

**Declarations of the  
Texan Resort Estates –  
A Common Interest Community**

**THIS DECLARATION OF TEXAN RESORT ESTATES – A COMMON INTEREST COMMUNITY** (this "Declaration") is made as of the 6<sup>th</sup> day of January, 2009, by Granite Falls, LLC, a Colorado Limited Liability Company (the "Declarant").

**RECITALS:**

A. Declarant is the owner of that certain real property located in the County of Hinsdale, State of Colorado, more particularly described on Exhibit A attached hereto (the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute § 38-33.3-101 et seq. (the "Act") on the Property, the name of which is The Texan Resort Estates.

**ARTICLE 1**  
**DECLARATION AND SUBMISSION**

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements 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.

1.2 **Submission.** Declarant hereby submits the Property and all improvements thereon to the provisions of the Act.

**ARTICLE 2**  
**DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

2.1 **"Allocated Interest"** means the undivided interest in the Common Elements, the Common Expenses and Assessments, and votes in the Association allocated to each Unit. The formulas for the Allocated Interests are as follows:

2.1.1 **Share of Common Expenses and Share of Ownership of Common Elements:** Each Unit's share of Common Expenses and share of ownership of Common Elements are set forth on the attached Exhibit B. The Limited Common

Elements will be allocated to the respective Unit or Units served, as described on the Map.

2.1.2 **Voting.** The respective Owner or Owners of each Unit shall collectively be entitled to a single vote per Unit owned; provided, however, that no Unit owned by the Association shall be so entitled.

2.2 **"Articles"** means the Articles of Incorporation of The Texan Resort Condominiums Association, Inc., a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.3 **"Annual Assessment"** means the Assessment levied pursuant to an annual budget.

2.4 **"Assessments"** means the Annual, Special and Default Assessments levied pursuant to Article 12 below.

2.5 **"Association"** means The Texan Resort Condominiums Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

2.6 **"Association Documents"** means this Declaration, the Articles, the Bylaws, the Map, and any procedures, rules, regulations or policies adopted under such documents by the Association.

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

2.8 **"Clerk and Recorder"** means the office of the Clerk and Recorder in the County of Hinsdale, State of Colorado.

2.9 **"Common Elements"** means all portions of the Project except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interest set forth in Section 2.1.1 above, and consist of General Common Elements and Limited Common Elements.

2.9.1 **"General Common Elements"** means all portions of the Project except Limited Common Elements and the Units.

2.9.2 **"Limited Common Elements"** means those parts of the Common Elements which are limited to or reserved in this Declaration, on the accompanying Map or by operation of law, for the exclusive use of an Owner of a Unit, or are limited to and reserved for the common use of more than one but fewer than all Owners.

2.10 **"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

General Common Elements; (iii) insurance premiums for the insurance carried under Article 9; (iv) any allocations to reserves determined by the Executive Board; and (v) all other expenses lawfully determined to be Common Expenses by the Executive Board. The expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Limited Common Elements shall be allocated to the Unit or Units served by such Limited Common Elements as described on the Map.

2.11 "**County**" means the County of Hinsdale, State of Colorado.

2.12 "**Declaration**" means this Declaration and the Map, and any amendments and supplements thereto.

2.13 "**Eligible Insurer**" means an insurer or guarantor of a first security interest in a Unit. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first security interest in a Unit. It must provide the association with the Unit number and address of the Unit on which it is the insured or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given Notices and other rights described in this Declaration.

2.14 "**Eligible Mortgagee**" means a Mortgagee who holds a first Security Interest in a Unit when the holder has notified the Association, in writing, of its name and address, and that it holds a first Security Interest on one or more Units. The notice must include the Unit number and street address of the Unit on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights of Eligible Mortgagees described in this Declaration.

2.15 "**Executive Board**" means the three (3) person governing body of the Association.

