospective purchaser, both the lien for the unpaid Assessment and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the fourteen (14) business day period provided for above, and if after that period an additional written request is made by such purchaser and is not complied with within ten (10) days and the purchaser subsequently acquires the Townhouse Unit.

12. Association as Attorney-In-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any claims or recoveries for improvements located upon the Property covered by insurance policies written in the name of the Association. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

13. Damage or Destruction.

- 13.1 The Role of the Board of Directors. Except as provided in Section 13.6, in the event of damage to or destruction of all or part of any Association-Owned Property, or other property covered by insurance written in the name of the Association, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association is sometimes referred to as the "Association-Insured Property").
- 13.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Section 13 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.
- 13.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently complete the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

13.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. However, if the aggregate of any Special Assessment for expense relating to the Association-Owned Property exceeds the greater of (i) 10% of the gross annual budget for the Association for that year, or (ii) \$10,000.00, then the Special Assessment shall be subject to the approval of the Class B Member(s), as long as the Class B membership exists, and three-fourths of the votes of the Class A Members who are subject to the Special Assessment. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

13.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the applicable Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Townhouse Unit, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

13.6 Decision Not to Rebuild the Association-Owned Property. If the Class B members, as long as the Class B membership exists, and 75% of the votes of the Class A members, agree in writing not to repair and reconstruct improvements within the Association-Owned Property and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Association-Owned Property by the Association in a neat and attractive condition.

Any remaining insurance proceeds shall be distributed in equitable shares per Townhouse Unit, based upon the diminution in market value of the respective Townhouse Units. Any dispute as to the equitable distribution of proceeds shall be resolved by binding arbitration, the arbitrator to be chosen by a vote of three-fourths of the Owners. If the Owners cannot agree on a particular arbitrator, each Owner shall appoint an arbitrator who shall then appoint a fifth arbitrator of their choosing.

13.7 Destruction of Townhouse Unit. In the event of damage to or destruction of all or part of any Townhouse Unit, improvement or other property owned by an individual Owner, such Owner shall arrange for and supervise the prompt repair and restoration of the damaged property, and shall be obligated to complete such repair and restoration in a timely fashion.

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14. Condemnation.

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

14.2 Partial Condemnation; Distributions of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Association-Owned Property was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Association-Owned Property on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least three-fourths of the Class A votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Association-Owned Property to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the provisions of Section 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Association-Owned Property, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equitable shares per Townhouse Unit among the Owners in accordance with the provisions of Section 13.6 above.

14.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Association-Owned Property shall be distributed as provided in Article 13 above.

15. Architectural Control. No exterior addition to or change or alteration to the Townhouse Units, balconies, patios or deck areas shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors of the Association.

16. Mortgagee's Rights. The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Section 16 apply to this Declaration and also to the Articles and Bylaws of the Association.

- 16.1 Approval Requirements. Unless at least two (2) First Mortgagees or all of the Mortgagees holding First Mortgages, whichever number is less, and at least three-fourths of the Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:
- 16.1.1 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or part of the Association-Owned Property (provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Association-Owned Property shall not be deemed a transfer within the meaning of this clause);
  - 16.1.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
  - 16.1.3 By act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design, appearance or maintenance of the Association-Owned Property or the Exterior Maintenance Area; or
  - 16.1.4 Use hazard insurance proceeds for losses to improvements in the Association-Owned Property for other than repair or reconstruction of such property.
- 16.2 Title Taken by Mortgage. Any Mortgagee holding a First Mortgage of record against a Townhouse Unit who obtains title to the Townhouse Unit and any improvements on the Townhouse Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Townhouse Unit (i) is acquired, or (2) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier. Such Mortgagee will not be liable for any unpaid dues or charges attributable to the Townhouse Unit which accrue prior to the date the Mortgagee acquired title or could have acquired title under the Colorado foreclosure statutes, whichever is earlier. Sale or transfer of any Townhouse Unit pursuant to a deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. The amount of any extinguished lien may be reallocated and assessed to all Townhouse Units as a Common Expense at the direction of the Board of Directors.
- 16.3 Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Townhouse Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Association-Owned Property, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Association-Owned Property, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.
- 16.4 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Townhouse Units for losses to, or taking of, all or part of the Association-Owned Property, any

Owner who has encumbered his Townhouse Unit with a First Mortgage shall not take priority in receiving the distribution over the right of any such First Mortgagee.

17. Duration of Covenants and Amendment.

17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Land in perpetuity, subject to the termination provisions of the Act (which shall be specifically applicable to this Section).

