

mortgagor within thirty (30) days. A fee not exceeding \$10 for each such report may be charged by the Association to the mortgagee.

Section 15. Payment of Delinquent Taxes and Insurance. The Association agrees that first mortgagees of the lots within the project may, at their option, jointly or singularly pay taxes or other charges which are in default and which may or have become a charge against any common area and may pay overdue premiums for hazard insurance or secure new hazard insurance coverage on the lapse of any such policy on the common areas. The Association hereby agrees that in the event any first mortgagee makes any such payments, the same shall be immediately reimbursed by the Association. Further, the Association agrees that notwithstanding the above, no first mortgagee shall be obligated to make any of the payments hereinabove set forth, but may do so only upon the exercise of the option granted to them hereby.

Section 16. Professional Management. This project may be managed by a professional real estate management company licensed to do business in the State of Colorado and the Association's Board of Directors shall be allowed to retain the services of such a company, provided that the term of any such contract shall not be in excess of three (3) years and shall be terminable by either party without cause and without payment of a termination fee on ninety (90) days written notice.

Section 17. Notice of Meetings. Any first mortgagee of a living unit, upon written request, shall be entitled to written notice of all Association meetings and be permitted to send a representative to such meetings.

Section 18. Mortgagee as Proxy. Each owner shall have the right to irrevocably constitute and appoint the beneficiary of a trust deed his true and lawful attorney to cast his vote in this Association at any and all meetings of the Association and to vest in the beneficiary any and all rights, privileges and powers that he

has as a living unit owner under the Certificate of Incorporation and By-Laws of this Association or by virtue of the recorded Declaration of Covenants, Conditions and Restrictions. Such proxy shall become effective upon the filing of notice by the beneficiary with the Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the managing agent or the living unit owners to carry out their duties as set forth in the Declaration of Covenants, Conditions and Restrictions. A release of the beneficiary's deed of trust shall operate to revoke such proxy. Nothing herein shall be construed to relieve a living unit owner as a mortgagor of his duties and obligations as a living unit owner or to impose upon the beneficiary of the deed of trust the duties and obligations of a living unit owner.

Section 19. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that Declarant shall not be obligated to pay the annual assessment for Lots owned by it until a Certificate of Occupancy for the Residence situated thereon has been issued, and, further provided that the amount of such assessments on Lots owned by Declarant shall not exceed One Hundred and Seventy Dollars (\$170.00) per Lot per month.

Section 20. Assessment Reserves. The Association or the managing agent may require an owner other than Declarant to deposit with the Association up to three times the amount of the estimated monthly common assessment, without interest, which sum shall be held by the managing agent or the Association as a reserve to be used for paying such owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an owner from making the regular monthly payments of the monthly common assessment as the same comes due. On the sale of his living unit, an owner

shall be entitled to a credit from the grantee for any unused portion thereof.

## ARTICLE VI

### INSURANCE

Section 1. Association to Maintain Insurance on Buildings. The Board of Directors of the Association or its agent shall obtain and maintain at all times insurance of the type and kind hereinafter provided: A policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land and other items normally excluded from coverage) of the buildings located on each lot with an "Agreed Amount Endorsement" or its equivalent, and if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Buildings Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and for debris removal, cost of demolition, vandalism, malicious mischief, wind storm and water damage, and

(b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

The insurance shall be carried in blanket policy form naming the Association as insured, as attorney in fact, for all living unit owners. The policy or policies shall identify the interest of each living unit owner (owner's name and address and/or living unit number designation) and shall contain a standard non-contributory clause in favor of each first mortgagee, and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until ten (10) days prior written notice thereof is given to each owner and each first mortgagee. The Association shall furnish a certified copy of such blanket policy and the certificate identifying the interest of the owner to any

party in interest upon request. All blanket policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of a particular owner guilty of a breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that owner's interest or who permits or fails to prevent the happening of any event whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy as to the interest of all other insured owners not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect.

Section 2. Other Insurance to be Maintained by Owners.

Insurance coverage on the furnishings and other items of personal property belonging to an owner, and public liability insurance coverage within each living unit shall be the responsibility of the owner thereof.

Section 3. Other Insurance. The Association shall maintain:

(a) A comprehensive policy of public liability insurance covering all of the common areas insuring the Association in an amount not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(b) The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

(1) all such fidelity bonds shall name the Association as an obligee, and

(2) such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the planned living unit development project, including reserves, and

(3) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(c) All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a member of the Association and shall provide that the policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all insureds, including the mortgagees of any living unit. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any first mortgagee of any living unit upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as trustee for each of the owners.

Section 4. Reappraisal. The Association shall, at least every year, obtain an appraisal for insurance purposes which shall be maintained as a permanent record, showing that the insurance in any year represents one hundred percent (100%) of the full replacement value of the improvements on each living unit and of the insurable common area.

