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Doris L Brill - Summit County Recorder

**MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE CREEK AT FRISCO**

July 7, 1997

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**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE CREEK AT FRISCO  
A Planned Community in Frisco, Colorado**

THIS DECLARATION is made by Kane Enterprises, a Oklahoma General Partnership ("Declarant").

**RECITALS**

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

*Lots A-1 and A-3, Amended West Frisco 70, Filing No. 2, Frisco, Colorado*

B. Declarant desires to create a planned community on the Property described above, in which the Lots are designated for separate ownership; the remainder of the Property will be owned by the association named below and designated as Common Area or as Limited Common Area.

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 below) 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 "The Creek at Frisco Homeowners 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. Except as set forth in the PUD plan or plat of the Property, 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 Frisco Development 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.

## ARTICLE II - NAME, DIVISION INTO LOTS

Section 2.1. **Name.** The name of the project is The Creek at Frisco.

Section 2.2. **Association.** The name of the association is The Creek at Frisco Homeowners 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 Lots.** Initially, fourteen (14) Lots will be created by the Plat. If Declarant exercises development rights, the total number of Units in the project will be not more than forty-five (45).

Section 2.4. **Identification of Lot.** The identification number of each Lot 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. **"Accessory Housing Unit"** means a unit restricted to use as a long-term rental for terms of thirty (30) days or more which is located within or above the principal residence or garage located on Lots 1-7. The size of the Accessory Housing Unit will be limited to the lesser of 850 square feet or 30% of the square footage within the principal residence and garage. The Accessory Housing Unit is a part of the Lot on which it is constructed and such Lot may not be subdivided for separate ownership of the Accessory Housing Unit and the principal residence.

C. **"Agencies"** "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the

Federal Home Urban Development (HUD), 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.

D. "Articles" mean the Articles of Incorporation for The Creek at Frisco Homeowners Association on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

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

F. "Association" refers to The Creek at Frisco Homeowners Association ("Association"), a Colorado nonprofit corporation, and its successors and assigns.

G. "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.

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

I. "Common Elements" means all the Property, except the Lots and Units, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis as provided below. The Common Elements include the unimproved land surrounding the Units, the water and sewer lines and facilities serving more than one Lot in the project which are not owned by any public entity and the private street known as Streamside Lane. Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use by less than all Owners or as otherwise provided in this Declaration.

J. "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 snow removal for 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 Lot; (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.

K. "Declarant" means Kane Enterprises, a Oklahoma General Partnership ("Declarant") and their successors and assigns.

L. "Declaration" means and refers to this Master Declaration of Covenants, Conditions and Restrictions of The Creek at Frisco, a Planned Community in Frisco, Colorado.

M. "Development Rights" means those rights expressly reserved to Declarant allowing Declarant to create common elements, limited common elements and complete Units; maintain sales offices, models or management offices within the Project; to grant or use easements through Common Elements; appoint or remove officers or directors during the period of Declarant control; which rights are more fully described below.

N. "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.

O. "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.

P. "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to be interest of any such person under such First Mortgage.

Q. "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.

R. "Lot" refers to the initial fourteen (14) lots described in the Plat as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14.

S. "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.

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

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

V. "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.

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

X. "Plat" refers to the subdivision plat depicting the Property entitled "a Final Plat of The Creek at Frisco" together with such additional, supplemental or amended plats or maps as may be filed for the Property.



Y. "Project or The Creek at Frisco" shall mean the planned community 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 Lots A-1 and A-3, Amended West Frisco 70, Filing No. 2, Frisco, Colorado.

AA. "PUD" means that PUD Agreement for The Creek at Frisco and the PUD Plat recorded in the records of the Summit County Clerk and Recorder under Reception Numbers 544371 and 544370.

AB. "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.

AC. "Unit" means the physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration and the Plat. Unit includes any Accessory Housing Unit which may be constructed on Lots 1-7.

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

Section 4.1. **The Association.** Every Owner of a Lot or Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or 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 Lot or and then only to the purchaser or Mortgagee of his Lot or Unit.