2.16 "**Improvements**" are any construction, structure, equipment, fixture of facilities existing or to be constructed on the Project, including but not limited to buildings, trees and shrubbery planted by the Association or the Declarant, paving, utility wires, pipes and light poles.

2.17 "**Manager**" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Unit Owners may authorize from time to time.

2.18 "**Map**" means the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation schedule of the Property subject to this Declaration and any supplements and amendments thereto.

2.19 "**Member**" means every person or entity that holds membership in the Association. There shall be no Members of the Association who are not Unit Owners.

The respective Owner or Owners of each Unit shall collectively be entitled to a single membership interest per Unit owned, and shall be entitled to exercise one membership Vote in the Association per Unit owned.

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

2.21 "**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.

2.22 "**Owner**" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit.

2.23 "**Owner's Agent**" means members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenant.

2.24 "**Project**" means the common interest community created by this Declaration and as shown on the Map, consisting of the Property, the Units, and the Common Elements.

2.25 "**Successor Declarant**" means any person 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 executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

2.26 "**Supplemental Declaration**" means an instrument which amends this Declaration.

2.27 "**Supplemental Map**" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

2.28 "**Unit**" means a physical portion of the Common Interest Community designated for separate ownership or occupancy, as more specifically shown on the Map, together with the appurtenant interest in the Common Elements.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

### **ARTICLE 3** **NAME, DIVISION INTO UNITS**

3.1 **Name.** The name of the Project is The Texan Resort Condominiums. The Project is a Condominium pursuant to the Act.



3.2 **Association.** The name of the Association is The Texan Resort Condominiums Association, Inc. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

3.3 **Number of Units.** The number of Units in the Project is *Thirty Eight (38)*.

3.4 **Identification of Units.** The identification number of each Unit is shown on the Map.

3.5 **Description of Units.**

3.5.1 Each Unit, the appurtenant interest in the Common Elements and any appurtenant Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

3.5.2 Any contract of sale, deed, lease, Mortgage, Will or other instrument affecting a Unit may describe it by its Unit number, The Texan Resort Estates, County of Hinsdale, State of Colorado, according to the Plat Map thereof recorded on *January 6, 2009* at Reception No. *97337*, Book \_\_\_\_\_, Page \_\_\_\_\_, and this Declaration recorded in the records of the Clerk and Recorder of the County of Hinsdale, State of Colorado, as amended from time to time.

3.5.3 Each Owner shall be entitled to the exclusive ownership and possession of his Unit.

3.6 **Access.** Access to each Unit will be made from *County Road 142* and the historical access driveways through the Common Elements. All access driveways located in the Common Elements shall be considered a part of the Common Elements for purposes of this Declaration and shall be maintained and improved by the Association as set forth in this Declaration.

**ARTICLE 4**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

4.1 **Administration.** The Project will be administered in accordance with the provisions of the Declaration, the Bylaws and the Rules and Regulations adopted from time to time by the Association. All Common Elements are subject to the reasonable supervision, operation, management and control of the Association.

4.2 **Compliance.** Each Owner, Owner's Agent, Mortgagee and all parties claiming under them will take and hold their right, title and interest in any Unit subject to all of the covenants and conditions of this Declaration. Each Owner, Owner's Agent and

Mortgagee will comply with all applicable provisions of this Declaration, as they may be amended from time to time

4.3 **Permitted Uses.** Each Unit may be occupied and used only for uses permitted by applicable laws, with the additional following restriction:

4.3.1 **Residential Use.** Units shall be for residential use only and uses incidental thereto, including rental of the Units for residential use. Notwithstanding the foregoing, as long as Declarant is an Owner, Declarant, its duly authorized agents, representatives and employees may maintain any Unit owned by Declarant or any portion of the Common Elements as a sales office, management office, or a rental. In addition, Declarant may engage in the business of ATV/Off-Road or other similar equipment rental.

4.3.2 **Exterior Changes.** Except as provided in Article 13, no exterior additions to, alterations or decoration of any Units shall be commenced, erected, placed or maintained.