Section 5. Notice of Damage. The Association shall notify each first mortgagee of a living unit wherever damage to any living unit exceeds \$1,000.00. Said notification shall be delivered within twenty (20) days after the event causing the damage.

ARTICLE VII

DAMAGE OR DESTRUCTION

Section 1. Destruction of Improvements on Lot.

(a) In the event of damage or destruction to a living unit due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the living unit, shall be deposited into a bank account which requires, for withdrawals, the signatures of the owner and an officer of the Association. The owner and the Association shall then promptly authorize the necessary repair and reconstruction work and the insurance proceeds will be applied by the Association and the owner to defray the cost thereof. "Repair and reconstruction" of the living units, as used herein, means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each living unit having the same boundaries as before.

(b) If the insurance proceeds are insufficient to repair and reconstruct any damaged living unit, such damage or destruction shall be promptly repaired and reconstructed by the owner and Association, using the insurance proceeds and the proceeds of a special assessment against the owners of the damaged living unit. Any such assessments shall be equal to the amount by which the cost of reconstruction or repair of the living units exceeds the sum of the insurance proceeds allocable to such living unit. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The special assessment provided for herein shall be a debt of each owner and a lien on his living unit and the improvements thereon and may be enforced and collected by foreclosure proceedings in the courts.

(c) Notwithstanding the above, the owners and first mortgagees within the building or attached living unit group which contains the destroyed or damaged living unit or units may agree upon an

affirmative vote of at least two-thirds of the owners and two-thirds of the first mortgagees (based on one vote for each first mortgage owned) that the destroyed or damaged living unit or units shall forthwith be demolished and all debris and rubble caused by such demolition be removed and the portion of the lot regraded and landscaped and same shall become part of the common area.

Section 2. Damage to Common Area. In the event of damage or destruction to all or a portion of the common area due to fire or other disaster, the insurance proceeds shall be applied by the Association to the reconstruction and repair of the common area unless seventy-five percent (75%) of the owners and seventy-five percent (75%) of the first mortgagees of each unit (based on one vote for each mortgage owned) agree otherwise. If the insurance proceeds with respect to such common area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed common areas, the Association shall present to the members a notice of a special assessment for the approval by the membership in accordance with Article V, Section 4. If such assessment is approved, the Association shall make such assessment and shall proceed to make such repairs or reconstruction. If such assessment is not approved, or if seventy-five percent (75%) of the owners and seventy-five percent (75%) of the first mortgagees of each living unit agree otherwise, then the insurance proceeds shall be used for the future maintenance of the common area and exterior maintenance of the living units situated on each lot. If an assessment is approved, the assessment to each owner and living unit shall be in the same percentage as provided for the payment of annual assessment. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. The assessment provided for herein shall be a debt of each owner and a lien on his living unit thereon and may be enforced and collected by foreclosure proceedings in the courts.

ARTICLE VIII

CONDEMNATION

Section 1. Condemnation. If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the common areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(a) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

(b) Complete Taking.

(1) In the event that all of the common areas are taken or condemned or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the owners in the same percentages as provided for the payment of annual assessments and payment of said apportioned amounts shall be made payable to each owner and the first mortgagee of his living unit jointly.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each owner is entitled.

(c) Partial Taking. In the event that less than the entire common area is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those improvements on the common area damaged or taken by the condemning public authority, unless seventy-five percent (75%) of the owners and the first mortgagees of each living unit agree otherwise. Any surplus of the award or other portion



thereof not used for rebuilding and replacement shall be used by the Association for the future maintenance of the common area and exterior maintenance of the living units situated on each lot.

#### ARTICLE IX

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the dwelling living units upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators and shall be binding on all parties and shall be final.

#### ARTICLE X

##### ARCHITECTURAL CONTROL

Section 1. Architectural Control. Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, fence, or any structure whatsoever, on any lot or common areas, there shall be submitted to the Architectural Control Committee (herein referred to as the "Committee") two complete sets of plans and specifications for said improvements, the erection or alteration of which is desired. No such structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received written approval as herein provided. Such plans shall include plot plans, locations of structures and improvements, floor plans, fence plans, elevations, showing all aspects of dwelling and development of lot as an architectural living unit, together with the proposed color scheme and materials for fences, roofs, and exteriors. In order to avoid unnecessary hardships, it is mandatory that all owners contemplating such construction, or alteration, as mentioned above, should submit preliminary drawings in duplicate of such work to the Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans or specifications or incurring substantial expense. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same within thirty (30) days and the other copy thereof shall be retained by the Committee.

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion, for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if in accordance with all of the provisions of this Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final. Neither the undersigned nor any architect or agent of the undersigned nor any member of the Committee by virtue of his membership thereon on discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No building or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without the prior written approval of the Committee. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced within one year from the commencement thereof, approval will not be required and there will be deemed to have been full compliance with the related covenants.