##### **Section 4.3. Class of Membership.**

A. 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 which may be built on the Property.

B. The number of Units which may be built on each Lot and the corresponding votes are set forth below:

LOT	VOTES
1	1
2	1
3	1
4	1
5	1
6	1
7	1
8	2
9	2
10	2
11	2
12	2
13	8
14	20
TOTAL	45.00

In the event an amended or supplemental Plat is filed and the total number of the Units on the Property is increased or decreased, the number of votes in the Association shall change accordingly so that the Owner of each Unit will have one vote.

C. When more than one person holds an interest in any Lot or Unit, all such persons shall be members. The vote for such Lot or 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 Lot or 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 Lot or 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 Lots 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 Lot for the benefit of all other Owners.

**Section 4.6. 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.

**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 COMMON ELEMENTS AND UNITS**

**Section 5.1. Maintenance of Common Elements and Limited Common Elements.** The Association shall maintain and keep the Common Elements and Limited Common Elements in good repair. Maintenance shall include, but shall not be limited to, repair and replacement, subject to any insurance then in effect, of all trails, lighting, walls, fences, recreational amenities, retaining walls, signage, irrigation systems, drainage and detention facilities and improvements, if any, located in the Common Elements. The storage of snow will be placed only in those areas designated for snow storage, as more specifically set forth on the approved site plan for each lot. Such maintenance by the Association will be performed on a periodic basis as the Executive Board shall determine with all costs of maintenance paid as set forth in that Article named Assessments. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

**Section 5.2. Maintenance, Landscaping and Alteration of Lots or Units.** This Section will apply unless the maintenance obligations set forth below are restated and assumed by a group of Owners or any nonowner's association created in connection with resubdivision of a Lot.

A. Each Owner shall be solely responsible for all interior and exterior maintenance and repair of all improvements on a Lot or Unit, including, but not limited to, all fixtures, roofs, utility lines, glass, and equipment located in, on or upon the Lot or Unit. Each Owner is required to maintain the Unit in a clean condition of good order and free from trash, and garbage in accordance with the provisions of this Declaration and rules which may be adopted by the Executive Board. No Owner shall unreasonably damage the value of other Lots or Units such as by shoddy upkeep of such Owner's Lot or Unit.

B. Each Owner shall be solely responsible for all landscaping on the Lot or Unit. *No Owner shall damage, destroy or remove any trees, shrubs or vegetation on the Common Elements without the approval of the Executive Board.* All surface areas disturbed by construction or by use of a Unit shall be returned promptly to the condition required and approved by the Executive Board.

C. 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 Lot or Unit or construct any addition or improvement on a Lot or Unit, without first obtaining the prior written consent thereto from the Architectural Review Board pursuant to Article named Architectural Review below.

**Section 5.3. Limited Common Expense Allocation.** Any expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed equally against the Lots for which the expense is incurred.

**Section 5.4. Allocation of Specified Common Area.** The Executive Board may designate parts of the Common Area from time to time for use by less than all of the Lot 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 Area.

**Section 5.5. Maintenance of Utility Facilities.** The Association shall maintain and keep in good repair the water mains, sewer lines, service lines, lift station, facilities and utilities located on the Common Area and Limited Common Area or serving more than one Lot. The Association's obligations shall commence on facilities at the point where public maintenance and repair ends; the Association's obligations shall terminate at the Unit Lot boundary or where utility service to only one Lot commences. Utility or service connections, facilities or other utility equipment and property located in, on or upon a Lot which is used solely to supply a service or utility to such Lot shall be owned by the Owner of the Lot using such utility or service, and all expenses and liabilities for repair and maintenance shall be borne solely by the Owner of such Lot, who shall have a perpetual easement in and to that part of such other Lots containing such property for purposes of maintenance, repair and inspection. The Association shall maintain the collection manhole associated with the drainage system by pumping out sediment at least on a semi-annual basis.

**Section 5.6. 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 Area. 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 Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the provisions contained herein.

**Section 6.2. PUD and Recorded Easements.** The Property shall be subject to the PUD and 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 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 pre-existing condition, except that trees within the easement need not be restored.