4.3.3 **Interior Changes.** Nothing in this Declaration shall be construed to require any Owner to obtain approvals to make non-structural changes to the interior of such Owner's Unit; provided, however, that no lofts or additional floors may be created without Committee approval.

4.3.4 **Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on the Project, except animals assisting the disabled shall be permitted on the Project. In addition, the Executive Board may by resolution or rule permit Owners or tenants to bring a bona fide pet on the Project subject to such conditions as the Executive Board deems appropriate.

4.3.5 **Antennae.** Exterior television, satellite or other antenna are allowed only to the extent expressly permitted under applicable federal statutes or regulations ("Permitted Antennas"). Permitted Antennas shall be installed in the least conspicuous location available on the Unit which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law.

4.3.6 **Signs.**

(i) Except as otherwise provided in the Act, no signs which are visible from the outside of a Unit shall be permitted; except that reasonable signs used by the Owner of a Unit or Owner's Agent for the purpose of posting the street address and name of the occupant shall be permissible. Any such sign installed by an Owner or Owner's Agent shall be maintained, repaired and replaced by such party at their sole cost and expense.

(ii) Signs advertising and/or identifying the Project may be installed by the Declarant and/or the Association on the Common Elements and shall thereafter be maintained and repaired by the Association.

(iii) Additionally, the Association may rent or lease space on the Common Elements to Owners for the placement of signage approved by the Executive Board identifying the name of the Owner or occupant of a Unit. If the Executive Board permits an Owner or occupant of a Unit to install signage on the Common Elements, all maintenance, repair and replacement of such signage shall be performed by the owner of such signage at such owner's sole cost and expense. If the party who owns any signage on the Common Elements does not perform such party's maintenance, repair and replacement obligations in a manner satisfactory to the Executive Board, the Association may, if said failure continues for a thirty (30) day period after written notice to said party by the Executive Board, either remove the signage or perform any or all of such maintenance, repair or replacement. The cost of such removal or such maintenance, repair and replacement shall be assessed as a Default Assessment.

**4.3.7 Compliance with Laws.** No immoral, improper, offensive or unlawful use shall be permitted or made of any Unit or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Units, or any portion thereof, shall be observed.

**4.3.8 No Hazardous Activities; No Hazardous Materials or Chemicals.** No activities shall be conducted in any Unit or in the Project that are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit or Common Elements except such as may be contained lawfully in such limited quantities for use in their businesses so as to not constitute a hazard or danger to person or property.

**4.3.9 Restrictions on Slash and Materials.** No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trashcans or receptacles shall be maintained in an exposed or unsightly manner.

**4.3.10 Leases.** The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease such Owner's Unit subject to the following conditions:

(i) All leases shall be in writing, with a copy provided to the Association upon request;

(ii) All leases shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association;

(iii) Any failure of a lessee to comply with the terms of this Declaration or the Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not such lease contains such a provision;

(iv) The Association shall have the right to impose reasonable restrictions, requirements and/or obligations upon any such lease, including insurance requirements and the tenant's written acknowledgement of and adherence to these Declarations, the Bylaws and all Association Rules and Regulations;

(v) All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the Owner of such Unit notice of the Association's intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

(vi) A Unit may not be leased or rented for a term of more than 180 days in a single calendar year.

4.3.11 **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.

4.3.12 **Subdivision.** No Unit may be legally partitioned or be further subdivided.

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

5.1 **The Association.** There shall be one (1) Association membership interest per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

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

5.3 **Membership.** The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided in this Declaration, each Member shall



be entitled to vote in Association matters as set forth in Section 2.1.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

5.4 **Executive Board.** Except as provided in this Declaration, the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association.

5.5 **Declarant Control.** Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of (a) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective under the Act. Declarant Control is further extinguished, to the extent stated, sixty (60) days after the following events: (a) when Declarant conveys twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, to the extent of one (1) Executive Board member, and (b) when Declarant conveys fifty percent (50%) of the Units that may be created to Owners other than Declarant, to the extent of two (2) Executive Board members.

