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Cheri Brunvand - Summit County Recorder

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
TARN LANDING**

**TABLE OF CONTENTS**

**RECITALS** ..... 1

**ARTICLE I - DECLARATION** ..... 1

**ARTICLE II - NAME, DIVISION INTO UNITS**  
..... 1

**Section 2.1. Name** ..... 1

**Section 2.2. Association** ..... 2

**Section 2.3. Number of Units** ..... 2

**Section 2.4. Identification of Units** ..... 2

**ARTICLE III - DEFINITIONS** ..... 2

**Section 3.1. Definitions** ..... 2

**ARTICLE IV - MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS**  
..... 4

**Section 4.1. The Association** ..... 4

**Section 4.2. Transfer of Membership** ..... 4

**Section 4.3. Class of Membership** ..... 4

**Section 4.4. Period of Declarant's Control** ..... 4

**Section 4.5. Compliance with Association Documents** ..... 4

**Section 4.6. Books and Records** ..... 4

**Section 4.7. Manager** ..... 5

**Section 4.8. Implied Rights and Obligations** ..... 5

**Section 4.9. Powers of the Executive Board of the Association** ..... 5

**ARTICLE V - MAINTENANCE OF UNITS AND COMMON ELEMENTS** ..... 5

**Section 5.1.** ..... 5

**Section 5.2. Maintenance of Units** ..... 6

**Section 5.3. Limited Common Expense Allocation** ..... 6

**Section 5.4. Allocation of Specified Common Elements** ..... 6

**Section 5.5. Maintenance Contract** ..... 6

**ARTICLE VI - PROPERTY RIGHTS OF OWNERS & RESERVATIONS  
BY DECLARANT**  
..... 6

**Section 6.1. Owner's Easement of Enjoyment** ..... 6

**Section 6.2. Recorded Easements** ..... 7

**Section 6.3. Utility Easements** ..... 7

**Section 6.4. Special Declarant Rights** ..... 7

**Section 6.5. Reservation of Easements, Exceptions, and Exclusions** ..... 7

**Section 6.6. Easement for Ingress and Egress** ..... 8

**Section 6.7. General Maintenance Easement** ..... 8

**Section 6.8. Recorded Easements** ..... 8

**ARTICLE VII - INSURANCE** ..... 8

**Section 7.1. Insurance Coverage** ..... 8

**Section 7.2. Insurance Proceeds** ..... 8

**Section 7.3. Personal Property Insurance** ..... 8

<b>ARTICLE VIII - ASSESSMENTS</b> .....	8
Section 8.1. <b>Obligation</b> .....	8
Section 8.2. <b>Purpose of Assessments</b> .....	8
Section 8.3. <b>Budget</b> .....	8
Section 8.4. <b>Reserves</b> .....	9
Section 8.5. <b>Periodic Assessments</b> .....	9
Section 8.6. <b>Apportionment of Periodic Assessments</b> .....	9
Section 8.7. <b>Supplementary Assessments</b> .....	9
Section 8.8. <b>Special Assessments</b> .....	9
Section 8.9. <b>Default Assessments</b> .....	9
Section 8.10. <b>Effect of Nonpayment; Assessment Lien</b> .....	10
Section 8.11. <b>Personal Obligation</b> .....	10
Section 8.12. <b>Successor's Liability for Assessment</b> .....	10
Section 8.13. <b>Subordination of Lien</b> .....	11
Section 8.14. <b>Notice to Mortgagee</b> .....	11
Section 8.15. <b>Statement of Status of Assessment Payment</b> .....	11
<b>ARTICLE IX - ARCHITECTURAL REVIEW</b> .....	11
Section 9.1. <b>Approval Required</b> .....	11
Section 9.2. <b>Procedures</b> .....	11
Section 9.3. <b>Rules</b> .....	12
<b>ARTICLE X - DAMAGE OR DESTRUCTION</b> .....	12
Section 10.1. <b>The Role of the Executive Board</b> .....	12
Section 10.2. <b>Estimate of Damages or Destruction</b> .....	12
Section 10.3. <b>Repair and Reconstruction</b> .....	12
Section 10.4. <b>Funds for Repair and Reconstruction</b> .....	12
Section 10.5. <b>Disbursement of Funds for Repair and Reconstruction</b> .....	12
Section 10.6. <b>Decision Not to Rebuild Common Elements</b> .....	12
<b>ARTICLE XI - CONDEMNATION</b> .....	13
Section 11.1. <b>Rights of Owners</b> .....	13
Section 11.2. <b>Partial Condemnation, Distribution of Award; Reconstruction</b> .....	13
Section 11.3. <b>Complete Condemnation</b> .....	13
<b>ARTICLE XII - MORTGAGEE'S RIGHTS</b> .....	13
Section 12.1. <b>Approval Requirements</b> .....	13
Section 12.2. <b>Right to Pay Takes and Charges</b> .....	13
<b>ARTICLE XIII - DURATION OF COVENANTS AND AMENDMENT</b> .....	14
Section 13.1. <b>Covenants Binding</b> .....	14
Section 13.2. <b>Amendment</b> .....	14
Section 13.3. <b>When Modifications Permitted</b> .....	14
Section 13.4. <b>Revocation</b> .....	14
<b>ARTICLE XIV - PROTECTIVE COVENANTS</b> .....	14
Section 14.1. <b>Improvements Prohibited</b> .....	14
Section 14.2. <b>Pets</b> .....	15
Section 14.3. <b>Trash</b> .....	15
Section 14.4. <b>Noxious or Offensive Activity</b> .....	15
Section 14.5. <b>Maintenance of Property</b> .....	15
Section 14.6. <b>Signs</b> .....	15