**Section 6.4. Declarant's Rights Incident to Construction.** Declarant, for it and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of improvements on the Property or other real property owned by Declarant.

**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.

**Section 6.6. Easement for Ingress and Egress.** Declarant hereby grants as an appurtenance of each Lot or Unit a non-exclusive easement of ingress and egress across the Common Elements as shown on any recorded plat of the Property to each Lot or Unit to assure access to each Lot or 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 for purpose of performing maintenance to the Common Elements.

## **ARTICLE VII - INSURANCE**

### **Section 7.1. Association's Insurance.**

A. The Association shall provide and keep in force for the protection of the Owners general public liability and property damage insurance against claims for bodily injury or death or property damage occurring in, on, or upon the Common Elements or any nonexclusive easement hereunder granted, in limits of not less than \$300,000 in respect of bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against possible tort liability with respect to similar property in the County of Summit, Colorado, such higher limits shall be carried.

B. To the extent reasonably available, the Executive Board shall obtain physical damage insurance covering the Common Elements in an amount not less than the full replacement value of all insurable improvements (if any) on the Common Elements, together with such other insurance policies relating to the Common Elements as it deems appropriate, which policies shall be purchased by the Executive Board or its duly authorized agent. The Executive Board, the Manager, and Declarant shall not be liable for failure to obtain any coverages which may be obtained under this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies.

C. If any Owner or employee of the Association controls or disburses funds of the Project, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves as calculated from the current budget of the Association.

D. The Association shall deliver to the Owners certificates evidencing all insurance required to be carried under this paragraph, each containing agreements by the insurers not to cancel or modify the policies without giving all of the Owners written notice of at least thirty (30) days. Each Owner shall have the right to inspect and copy all such insurance policies of the Association and require evidence of the payment of premiums thereon.

**Section 7.2. Insurance Obtained by Owners.** Each Owner will obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot or Unit and personal liability (except to the extent any such Lot or Unit is encumbered by an easement conveyed to the Association as Common Elements). In addition, an Owner may obtain such other and additional insurance coverage on the Lot or 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 Executive Board, 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 Lot or Unit. No Owner shall obtain separate insurance policies on the Common Elements.

The Executive Board may require an Owner who purchases insurance coverage for the Owner's Lot or Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage. The Association may also adopt rules addressing minimum limits and other policy terms for insurance coverage to be obtained by Owners or rules to eliminate potential conflicts with any master policy carried by the Association.

**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 Lot or Unit and liability for injury, death or damage occurring inside his Unit, upon his Lot or Unit, or deriving from any exclusive easement.

## **ARTICLE VIII - ASSESSMENTS**

**Section 8.1. Obligation.** Owners, by accepting a deed for a Lot or 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 Lot or 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 Lot or Unit to make a non-refundable payment to the Association in an amount equal to \$500.00, 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 Lot or 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 Lot or 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 based upon the total number of Units on the Property, divided equally among the Owners, subject to the following exceptions. Any extraordinary maintenance, repair or restoration work on fewer than all of the Lots or Units or Limited Common Elements shall be borne by the Owners of those affected Lots or 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 Lot or 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 Lot.

**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 Lots or Units shall be borne by the Owners of those affected Lots or 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.

G. File a statement of lien with respect to a Lot or Unit and proceed with foreclosure as set forth below.

Assessments chargeable to any Lot or Unit shall constitute a lien on such Lot or Unit, including any improvements on any Lot. 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 Lot or Unit, and (v) a description of the Lot or 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 Lot or 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 request the ex parte appointment of a receiver, may collect all rents from the delinquent Owner's Lot or Unit and may institute foreclosure proceedings against the defaulting Owner's Lot or 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 Lot or Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

**Section 8.9. Personal Obligation.** The amount of any Assessment chargeable against any Lot or 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 Lot or 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 8.10. 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 Lot or 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 Lot or 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 Lot. 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 8.11. 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 Lot or Unit shall not affect the Association's lien except that sale or transfer of any Lot or 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 Lots or Units as a Common Expense at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Lot or Unit from liability for, or the Lot or Unit from the lien of, any Assessments made after the sale or transfer.