5.6 **Books and Records.** The Association shall maintain and make reasonably available such books and records as may be required under the Act. The Association may charge a fee for copies of such records, which shall not exceed the Association's actual cost per page.

5.7 **Manager.** The Association may employ or contract for the services of a Manager to whom the Unit Owners may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association.

5.8 **Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Nonprofit Corporation Act.

5.9 **Notice.** Except as may otherwise be required by the Act or provided in the Bylaws, any notice to an Owner or Mortgagee of matters affecting the Project by the Association or by another Owner shall be deemed sufficiently given if in writing and delivered personally, by courier or private service delivery, or upon the fifth business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to the subject Unit. Notice to any one Owner of a Unit shall constitute notice to all other Owners of that Unit. If Owners have provided an email address to the Association and requested that it be used

for delivery of such notices, email delivery shall constitute notice as of the date of submission.

**ARTICLE 6**  
**SPECIAL DECLARANT RIGHTS**

6.1 **Reserved Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps; (b) appoint or remove any officer of the association or any Executive Board member during the period of Declarant Control as set forth in Section 5.5 above; and (c) to control the Architectural Review Committee as set forth in Section 13.3 below.

6.2 **Termination of Rights Reserved.** Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate twenty (20) years after the date upon which this Declaration is recorded or upon the sale of all Units which are within the Project up to the maximum number of Units, whichever shall first occur; provided, however, such reserved rights may be: (i) reinstated or extended by the Association as allowed by law and subject to whatever terms, conditions, and limitations the Executive Board may impose; or (ii) terminated in whole or in part by a written instrument executed by the Declarant in such manner as provided in the Act.

**ARTICLE 7**  
**EASEMENTS**

7.1 **Recorded Easements.** The Property shall be subject to all easements as shown on any Map or plat, those of record (including those set forth on Exhibit C attached hereto), those provided in the Act (including easements for encroachment set forth in the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

7.2 **Declarant's Rights Incident to Construction.** Declarant, for itself and its successors and assigns, the Association and/or for Owners, 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, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

7.3 **Utility Easements.** There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement

includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roof and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

7.4 **Reservation of Easements, Exceptions and Exclusions.** The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements by the Association, such as for closure for repairs and maintenance.

7.5 **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

7.6 **Easement for Maintenance.** Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to all Common Elements and each Unit from time to time upon reasonable notice and during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit.

7.7 **Support Easement.** Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

## ARTICLE 8 MAINTENANCE AND REPAIRS

8.1 **Maintenance by Owners.** Each Owner, at such Owner's expense, shall maintain and keep in repair his Unit, including all improvements and fixtures thereof, and the Limited Common Elements allocated to the Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner whose Unit is serviced by a shallow water line shall be responsible for draining, maintaining and replacing said line up to the main water line.

**8.2 Owner's Failure to Maintain or Repair.** In the event that a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired by the Owner, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 12 of this Declaration.

**8.3 Emergency Repairs and Damages.** The Association shall be entitled to conduct emergency repairs to and within any Unit, and allocate the cost thereof to the applicable Unit Owner as appropriate. Damage to any part of a Unit or Common Element resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements shall be a Common Expense of all of the Owners, subject to the provisions of Paragraphs 8.1 and 8.4 hereof.

**8.4 Damages Caused by Owner Misconduct.** If any damage is caused by negligent or tortious acts or other misconduct of a Unit Owner or Owner's Agent, then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof to the extent that the Owner or Owner's Agent's misconduct caused such damage, and shall promptly remedy the same. In the event the party damaged is the Association, a lien for such damages may be enforced against the liable party in the same manner as a lien for an unpaid Assessment levied in accordance with Article 12 of this Declaration.