Section 2. Architectural Control Committee. The Architectural Control Committee shall consist of at least three persons appointed by the Declarant, their successors or assigns. The members of the Architectural Control Committee need not be members of the Association. The Declarant, their successors or assigns, may constitute one member of the Committee. The Declarant, their successors or assigns shall have absolute right to remove and appoint members of the Committee at any time. The members of the Committee shall, as long as the restrictions, covenants, and conditions herein set forth are in force and effect, perform the duties imposed on it as herein set forth. At any time while the restrictions, covenants and conditions herein set forth remain in force and effect, the Declarant, their successors or assigns, may relinquish their powers to determine the number and members of the Committee. Such relinquishment may be accomplished by recording a declaration of such relinquishment in the office of the County Clerk and Recorder of Eagle County, Colorado, and such relinquishment must occur no later than October 1, 1984. From and after such relinquishment the number and members of the Committee shall be determined by the Board of Directors of the Association. Neither the members of the Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 3. Landscaping. No landscaping of any nature may be added to any lot without the prior written approval of the Architectural Control Committee. Any request for alteration in or addition to the landscaping must be approved by a plan showing the requested changes. Approval or disapproval of such landscaping plans shall be in the same manner as set forth in Section 1 hereof.

Section 4. Fences. No fences other than original construction shall be constructed unless approved by the Committee. Any fence approved shall be designed and approved as an integral part of the design of the house.

Section 5. Exterior Painting. No exterior painting or staining of the dwellings located upon the properties shall be allowed by owners. All exterior painting shall be done by the Association.

Section 6. Waiver. The Committee may not waive any of the architectural control provisions and shall not be entitled to, by act or omission, change, waive or abandon any scheme of regulations or the enforcement thereof pertaining to architectural design or exterior appearance of the improvements built upon the lots, unless at least seventy-five percent (75%) of the first mortgagees of the lots within the properties have given their prior written approval.

#### ARTICLE XI

##### LAND USE RESTRICTIONS

Section 1. Land Use and Building Type. No structure or structures shall be erected, placed, altered or permitted to remain on any lot or be occupied or used for any purpose other than single-family dwellings, private garages, and other outbuildings incidental to residential use. An "outbuilding" as used herein shall mean an enclosed covered structure not directly attached to the dwelling which it serves.

Section 2. Dwelling Quality and Size. No residential structure shall be erected on any part of the properties which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Architectural Control Committee in accordance with Article X.

Section 3. Building Locations and Height Restrictions. No building, primary or accessory, shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

The Architectural Control Committee shall approve the location and height of any structure placed on any lot. Such approval must be obtained before commencement of any construction or alteration in accordance with Article X.

Section 4. Resubdivision of Lots. No lot or lots shall be subdivided except for the purpose of combining portions with an adjoining lot provided that no additional building site is created thereby. Any ownership or single holding by any person comprising the whole of one lot and part or parts of one or more adjoining lots shall for all purposes of this Declaration be deemed as constituting a single lot. Not less than one entire lot as originally platted shall be used as a building site except as provided in Article II, Section 2, wherein Lots 46 and 47 may be resubdivided.

Section 5. Trees. No tree or trees, whether now growing or hereafter grown upon any part of the properties, shall be cut down without prior written approval of the Architectural Control Committee, provided however, that this restriction shall not apply unless such tree is more than two (2) inches in diameter as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees within the properties.

Section 6. Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon any part of the properties and no residence placed or erected on any lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth; provided however, that during the actual construction or alteration of a building on any lot reasonable and necessary, temporary buildings for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration or remodeling. The work of construction, altering and remodeling any building on the properties shall be prosecuted diligently from its commencement and completed within one year from commencement.

Section 7. Trash, Etc. The Association shall be responsible for the regular removal of trash and garbage. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any lot so it is visible from any neighboring lot or the street, except as reasonably necessary during the period of construction. In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all debris and remaining portions of the structure including the foundations shall be promptly removed from the property. No noxious or offensive activity shall be carried on upon the properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Nuisances. No boats, trailers, campers, motor homes, wrecked or partially disassembled cars, tractors, equipment, by way of example only, and not by limitation, shall be kept or stored so that they are visible from neighboring lots or from the street.

Section 9. Utilities. All electric, television, radio and telephone line installations and connections from the owner's property line to the residence shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed.

Section 10. Signs. No sign or advertising of any character except for those of the Developer and his sales agents shall be erected, placed, permitted or maintained on any lot except for a "For Sale" or "For Rent" sign not exceeding the size permitted by the Committee.

Section 11. Mailboxes and Property Identification. At the present time all mail is delivered via post office boxes. However, if in the future mail is delivered then a commonly designed mailbox