**Section 8.12. 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 Lot or Unit may pay any unpaid Assessment payable with respect to such Lot or 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 Lot or Unit for the amounts paid with the same priority as the lien of the Mortgage.

**Section 8.13. 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 Lot or 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 Lot 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, barn, corral, outbuilding, shed, tree house, pen, doghouse, pool, hot tub, spa, porch, patio, gazebo, excavation, landscaping, pit, cave, tunnel, 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 design guidelines 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 adopt additional architectural review or design guidelines to implement the intent of this Article or 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 Lot, 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 Lot) 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 Lot 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 Lots. 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 against an Owner.

**Section 12.2. Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Lots 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. Term.** The covenants and restrictions of this Declaration shall run with and bind the land until twenty (20) years after the date hereof, after which time they shall be automatically extended for successive periods of time of ten (10) years each, subject to the following provisions.

#### **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 Mortgages, to comply with the requirements and powers set forth in the Act, or to confirm with any Amendments, modifications, revisions or revocations of the Summit County 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. **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 constructed, 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 14.3. **Noxious or Offensive Activity.** No noxious or offensive activity shall be conducted on any Lot or Unit, nor shall anything be done or placed on any Lot, 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 Lot or Unit which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying; and no odor shall be emitted from any Lot or Unit which is noxious or unreasonably offensive to other Owners.

Section 14.4. **Annoying Lights and Sounds.** No lights shall be emitted from any Lot or Unit which shines outside any Lot or Unit and which are unreasonably bright or cause unreasonable glare, and no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying to other Owners.

Section 14.5. **Maintenance of Property.** Every Lot or Unit shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly 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 Lot or outside any Unit.



**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 Timesharing.** 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 14.8. House Number.** Each dwelling shall have a house number with a design and at a location established by the Executive Board.

**Section 14.9. Landscaping.** All surface areas disturbed by construction shall be returned promptly to their natural condition. Any and all landscaping, other than returning surface areas to their natural condition, must be consented to in writing by the ARC; provided, that this shall not be construed to prohibit any seasonal changes made in the natural environment such as flower or vegetable gardening, and shall not include the addition or isolated removal of plantings or dead trees unless such results, or could result, in a material change to the Property, Lot or Unit, as applicable.

**Section 14.10. Vehicles and Parking.** No automobile, truck, pickup, camper, motorbike or motorcycle, trail bike, trailer, mobile home, recreation vehicle, tractor, boat, snowmobile, or any other vehicle of any type, except bicycles or the Association's maintenance equipment shall be parked or stored outside any garage upon the Property, except, licensed automobiles and trucks less than 7,500 pounds gross vehicle weight upon the exterior parking spaces depicted on the Plat. Campers, recreational vehicles or motor homes may be parked on any designated parking spaces on a temporary basis (one (1) week maximum) or as determined by the Executive Board.

**Section 14.11. Pets.** Dogs, cats or customary household birds may be kept on the Property, not to exceed a total of two (2) household pets per Unit without the written approval of the Executive Board. Such pets shall not be kept outside the Unit unless the pets are leashed and under direct supervision and control of the Owner. All pet refuse and waste shall be promptly picked up by the Owner. No pets owned by persons other than Owners, nor any 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 14.12. Modular Construction.** The use of "manufactured", modular, or factory-built structures is prohibited.

**Section 14.13 Accessory Apartments.** Units on Lots 1 through 7 may include one Accessory Housing Unit as an integrated part of such Unit or garage.

## ARTICLE XV - DEVELOPMENT RIGHTS

Section 15.1. **Development and Withdrawal Rights.** Declarant expressly reserves the right to create Lots, Units, Common Elements and Limited Common Elements on all or any portion of the Property. Declarant may exercise such rights on all or any portion of the Property in whatever order of development Declarant, in its sole discretion, determines. Declarant expressly reserves the right to withdraw all or any portion of the Property by recording a document evidencing such withdrawal in the office of the Clerk and Recorder of Summit County; provided, however, that no improved Lot may be withdrawn after that Lot has been conveyed to a Purchaser. The property withdrawn from the Property shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the project. Declarant shall prepare and record in the office of the Clerk and Recorder of Summit County whatever documents are necessary to evidence such easements.