**8.5 Damages to Limited Common Elements.** In the event of damage or destruction of a Limited Common Element from any cause other than the negligent or tortious acts of an Owner or Owner's Act, or the action of the Association pursuant to the provisions of Section 8.4, the then-Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition.

**8.6 Maintenance by Association.**

**8.6.1** Except as otherwise provided in this Article 8, the Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units, which shall be the Common Expense of the Owners. Such maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any, located in the Common Elements. Maintenance of the Project shall be limited to seasonal (May 1 through October 31) maintenance, and shall not include maintaining winter access or snow removal. 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.

8.6.2 The Association will contract with the providers of electrical, water, natural gas and sewer service to provide all services to the Common Elements in the name of the Association; provided, however, the Association shall not be responsible if such services are unavailable from time to time through no fault of the Association. The Owners shall each be responsible to provide for their electric service and shall pay for all utility services for their respective Units and the Limited Common Elements allocated thereto, and separate meters will be installed to accommodate this requirement.

8.6.3 Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance and repair of the Common Elements or improvements thereon shall give rise to any interest of the Association in any Unit or any improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant for negligence, breach of express or implied warranties, or any other matters, with respect to any such improvements or the construction thereof.

## ARTICLE 9 INSURANCE

9.1 **General Insurance Provisions.** The Association shall acquire and pay for, out of the assessments levied under Article 12 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado, to the extent such coverage is reasonably available:

9.1.1 **Comprehensive Liability.** Comprehensive general public liability insurance for the Project in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence, insuring the Association, the Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Unit Owners, from liability in connection with the ownership, existence, use or management of Common Elements. The Declarant shall be included as an additional insured, in the capacity of Unit Owner and Executive Board Member. Such policy shall include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Hinsdale County Area, including automobile liability insurance if appropriate.

9.2 **Form of Policies.** Any insurance policies mentioned in Section 9.1 hereof may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Unit Owners. Each Unit Owner shall be an insured person under the policy with respect to liability arising out of such Unit Owner's

interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Unit Owner or member of the Unit Owner's household. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

9.3 **Inability to Acquire Insurance.** Should the insurance policies set forth in Sections 9.1 not be reasonably available, or should any such policy be cancelled and not renewed without a replacement policy having been obtained, then the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States Mail, to all Unit Owners.

9.4 **Fidelity Insurance.** Fidelity insurance or fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) twenty-five thousand dollars (\$25,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to two (2) months aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

9.5 **Other Insurance.** The Association may also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate, on behalf of the Executive Board and against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

9.6 **Additional Insurance.** The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers

compensation insurance, commercial general liability insurance and automobile insurance, on all of which the Association is named as an additional insured.

9.7 **Workers' Compensation Insurance.** The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law. The Unit Owners shall obtain workers' compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith, performed at the instance of the Owner.

9.8 **Certificates of Insurance; Cancellation.** Certificates of Insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article shall provide a standard non-contributory mortgagee clause in favor of each Eligible Mortgagee of a Unit and shall provide that such policy cannot be cancelled by the insurance company without at least thirty (30) days' prior written notice to each Owner and Eligible Mortgagee whose address is shown in the records maintained pursuant to the Association's documents.

9.9 **Premiums.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units, or other insurance attributable to some but not all of the Units, the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

9.10 **Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.11 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

9.11 **Repair and Replacement.** Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.11.1 The common interest community created by this Declaration is terminated, in which case the approval must first be obtained by at least sixty-seven percent (67%) of all Unit Owners;

9.11.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.11.3 Sixty-seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild;

9.11.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

9.12 **Insufficient Insurance.** The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project. Except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the affected Owners or Mortgagees, as their interests may appear, in proportion to each Unit's Common Expenses Allocated Interest.

9.13 **Owners' Insurance.** All Owners should obtain insurance for any and all Improvements on their Units, and any and all personal liability for any injury occurring within their Units, at their own expense.