Section 14.7.	Restriction on Use .....	15
Section 14.8.	Property Management Unit .....	15
Section 14.9.	Unit Number. ....	15
Section 14.10.	Satellite Dishes .....	15
Section 14.11.	Vehicles and Parking .....	15
Section 14.12.	Timeshare Restriction .....	16
Section 14.13.	Charcoal Grills. ....	16
<b>ARTICLE XV - DEVELOPMENT RIGHTS .....</b>		<b>16</b>
Section 15.1.	Expansion Rights .....	16
Section 15.2.	Maximum Number of Units .....	16
Section 15.3.	Amendment of the Declaration. ....	16
Section 15.4.	Amendment of the Plat .....	16
Section 15.5.	Interpretation .....	16
Section 15.6.	Reservation of Withdrawal Rights .....	17
Section 15.7.	Other Reserved Rights .....	17
Section 15.8.	Reciprocal Easement .....	17
Section 15.9.	Termination of Expansion and Development Rights. ....	17
Section 15.10.	Transfer of Expansion and Development Rights. ....	17
<b>ARTICLE XVI - GENERAL PROVISIONS .....</b>		<b>17</b>
Section 16.1.	Enforcement .....	17
Section 16.2.	Severability .....	18
Section 16.3.	Failure to Enforce .....	18
Section 16.4.	Conflicts Between Documents .....	18
Section 16.5.	References to Town of Frisco Standards .....	18
<b>EXHIBIT A .....</b>		<b>19</b>
<b>EXHIBIT B .....</b>		<b>20</b>

December 17, 1998

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TARN LANDING**

A Planned Community in Summit County, Colorado

THIS DECLARATION is made by **Tarn Landing, L.L.C.**, a Colorado limited liability company, P.O. Box 5684, Frisco, Colorado 80443 ("Declarant").

**RECITALS**

A. Declarant is the owner of real estate in Summit County, Colorado, which is referred to below as the "Property" and is more particularly described as:

*Lot 4, Block 3, Lakepoint at Frisco, Frisco, Colorado*

B. Declarant desires to create a planned community and adopt the provisions of the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et. seq. (The "Act") on the Property described above, in which the Units are designated for separate ownership; the remainder of the Property will be owned by the association named below and designated as Common Elements or as Limited Common Elements.

C. Declarant also desires to protect and maintain the Project as a prime mountain residential area of the highest quality and value to enhance and protect its desirability and attractiveness.

D. Declarant further desires to provide for the operation and maintenance of the Common Elements and Limited Common Elements (as defined on the Plat) and other related facilities serving the Project.

E. Declarant has deemed it necessary and desirable, for the welfare of the residents of the project and the preservation of the Property, to subject the Property to the covenants, restrictions, easements, charges, assessments and liens set forth below, which shall be burdens and benefits to the Declarant and the other Owners and their respective successors, heirs, executors, administrators, devisees, grantees or assigns.

F. Declarant hereby creates an association named "Tarn Landing Condominium Association" to delegate and assign to the association the power and duties of maintaining and administering the Common Elements, Limited Common Elements, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges created under this Declaration.

G. The provisions of this Declaration are intended to be in conformity with the Town of Frisco Development Code which contains additional requirements pertaining to the Property and provisions of the Town Code shall control over any contrary provisions in this Declaration.

**ARTICLE I - DECLARATION**

Declarant declares that the Property shall be held, sold, and conveyed subject to the following covenants, 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 of parties having any right, title, or interest in all or any part of the Property. Declarant submits the Property to the entire provisions of the Act.

**ARTICLE II - NAME, DIVISION INTO UNITS**

Section 2.1. **Name.** The name of the project is Tarn Landing.

Section 2.2. **Association.** The name of the association is The Tarn Landing Condominium Association. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a nonprofit corporation with the purpose of exercising the functions as herein set forth. In consideration for the exercise of such functions, Declarant sells and conveys the Common Elements to the Association.

Section 2.3. **Number of Units.** Initially, twelve (12) Units will be created by the Plat, if Declarant exercises development rights on the Property or on any adjacent property, the total number of Units in the project will be increased as provided in the Article named Development Rights.