Section 15.2. **Amendment of the Plat.** Declarant shall file an Amendment of the Plat showing the location of the additional Lots, Units, Common Elements and Limited Common Elements. The Amendment to the Plat shall substantially conform to the requirements contained in this Declaration and the PUD.

Section 15.3. **Interpretation.** Recording of amendments to the Declaration and Plat in the office of the Clerk and Recorder of Summit County shall automatically:

- A. Vest in each existing Lot Owner any additional rights or interest appurtenant to his/her Lot; and
- B. Vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

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 Lots or Units after such amendment shall be effective to transfer rights in the 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 15.4. **Maximum Number of Lots.** The maximum number of Units in the project shall not exceed forty-five (45) Units. Declarant shall not be obligated to improve the project with any Lots or Units. The initial fourteen lots are restricted to the type of improvement set forth below.

All development on lots 1-13 will be restricted to buildings containing residential dwelling units with the maximum number of dwelling units to be constructed on each lot indicated in the PUD Agreement. Lots 1-7 will all be developed as freestanding, single family homes, with the option to also construct on each of these seven Lots one Accessory Housing Unit as currently defined by §180-5 of the Frisco Town

Code. Lots 8-13 may be developed as either single family homes or resubdivided according to §157-III of the Frisco Town Code into any type of individual unit permitted under the Colorado Common Interest Ownership Act (e.g. Townhome with vertical and possibly horizontal boundaries or airspace units). Lot 14 may be developed into one or more buildings containing multi-units, apartments, a bed and breakfast or in accordance with development permitted on the other lots in the Property.

Upon each expansion of the property, Common Expenses shall be reapportioned equally between the number of Units set forth on the amended Declaration. In the event Lot 14 is not resubdivided and is developed into apartments or a bed and breakfast, an equivalent number of Units will be determined by the Town Code or Declarant.

**Section 15.5. Construction Easement.** Declarant expressly reserves the right to perform any work, repairs and construction work, and to store materials in secure areas, on the Lots and on the Common Elements and the future right to control such work and repairs, and the right to access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or Mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in the Declaration or on the Plat for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement, if any. If Declarant grants any such easements, the Plat of the Property will be amended to include reference to the recorded easement.

**Section 15.6. Reciprocal Easements.** If property is withdrawn from the Property ("Withdrawn Property") the Lot Owner (s) of the Property and/or Withdrawn 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 the 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 Plat to the Declaration 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 15.7. Termination of Development Rights.** The Development Rights reserved to the Declarant for itself, its successors and assigns for the development of the Property, shall expire twenty (20) years from the date of recording this Declaration, unless the 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 Development Rights by Declarant.

Section 15.8. **Transfer of Development Rights.** The 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 Lot or improvement thereon 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.

Section 16.2. **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.

Section 16.3. **Rule Against Perpetuities.** Notwithstanding anything in this Declaration to the contrary, the creation of any interest under this Declaration shall vest, if at all, within the period of time measured by the life of the survivor of the now living children of Prince Charles, Prince of Wales, plus 21 years.

Section 16.4. **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.

Section 16.5. **References to Town of Frisco Development Code of Standards.** Wherever in this Declaration there is a reference to land use regulations, zoning, other Town of Frisco standards, any plats approved by the Town of Frisco or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other Town of Frisco standard, Approval Resolutions, plats or any other rule or law.

DECLARANT: KANE ENTERPRISES, a Oklahoma General Partnership

By: [Signature] Title: General Partner

STATE OF Colo. )  
 ) ss.  
County of Summit )

The foregoing instrument was acknowledged before me this 26th day of July, 1997 by Kenneth F. Kane as General Partner for Kane Enterprises, a Oklahoma General Partnership.

My Commission expires: 11/20/97  
[Signature]  
Notary Public