9.14 **Insurance Payable to Owner.** In the event insurance proceeds under this Article are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

## ARTICLE 10 DAMAGE OR DESTRUCTION

10.1 **The Role of the Executive Board.** Except as provided in Section 9.11 above, 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 name of the Association under Article 9, 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 Article 9 is sometimes referred to as the "Association-Insured Property").

10.2 **Estimate of Damages or Destruction.** As soon as practical 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 or the insurance trustee, if any, determines to be necessary.

**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.

**10.4 Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 12.5 below, 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.

**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 proportion to the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

## ARTICLE 11 MECHANIC'S LIENS

**11.1 No Liability.** If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be

at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit.

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

11.3 **Association Action.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, may be the basis for the filing of a lien pursuant to law against such Common Elements. Any such lien shall be limited to such Common Elements and no lien may be effected against an individual Unit or Units.

## ARTICLE 12 ASSESSMENTS

12.1 **Obligation.** Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

12.2 **Budget.** A budget shall be submitted to the Owners pursuant to the Act, and will be deemed approved in the absence of a veto at the noticed meeting by a majority of all Unit Owners, whether or not a quorum is present. Common Expense Assessments shall be due and payable annually or in periodic installments, or in any other manner. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

12.3 **Annual Assessments.** Annual Assessments made for Common Expenses 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 Section 12.2 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the General Common Elements, expenses of management, insurance premiums and deductibles, landscaping of the General Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within

the General Common Elements, wages, common water and utility charges for the General Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the General Common Elements on a periodic basis, as needed. Any surplus funds derived from Assessments shall be transferred to the reserve fund or used for Association operations in the Executive Board's sole discretion, and by acceptance of a deed to his or her Unit, each Owner hereby directs the Executive Board to make this determination each year.

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

**12.4 Apportionment of Annual Assessments.** The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment; provided, however, that the Association reserves the right to allocate expenses relating to fewer than all of the Units (such as expenses attributable to Limited Common Elements, insurance premiums described in Section 9.1.1.1 and 9.9 above or expenses associated with an Owner's request to make changes to a Unit that requires any alteration to any Common Element.) to the Owners of those affected Units only.

**12.5 Special Assessments.** In addition to the Annual Assessments, 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 12.5 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. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units which shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall be borne by that Owner. Notice in writing of 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 ten (10) days after such notice shall have been given.

12.6 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

12.7 **Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date, shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank or such other lawful rate as the Executive Board may establish;
- (iii) Require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such delinquency, without the necessity of commencing a legal proceeding;
- (iv) Suspend the voting rights of the Owner during any period of delinquency;
- (v) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (vi) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vii) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for

the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**12.8 Personal Obligation.** Each Assessment against a Unit is the personal obligation of the person or entity who owned the Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments or exercising any other remedy pursuant to the Declaration or the Act, 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, and all Owners shall be liable for payment of such fees and costs.

**12.9 Payment by Mortgagee.** Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

**12.10 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request

**12.11 Capitalization of the Association.** Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to two-twelfths (2/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The working capital deposit made by an Owner shall be returned to each Owner including Declarant upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve contributions, or construction costs, nor to make up any budget deficits during the period of Declarant Control.

12.12 **Maintenance Accounts Accounting.** If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

### ARTICLE 13 ARCHITECTURAL CONTROL AND DESIGN REVIEW

13.1 **Alterations and Modifications.** Except as herein specifically provided, no alteration or additions to the Units or Common Elements of any kind (including, without limitation, change in color, texture, street number signage, doors or windows) shall be made unless first approved in writing by the Executive Board. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

13.2 **Architectural Review Committee.** There is hereby established an Architectural Review Committee (the "Committee"), which shall be responsible for the establishment and administration of Design Guidelines (the "Design Guidelines") to carry out the purposes and intent of this Declaration and shall provide advice to the Executive Board on such matters as the Executive Board may request.