Section 2.4. **Identification of Units.** The identification number of each Unit is shown on the subdivision plat depicting the Property recorded in the real property records of Summit County, Colorado and such amended, additional or supplemental plats as may be filed for the Property (the "Plat").

### ARTICLE III - DEFINITIONS

Section 3.1. **Definitions.** The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. **"Act"** means the Colorado Common Interest Ownership Act, Sections §38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time.

B. **"Agencies."** "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Colorado Housing Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

C. **"Articles"** mean the Articles of Incorporation for The Tarn Landing Condominium Association on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

D. **"Assessments"** means the Periodic, Supplementary, Special, and Default Assessments levied pursuant to the Article named Assessments below.

E. **"Association"** refers to The Tarn Landing Condominium Association ("Association"), a Colorado nonprofit corporation, and its successors and assigns.

F. **"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.

G. **"Bylaws"** means the Bylaws adopted by the Association, as amended from time to time.

H. **"Common Elements"** means all the Property other than the Units. The Common Elements predominantly include the unimproved land surrounding the Units, structural walls and plumbing facilities which are located within a Unit but serve other Units, water and sewer lines and facilities serving the Project which are not owned by the Frisco Water Department or the Frisco Sanitation District, and the parking areas and driveways depicted on the Plat. The term Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use by an Owner or as otherwise provided in this Declaration.

I. **"Common Expenses"** means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) the cost of supplying heat, hot water, trash removal and snow removal from the Common Elements; (iv) all expenses of maintaining, repairing or replacing any part of the water or

sewer utility lines and facilities serving more than one Owner or located on the Common Elements; (v) insurance premiums for the insurance carried under this Declaration; and (vi) all expenses lawfully determined to be common expenses by the Executive Board of the Association.

J. "Condominium Map" or "Plat" shall mean and refer to the Condominium Map for Tarn Landing, recorded or to be recorded in the records of the office of the Clerk and Recorder of the County of Summit, Colorado. More than one Condominium Map or Supplement thereto may be recorded; and without limiting the generality of the foregoing, separate Condominium Maps may be recorded for each Condominium Building. If more than one condominium map or supplements thereto are recorded, then the term Condominium Map shall collectively mean and refer to all of such condominium maps and supplements thereto.

K. "Condominium Unit" or "Unit" shall mean and refer to the fee simple interest in and to an Individual Air Space Unit, together with the exclusive use of the Limited Common Elements allocated thereto, all fixtures and improvements therein contained, and together with the membership in the Association as provided in Article IV. If walls, floors or ceilings are designated as boundaries of a Unit, all plaster, paneling, tiles, wallpaper, painting, finished flooring, and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and the wallboard, doors, windows and all other portions of the walls, floors and ceilings are part of the Common Elements.

L. "Declarant" means Tarn Landing, L.L.C., a Colorado limited liability company ("Declarant") and its successors and assigns.

M. "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions of Tarn Landing, a Condominium Project in Summit County, Colorado.

N. "Development Rights" means those rights expressly reserved to Declarant allowing Declarant to create common elements, limited common elements and additional Units within the Project, which rights are more fully described below in that Article entitled Development Rights.

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

P. "Expansion Property" means that portion of the Property identified on the Map reserved for creation of additional Units as set forth in that Article entitled Development Rights.

Q. "First Mortgage" means any Deed of Trust or Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

R. "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.

S. "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration, or Plat for the exclusive use of one or more Owners but fewer than all the Owners; the Limited Common Elements are set forth on the Plat.

T. "Manager" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

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

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

W. "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor

to the interest of any such person under such Mortgage.

X. "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit, but excludes those having such interest in a 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 Unit pursuant to foreclosure or other proceedings.

Y. "Project or Tarn Landing" shall mean the residential subdivision created by this Declaration, consisting of the Property and any other improvements constructed on the Property and as shown on the Plat.

Z. "Property" refers to Lot 4, Block 3, Lakepoint at Frisco, Frisco, Colorado

AA. "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 Summit 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.

#### **ARTICLE IV - MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS**

Section 4.1. **The Association.** Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

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

Section 4.3. **Class of Membership.** The Association shall have one (1) class of voting membership. Members shall be all Owners who, 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 Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons (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 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 Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

Section 4.4. **Period of Declarant's Control.** 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 shall have exclusive power to appoint and remove members of the Executive Board and officers of the Association. This period of Declarant's control shall terminate no later than sixty (60) days after conveyance of 75% of the Units to Owners other than Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's control, but, in that event, the Declarant may require for the duration of the period of Declarant's control, that specified actions of the Association or the Executive Board, as described in a recorded instrument by the Declarant, be approved by the Declarant before they become effective.

Section 4.5. **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 Unit for the benefit of all other Units.

Section 4.6. **Books and Records.** The Association shall make available for inspection, upon advance



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.