17.2 Amendment. This Declaration, or any provision of it, may be amended at any time by an instrument signed by Owners holding not less than three-fourths of the votes possible to be cast under this Declaration and at least two (2) Mortgagees holding First Mortgages or all of the Mortgagees holding First Mortgages, whichever number is less, and signed by Declarant (during the period of Class B membership). Any amendment must be recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association.

18. Limit on Timesharing. No Owner of any Townhouse Unit shall ever offer or sell any interest in such Townhouse Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

19. Covenants Relating to the Master Declaration.

19.1 Master Declaration Matters. Each Owner, by accepting a deed to a Townhouse Unit, recognizes that (a) the Property is subject to the Master Declaration, (b) by virtue of his ownership, he has become a member of the Eagle-Vail Property Owners' Association. Each Owner, by accepting a deed to a Townhouse Unit, acknowledges that he has received a copy of the Master Declaration. The Owner agrees to perform all of his obligations as a member of the Eagle-Vail Property Owners' Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of the Eagle-Vail Property Owners' Association.

19.2 Enforcement of Master Declaration.

19.2.1 The Association shall have the power, subject to the primary power of the Board of Directors of the Master Association, to enforce the covenants and restrictions contained in the Master Declaration, but only if said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Association.

19.2.2 This Declaration is intended to supplement the Master Declaration as it applies to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the By-laws or the Articles of Incorporation, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and the By-Laws of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant

to the Master Declaration and the By-Laws of the Master Association. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

20. General Provisions.

- 20.1 Enforcement. Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board of Directors of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.
- 20.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 20.3 Conflicts Between Documents. In case, of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

CANWEST VENTURES, INC.

By: [Signature]  
Title: President

STATE OF COLORADO     )  
                                          ) ss  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this 1st day of December, 1995, by Glen F Wood as President of Canwest Ventures, Inc.

My commission expires: 10-24-96



[Signature]  
Notary Public

938501

EXHIBIT A

LOT 4  
BLOCK 45  
EAGLE-VAIL SUBDIVISION, FILING NO. 1  
According to the recorded Plat thereof.

COUNTY OF EAGLE  
STATE OF COLORADO

43860

EXHIBIT B

1. Reservations and exceptions in Patents, or Acts authorizing the issuance thereof, including the reservation of the right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded in Book 48 at Page 438 and recorded in Book 31 at Page 455.
2. Reservations or exceptions in Patents, or in Acts authorizing the issuance thereof, including the reservation of a right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded in Book 31 at Page 455.
3. Right of way granted to Mountain States Telephone and Telegraph Company to construct, operate and maintain telephone lines, as contained in instrument recorded December 28, 1926 in Book 105 at Page 403, in which the specific location is not defined, insofar as it may affect subject property.
4. Easements, restrictions and rights-of-way as shown on the plat of Eagle-Vail Subdivision Filing No. 1, including but not limited to easements for utility and drainage purposes 10 feet in width along each back lot line of every lot line in the subdivision. In addition, utility and drainage easements 7.5 feet in width are reserved along each side lot in the subdivision not fronting on a dedicated street or road; except where noted otherwise on the plat, as shown on the Plat recorded September 6, 1972 in Book 225 at Page 303 as Reception No. 121075.
5. Protective Covenants of Eagle-Vail Subdivision, Filing No. 1, recorded in Book 225 at Page 302 as Reception No. 121074 as amended by instrument recorded in Book 253 at Page 901 as Reception No. 150198.
6. Terms, conditions, reservations, restrictions and obligations as contained in Resolution No. 1992-, Affirming the Validity of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Eagle-Vail Subdivision Filing Nos. 1 and 2 and Whiskey Hill of the Eagle-Vail Property Owners' Association, Inc., recorded July 7, 1992 in Book 584 at Page 243 as Reception No. 480348.
7. Terms, conditions, reservations, restrictions and obligations as contained in Amended and Restated Declaration of Covenants, Conditions and Restrictions of Eagle-Vail Subdivision Filing Nos. 1 and 2 and Whiskey Hill recorded July 7, 1992 in Book 584 at Page 244 as Reception No. 480349.

83860



EXHIBIT A

LOT 4  
BLOCK 4  
EAGLE-VAIL SUBDIVISION, FILING NO. 1  
According to the recorded Plat thereof.

COUNTY OF EAGLE  
STATE OF COLORADO

00162

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When recorded please return to: Karen Brosius Po Box 1329 Avon Co  
81620