13.3 **Membership.** The Committee shall consist of individuals appointed by and responsible to the Executive Board. During the period of Declarant Control set forth in Section 5.5 above, the number of members shall be determined by the Executive Board and such members need not be Owners. After the period of Declarant Control has passed, the Committee shall consist of three (3) members at least one (1) of whom shall be an Owner; provided, however, the Declarant shall retain control of the Committee until the expiration of its rights reserved in Article 5. Members of the Committee shall be appointed to serve for a period of time established by the Executive Board, but in no event for a period of less than one year. The Committee is authorized, upon approval of the Executive Board, to seek the advice of design professionals or other professionals if the need should arise. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the Executive Board.

13.4 **Design Guidelines.** The Committee may adopt, establish, and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be an Association Document the terms of which shall be complied with by all Owners. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by unanimous approval of the Executive Board and shall be made available to all Owners and their representatives for review. Further, the Committee may recommend, and the Executive Board, in its sole discretion, may excuse, compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process and design standards is not a substitute for compliance with County building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Design Guidelines, the terms of this Declaration shall control.

13.5 **Requirement for Approval.** No improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Committee showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Committee or Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within sixty (60) days of the submission by Owner of all information requested by the Committee and the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Improvements and alterations, which are completely within an existing Unit, may be undertaken without such approval.

The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal.

13.6 **Criteria for Approval.** The Committee shall recommend approval and the Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and that the upkeep and maintenance of the proposed improvement will

not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, grade and finished ground elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Committee or Executive Board may deem appropriate.

#### ARTICLE 14

#### CONVEYANCE OR MORTGAGE OF COMMON ELEMENTS

Common Elements may be conveyed or subjected to a security interest only if: (a) Owners entitled to cast at least sixty-seven percent (67%) of the votes agree to that action, (b) the provisions of Article 17 are followed with respect to notices to Eligible Mortgagees, and (c) all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest.

#### ARTICLE 15

#### CONDEMNATION

15.1 **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.

15.2 **Partial Condemnation; Distribution of Award Reconstruction.** The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, 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 sixty-seven percent (67%) 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. If such improvements are to be repaired or restored, the provisions in Article 10 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 among the Units according to each Unit's Allocated Interests of Percentage Share of Common Elements, first to the Mortgagees and then to the Owners, as their interests appear.

15.3 **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 governance created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 10.5 above.

#### ARTICLE 16 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 7; (b) purchasing and maintaining insurance pursuant to Article 9, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 10; and (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 15, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE 17 MORTGAGEE'S RIGHTS

The following provisions are for the benefit of Eligible Mortgagees. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

17.1 **Title Taken by Mortgagee.** Any Mortgagee holding a Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit: (i) is acquired; or (ii) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier.



17.2 **Distribution of Insurance or Condemnation Proceeds.** In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a Mortgage against the Unit.

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

17.4 **Audited Financial Statement.** Upon written request from any Eligible Mortgagee, which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

17.5 **Notice of Action.** Any Eligible Mortgagee will be entitled to timely written notice of:

17.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the easement rights appurtenant thereto, (b) the interest in the Common Elements appurtenant to the Unit or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, (d) the purposes to which any Unit or the Common Elements are restricted, or (e) any amendment set forth in Section 18.2 below.

17.5.2 Any proposed termination of the common interest community;

17.5.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a Mortgage held, insured or guaranteed by such Mortgagee;

17.5.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty days;

17.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 9.

17.5.6 Any proposed conveyance or encumbrance of the Common Elements pursuant to Article 14.

## **ARTICLE 18**

## DURATION OF COVENANTS AND AMENDMENT

18.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

### 18.2 **Amendment**

18.2.1 **Amendments by Owners.** Subject to the restrictions set forth in this Declaration and the Act, this Declaration, including the Map, may be amended by written agreement by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Any such amendment shall be effective upon the recording of the amendment signed by the President together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners have given their written consent to the amendment.