Section 4.7. **Manager.** The Association may employ or contract for the services of a Manager to whom the Executive 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 Executive Board. The Executive 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 Executive Board.

Section 4.8. **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 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.

Section 4.9. **Powers of the Executive Board of the Association.** The Executive Board shall have power to take the following actions:

A. Adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests on the Common Elements; the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

B. 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 that Article named Assessments. Such rights may also be suspended after notice and hearing for a period up to 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 thereafter, and;

C. Exercise for the Association all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by the Act.

## ARTICLE V - MAINTENANCE OF UNITS AND COMMON ELEMENTS

### Section 5.1. **Maintenance of Common Elements.**

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association's property in good order and condition and shall otherwise manage and operate the Common Elements and such property as it deems necessary or appropriate. In this regard the Association may:

- (i) construct, modify, add to, replace or renovate any improvements that are located on or constitute a part of any Common Element;
- (ii) plant and replace trees, shrubs and other vegetation on any Common Element;
- (iii) place, maintain and replace signs upon any Common Element;
- (iv) adopt and enforce Rules and Regulations regulating the use of Common Elements;

- (v) impose and collect fees for the use of any Common Element; and
- (vi) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

(b) The Association and its agents have the irrevocable right, but no obligation, to access each Unit at any time for emergency repairs and situations, and at reasonable times for maintenance, repair or replacement of Common Elements. If the need for access or repair or replacement of a Common Element was caused by the misuse or negligence of an Owner, such Owner shall be solely liable and responsible for all costs, expenses and damage, and the Association may directly bill such Owner for the same.

**Section 5.2. Maintenance of Units.**

A. Each Owner, at such Owner's sole costs and expense, shall maintain his Unit (including all fixtures therein) and the Limited Common Elements assigned solely to his Unit, in good order and repair, except in such cases (e.g., paint on external doors and windows) where for reasons of uniformity or structural integrity the Association deems it necessary or appropriate to perform such maintenance itself.

B. No owner shall construct any structure or improvement, or make or suffer any structural or design change (including a color scheme change), either permanent or temporary and of any type or nature whatsoever to the exterior of a Unit or construct any addition or improvement on a Unit, without first obtaining the prior written consent thereto from the Executive Board and in regard to structural changes, the prior written consent of the Town of Frisco.

C. In the event that a Unit is not properly maintained by an Owner, then the Association, after ten (10) days prior written notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements thereon to a condition of good order and repair. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with that Article named Assessments below.

**Section 5.3. Limited Common Expense Allocation.** Any expense associated with the maintenance, repair or replacement of a Limited Common Element which is an appurtenance and provided to all Units in the Project shall be assessed as a Common Expense. Any expense associated with the maintenance, repair or replacement of a Limited Common Element which is not provided to all Units shall be assessed equally against the Units for which the expense is incurred.

**Section 5.4. Allocation of Specified Common Elements.** The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portions of the Common Elements.

**Section 5.5. Maintenance Contract.** The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**ARTICLE VI - PROPERTY RIGHTS OF OWNERS & RESERVATIONS  
BY DECLARANT**

**Section 6.1. Owner's Easement of Enjoyment.** Every Owner has a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Unit, subject to the provisions contained herein.

Section 6.2. **Recorded Easements.** The Property shall be subject to all easements as shown on the Plat and to any other easements of record or in use as of the date of recordation of this Declaration as set forth in Exhibit A. In addition, the Property is subject to those easements set forth in this Article.

Section 6.3. **Utility Easements.** There is hereby created a general easement upon, across, over, in, and under the Common Elements for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, gas, telephone, electrical, and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under the Property. Such utilities may temporarily be installed above ground during construction, if approved by Declarant. Any person or utility company disturbing the surface of the Property during installation, maintenance or repair of facilities within an easement will restore the surface to its original grade and revegetate the surface to its preexisting condition, except that trees within the easement need not be restored.

Section 6.4. **Special Declarant Rights.** Declarant reserves the right to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

A. Completion of Improvements. The right to complete improvements indicated on Plats filed with the Declaration.

B. Exercise of Development Rights. The right to exercise any Development Right reserved in Article XV of this Declaration.

C. Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Project and models.

D. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Project or within the Expansion Property which may be added to the Project.

E. Master Association. The right to make the Project subject to a Master Association.

F. Merger. The right to merge or consolidate a Project with another Project of the same form of ownership.

G. Control of Association and Executive Board. The right to appoint or remove any Officer of the Association or any Executive Board member.

H. Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights.

I. Amendment of Plat. The right to amend the Plat in connection with the exercise of any Development Right.

Section 6.5. **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 grant or otherwise, utility and other easements, permits, or licenses over the Common Elements for purposes including, but not limited to, drives, paths, walkways, drainage, parking areas, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interests of all the Owners and the Association, in order to serve the Owners within the Property. Declarant has agreed in that certain Agreement Concerning Non-Vehicular Easement and Construction of Non-Vehicular Pathway, dated Dec 9, 1998 and recorded in the Summit County Clerk and Recorder's office in Book     , at Page     , under Reception No. 584211 (the "Agreement"), to convey to the Town of Frisco, Colorado, a bicycle pathway and pedestrian easement over the Common Elements of the Property. Declarant or its agents will construct within the easement a bicycle path pursuant to the term of the Agreement.

Section 6.6. **Easement for Ingress and Egress.** Declarant hereby grants as an appurtenance of each Unit a non-exclusive easement of ingress and egress across the Common Elements as shown on any recorded plat of the Property to each Unit to assure access from a public road to each Unit. The specific means of ingress and egress shall be subject to change as Declarant shall from time to time deem necessary so long as a reasonable means of access is always provided.

Section 6.7. **General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Unit.

#### ARTICLE VII - INSURANCE

Section 7.1. **Insurance Coverage.** The Association shall obtain and maintain all insurance required to be obtained and maintained by associations of unit owners under the Act.

Section 7.2. **Insurance Proceeds.** Any damage or destruction covered by insurance maintained by the Association shall be adjusted with the Association in the manner described in the Act and insurance proceeds for any loss shall be paid in the manner described in the Act.

Section 7.3. **Personal Property Insurance.** Each Owner shall be separately responsible for all insurance covering loss or damage to personal property in his respective Unit and liability for injury, death or damage occurring inside his Unit, or deriving from any exclusive easement.

#### ARTICLE VIII - ASSESSMENTS

Section 8.1. **Obligation.** Owners, by accepting a deed for a Unit, are deemed to covenant to pay to the Association (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (3) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 8.2. **Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Plat.

Section 8.3. **Budget.** The Executive Board shall adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within thirty (30) days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners or any larger percentage specified in the Declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

Section 8.4. **Reserves.** The Association or Declarant shall require each buyer of a Unit to make a non-refundable payment to the Association in an amount not to exceed one-fourth the of the current cumulative Periodic Assessments for one year for the Unit, which sum shall be held, without interest, by the Association as a reserve fund. The Reserve Fund shall be collected and transferred to the Association at the time of closing of the sale of each Unit, as aforesaid.

and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall not be entitled to a credit from the transferee for any unused portion of the Reserve Fund.

Section 8.5. **Periodic Assessments.** Periodic Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to that Section named Budget above.

Periodic Assessments shall be payable on a prorated basis each calendar quarter in advance and shall be due on the first day of each quarter, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the periodic 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 Periodic Assessments in excess of the actual expenses incurred in any fiscal year.

Section 8.6. **Apportionment of Periodic Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses which shall be divided among the Owners in accordance with the allocated interest set forth in Exhibit B, subject to the following exceptions. Any extraordinary maintenance, repair or restoration work on, or Common Expense benefitting, fewer than all of the Units or Limited Common Elements shall be borne by the Owners of those affected Units only. Any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Any Common Expense caused by the misconduct of any Owner shall be assessed solely against such Owner's Unit.

Section 8.7. **Supplementary Assessments.** In the event the Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Board shall revise the budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the ratification of such budget. Upon request, the Board will deliver a summary of the revised budget to any Mortgagee. Based on such revised budget, the Board may make a supplementary assessment for such fiscal year against each Unit.

Section 8.8. **Special Assessments.** In addition to the Periodic Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements 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, and in 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 as provided in this Article, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. 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 thirty (30) days after such notice shall have been given.

Section 8.9. **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 8.10. **Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Periodic, 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:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge from the date of delinquency at the yearly rate of four points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish, not to exceed twenty-one percent (21%) per annum;
- C. Suspend the voting rights of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Disconnect any utility services to the Unit which are paid as a Common Expense;
- F. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- G. File a statement of lien with respect to the Unit and proceed with foreclosure as set forth below.

Assessments chargeable to any Unit shall constitute a lien on such Unit, including any improvements on the Unit. To evidence the lien created under this Section, the Association may, but is not 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 Unit, and (v) a description of the 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 mail to the address of the Unit or to such other address as the Association may have in its files for such Owner. At least ten (10) days after the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Thirty (30) days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under Colorado law. 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 attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 8.11. **Personal Obligation.** The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest, thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 8.12. **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 Unit, except as provided in the Section named Subordination of Lien 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 attorney's fees against such Unit without prejudice to 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 Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association as set forth below.

Section 8.13. **Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a first mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent, except that the Association claims the priority for 6 months' assessment lien as granted in the Act. 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. Seller's transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any first mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 8.14. **Notice to Mortgagee.** The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such 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 Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 8.15. **Statement of Status of Assessment Payment.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, the Association shall have no right to assert a priority lien upon the Unit for unpaid assessments which were due as of the date of the request.

## ARTICLE IX - ARCHITECTURAL REVIEW

Section 9.1. **Approval Required.** No building, house, outbuilding, shed, tree house, pen, doghouse, pool, porch, patio, gazebo, excavation, landscaping, bridge, dog run, fence, wall, or any other structure of any kind shall be commenced, erected, or maintained upon the Property, nor shall any exterior painting, addition, change, or alteration to any part of the Property be made until satisfactory and complete plans and specifications showing the design, nature, kind, shape, height, 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, topography, and natural surroundings by the Executive Board. Any improvements and alterations which are made by Declarant or which are completely within a building may be undertaken without such Executive Board approval. Approval by the Executive Board is in addition to and not in lieu of the Town of Frisco Development Code and other applicable code requirements.

Section 9.2. **Procedures.** The Executive Board shall review, study and approve or reject proposed improvements upon the Property subject to these covenants and restrictions and as further set forth in the rules and regulations of the Executive Board, adopted as provided below. The Executive Board shall attempt to ensure that no improvements impair the aesthetics and monetary values of the Property. The Executive Board shall consider the suitability of improvements (including landscaping) and construction materials; the quality of materials utilized in any proposed improvement; the effect of any improvements on neighboring property; the location, character and method of utilization of all utility lines; the impact of any proposed improvement upon the natural surroundings; the timely and orderly completion of all such improvements

Section 9.3. **Rules.** The Executive Board may make such rules and regulations as it deems appropriate to govern its proceedings.

## ARTICLE X - DAMAGE OR DESTRUCTION

Section 10.1. **The Role of the Executive Board.** Except as provided in that Section named Decision Not to Rebuild Common Elements, in the event of damage to or destruction of all or part of any Common Elements Improvement, or other property covered by insurance written in the Association's name under that Article named Insurance, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to that Article named "Insurance" may be referred to as "Association-Insured Property").

Section 10.2. **Estimate of Damages or Destruction.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

Section 10.3. **Repair and Reconstruction.** As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 10.4. **Funds for Repair and Reconstruction.** Proceeds received by the Association from any hazard insurance carried by the Association shall be used to repair, replace, and reconstruct the Association-Insured Property, if said proceeds 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 that Article named Assessments, Section named Supplementary Assessments, but subject to applicable law, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 10.5. **Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 10.6. **Decision Not to Rebuild Common Elements.** If Owners representing at least two-thirds (2/3) of the total allocated votes in the Association and two-thirds (2/3) of the First Mortgagees (based on one (1) vote for each Mortgage which encumbers a Unit) and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

## ARTICLE XI- CONDEMNATION

Section 11.1. **Rights of Owners.** Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled



to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 11.2. **Partial Condemnation, Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least two-thirds (2/3) of the 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 Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board and the Architectural Review Committee. If such improvements are to be repaired or restored, the provisions in that Article named Damage or Destruction above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 11.3. **Complete Condemnation.** If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in that Section named Disbursement of Funds for Repair and Reconstruction above.

## ARTICLE XII- MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgagee on Units. To the extent applicable, necessary, or proper, the provisions of this Article apply to this Declaration and also to the Articles and Bylaws of the Association.

Section 12.1. **Approval Requirements.** Unless at least two-thirds (2/3) of the Mortgagees holding First Mortgages against any portion of the Property (based on one vote for each Mortgage owned), and at least two-thirds (2/3) of the Owners have given their prior written approval, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition, subdivide, sell, or transfer all or part of the Common Elements (provided, however that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause);

B. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied

Section 12.2. **Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE XIII- DURATION OF COVENANTS AND AMENDMENT

Section 13.1. **Covenants Binding.** Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall by virtue of acceptance of any right, title or interest in any of the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant

of such Owner and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Project; (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Subdivision; and (iv) shall run with the land.

**Section 13.2. Amendment.**

A. This Declaration, or any provision of it, may be amended at any time by an instrument signed by Owners holding not less than fifty-one (51%) percent of the votes possible to be cast under this Declaration. Any amendment must be executed by the president of the Association and 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.

B. Notwithstanding anything to the contrary contained in this Declaration:

(i) The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation and By-Laws of the Association, at any time for the purpose of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provision of any of such documents without the consent of any of the Owners or First Mortgagees.

(ii) The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles of Incorporation and By-Laws of the Association at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgagees, to comply with the requirements and powers set forth in the Act, or to confirm with any Amendments, modifications, revisions or revocations of the Town of Frisco Development Code, without the consent of the Owners or any First Mortgagees.

**Section 13.3. When Modifications Permitted.** Notwithstanding the provisions of that Section named Amendment above or that Section named Revocation below, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

**Section 13.4. Revocation.** This Declaration shall not be revoked, except as provided in that Article named Condemnation regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded

**ARTICLE XIV - PROTECTIVE COVENANTS**

**Section 14.1. Improvements Prohibited.** No used or second-hand structure, no building of a temporary character, no mobile home, house trailer, tent, shack, or outbuilding shall be placed or used on the Property, either temporarily or permanently, except those items which are necessary for construction may be used during the period extending no later than (i) eighteen (18) months after commencement of construction or (ii) the date of substantial completion of said improvement, whichever is earlier. The placement, appearance and maintenance of such temporary structures may be subject to reasonable rules of the Executive Board governing such matters.

**Section 14.2. Pets** Dogs, cats or customary household birds may be kept on the Property, not to exceed two (2) pets per Unit without the written approval of the Executive Board. Such pets shall not be kept outside the Unit unless the pet is leashed and under direct supervision and control of the Owner. No pets may be kept on the decks appurtenant to any Unit except pursuant to the Rules and Regulations of the Association. All pet refuse and waste shall be promptly picked up by the Owner. No wild animal, reptile, or bird may be trapped, transported, kept or maintained anywhere upon the Property. Breeding of any animals on the Property is specifically prohibited. The Executive Board may adopt rules

restricting pets which are noisy or nuisances.

Section 14.3. **Trash.** No trash, ashes or other refuse or debris may be thrown or dumped on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be installed or used. Waste materials, garbage and trash shall be kept in sanitary containers, enclosed and screened from public view, protected from disturbance, and disposed of with reasonable promptness.

Section 14.4. **Noxious or Offensive Activity.** No noxious or offensive activity shall be conducted on any Unit, nor shall anything be done or placed on any Unit or the Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No lights shall be emitted from any Unit which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be emitted from any Unit which is noxious or unreasonably offensive to other Owners.

Section 14.5. **Maintenance of Property.** Every Unit shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair, and no lumber, grass, shrub, or tree clippings or plant waste, metals, bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Unit. An Owner may not store any materials or personal property in the crawl spaces, porches or decks appurtenant to a Unit. Storage of personal property shall only be permissible in the Limited Common Element storage closet appurtenant to a Unit, which storage closet is depicted on the Plat.

Section 14.6. **Signs.** No signs, billboards, poster boards, or advertising structure of any kind, shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Executive Board pursuant to its regulations.

Section 14.7. **Restriction on Use.** Except as set forth below, a Unit may be used for residential purposes only. No Unit shall be used except by a single family equivalent group residing in a single-family dwelling and for purposes incidental or accessory thereto, except for sales and/or construction trailers and model homes used by Declarant or its assigns. Determination as to whether uses are incidental or accessory to single-family residential purposes shall be made by the Executive Board, but under no circumstances shall such incidental or accessory use be construed to permit the carrying on of any trade, business, profession or employment (other than a home occupation as may be permitted under the applicable zoning codes), or use of the Unit for a boarding house.

Section 14.8. **Property Management Unit.** B-7 Unit in Building B shall be designated as a "Manager's Unit". This Unit is the only Unit in the Project which shall be permitted to conduct property management of the Project and other property and, be used as a check-in site for short term rentals.

Section 14.9. **Unit Number.** Each dwelling shall have a house number with a design and at a location established by the Executive Board.

Section 14.10. **Satellite Dishes.** All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit unless first approved by the Executive Board in conformance with applicable federal law.

Section 14.11. **Vehicles and Parking.** Unless permitted by the Rules and Regulations of the Association, only parking of typical, licensed and operable passenger vehicles and trucks of less than 7,500 pounds gross vehicle weight is permitted on the designated parking spaces depicted on the Plat. Owners are prohibited from parking any type of commercial or recreational vehicle on the Property.

Section 14.12. **Timeshare Restriction.** No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association and Declarant (during the period of Declarant's control as further described in that Section named Period of Declarant's Control).

Section 14.13. **Charcoal Grills.** No charcoal grills may be used on any deck and the Executive Board may by rule regulate the use of all grills.

#### ARTICLE XV - DEVELOPMENT RIGHTS

Section 15.1. **Expansion Rights.** Declarant expressly reserves the right to convert all or any part of the portion of the Property labeled on the plat as "Expansion Property", for additional development into additional Units, Common Elements and Limited Common Elements. Declarant also reserves the right to convert the Common Elements adjacent to the Expansion Property into Limited Common Elements. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. The consent of the existing Owners or Mortgagees shall not be required for any such conversion, and Declarant may proceed with such conversion without limitation at its sole option. Owners and Mortgagees hereby agree not to oppose any proposed rezoning or Resubdivision to allow up to twenty-eight (28) Units on the Expansion Property.

Section 15.2. **Maximum Number of Units.** The maximum number of Units in the Project will not exceed forty (40) Units, pursuant to any development plan for the Property and the Expansion Property. Declarant is not obligated to expand the project beyond the number of Units initially submitted to this Declaration.

Section 15.3. **Amendment of the Declaration.** If Declarant elects to create Units, Common Elements, Limited Common Elements or convert the Expansion Property, or any part thereof, or submit additional improvements to this Declaration, at such time as construction of the improvements on the Property or the Expansion Property or the additional improvements are substantially complete, Declarant shall record an Amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to the Declaration. The Allocated Interests appurtenant to each Unit in the Project, as converted or expanded, shall be based on the relative Allocated Interest as provided in Exhibit B for all of the Units in the Project, as converted or expanded, and/or on such other information as Declarant shall reasonably determine is relevant to the reallocation.

Section 15.4. **Amendment of the Plat.** Declarant shall, contemporaneously with the Amendment of the Declaration, file an Amendment of the Plat showing the location of the additional Units, Common Elements or Limited Common Elements. The Amendment to the Plat shall substantially conform to the requirements contained in this Declaration.

Section 15.5. **Interpretation.** Recording of amendments to the Declaration and Plat in the office of the Clerk and Recorder of Summit County shall automatically:

- (i) Vest in each existing Owner any additional rights or interest appurtenant to his/her Unit; and
- (ii) Vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Unit.

Upon the recording of an Amendment to the Plat, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as improved. All conveyances of Units after such amendment shall be effective to transfer rights in the Common Elements and Limited Common Elements as improved, 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.

Section 15.6. **Reservation of Withdrawal Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw provisions of this Declaration individual Units and/or Common Elements, provided however that none of the real estate may be withdrawn after any Unit has been conveyed by Declarant to a purchaser.

Section 15.7. **Other Reserved Rights.** Declarant reserves the right for itself and any Successor Declarant at

any time and from time to time to: (a) complete improvements indicated on the Plat, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, five (5) years from the recording of this Declaration with the Clerk and Recorder, (c) to subject the Project to a master association, (d) to merge or consolidate the Project with a common interest community of the same form of ownership, and (e) to appoint or remove any office of the association or any Executive Board member during the period of Declarant Control.

**Section 15.8. Reciprocal Easement.** If property is withdrawn from the Property ("Withdrawn Property"):

(i) the Unit Owner(s) of the Property and Withdrawn Property shall have whatever easements are necessary, if any, for access, utility service, repair, maintenance and emergencies over and across the Property, and

(ii) the Unit Owner(s) in the Expansion Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and Withdrawn Property.

Declarant shall prepare and record in the office of the Clerk and Recorder of Summit County whatever documents are necessary to evidence such easements and shall amend the Condominium Map to include reference to the recorded easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

**Section 15.9. Termination of Expansion and Development Rights.** The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights"), shall expire ten (10) years from the date of recording this Declaration, unless the Expansion and Development rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development rights by Declarant.

**Section 15.10. Transfer of Expansion and Development Rights.** The Expansion and Development Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by instrument describing the rights transferred and recorded in every county in which any portion of the Project is located. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE XVI - GENERAL PROVISIONS

**Section 16.1. Enforcement.** Except as otherwise provided in this Declaration, the Executive Board, 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 Executive Board 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.

Additionally, any such violation shall give the Declarant or the Executive Board the right, in addition to any other rights set forth therein, (i) to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein in violation of the Declaration or rules adopted by the Executive Board or Manager without being deemed guilty in any manner of trespass or any other civil or legal violation; and (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach, with each Owner or other person constructing improvements upon the Property hereby waiving the posting of a bond upon entry of such injunction. All reasonable attorneys fees and costs incurred by the Declarant or the Association in a suit to enforce the terms hereof shall, if said Declarant or the Association prevails in such action, be recoverable from the losing party.



## EXHIBIT A

### EASEMENTS OF RECORD

1. **Right of Proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded October 1, 1883, in Book 47 at Page 501.**
2. **Easements as shown on the filed plats for Discovery 9000 and Discovery 9000 Filing No. 2**
3. **Easement agreements between the Board of County Commissioners and the Frisco Sanitation District, a quasi municipal corporation to the easement for sewer line purposes for Discovery 9000 and to the Easement for sewer line purposes for Discovery Interchange West, recorded June 14, 1974 in Book 253 at Page 321 under Reception No. 141924.**
4. **Terms, conditions and provisions of Easement Access Deed recorded March 21, 1984 under Reception No. 274700.**
5. **Utility easement as granted to Public Service Company of Colorado and the Mountain States Telephone and Telegraph Company in instrument recorded September 29, 1981, under Reception No. 229466.**
6. **Terms, conditions and provisions of easement recorded February 25, 1985 under Reception No. 292826.**

**EXHIBIT B**  
**COMMON EXPENSE ALLOCATION**

UNIT #	PERCENTAGE OF COMMON EXPENSES
A1	7.520%
A2	9.146%
A3	7.520%
A4	9.146%
A5	7.520%
A6	9.146%
A7	7.520%
A8	9.146%
A9	7.520%
A10	9.146%
A11	7.520%
A12	9.146%
	100.00%