Each amendment to the Declaration must be recorded in the office of the Clerk and Recorder.

Signatures of Owners on the amendment need not be notarized.

All signatures shall be irrevocable even upon the death of an Owner or the conveyance of the Unit.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Declaration, unless it is commenced within one (1) year from the date of the recording of the said amendment, unless fraud or willful negligence is asserted and proven.

18.2.2 **Amendments by Declarant.** The Declarant reserves the right to amend, at any time and from time to time, without the consent of Owners, this Declaration, the Map, and the Association's Articles of Incorporation, to make nonmaterial changes such as (a) the correction of a technical, clerical, grammatical or typographical error, or (b) clarification of a statement.

18.3 **Termination.** Except as otherwise provided herein with respect to condemnation and casualty, the Project may be terminated only upon the agreement of Owners to which sixty-seven percent (67%) of the votes in the Association are allocated.

The proceeds of any sale of assets of the Association shall be held by the Executive Board as trustee, as more fully set forth in the Act.



**ARTICLE 19**  
**GENERAL PROVISIONS**

19.1 **Disclaimer Regarding Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. The Association, the Declarant, any Successor Declarant, or any representative or agent of the foregoing, shall in no way be considered insurers or guarantors of security within the Project, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that access gates, if any, constitute any form of security, and no representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Owner's Agents of the terms of this Section 19.1 and that such Owner's Agents and anyone within the Project assumes all risks for loss or damage to persons and to property resulting from acts or failure to act of third parties.

19.2 **Restriction on Declarant Powers.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

19.3 **Enforcement.** The Executive Board, Declarant or any Owner shall have the right to enforce 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. Subject to the limitations described in the Act, the prevailing party in any such proceeding shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees.

The Association's Bylaws shall set forth policies for the resolution of certain disputes through mediation and arbitration, which shall be binding upon the Owners and the Association.

19.4 **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.

19.5 **Conflicts Between Documents.** In case of conflict between this Declaration and the Act, the Act shall control. In case of conflict between this



Declaration and the Articles of Incorporation, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

19.6 **General Reservation.** To the fullest extent allowed by law, the Declarant hereby reserves for itself the right to take any and all actions deemed necessary or advisable in its opinion.

*end*



DECLARANT:

Granite Falls, LLC

By: [Signature]

Name: Arden Barksdale

Title: agent-in-fact

STATE OF COLORADO )  
  ) ss.  
COUNTY OF Hinsdale )

The foregoing instrument was acknowledged before me this 06<sup>th</sup> day of January, 2009 by Arden Barksdale as \_\_\_\_\_ of \_\_\_\_\_, Declarant.

My commission expires: \_\_\_\_\_

**My Commission Expires  
September 05, 2010**

WITNESS my hand and official seal.



[Signature]  
Notary Public

MARY FAYE BIELSER  
Notary Public



97339 01/06/2009 03:48 PM DECCOV Linda Ragle  
31 of 32 R:\$160.00 D:\$0 N:\$0 S:\$1.00 M:\$0 Hinsdale Co.

**EXHIBIT A**

Parcel A of the Mabbett Subdivision Exemption Plat, within the Garbutt and Abbott Placer Claim, M.S. 72, also within the N ½ of the Finley, Hotchkiss and Church Placer Claim, M.S. No. 40, also within the S ½ of Section 34, Township 44 North, Range 4 West, New Mexico Principal Meridian, Hinsdale County, Colorado.



**EXHIBIT B**

Unit #	Allocated Percentage for Expense
1	1.4390%
2	0.9681%
3	0.9623%
4	0.9826%
5	0.9913%
6	1.0030%
7	1.3082%
8	1.3780%
9	1.4826%
10	1.3286%
11	1.5582%
12	1.4826%
14	1.9769%
15	2.0873%
16	1.7036%
17	2.1426%
18	1.2152%
19	1.9449%
20	2.8868%
21	1.7763%
22	3.8462%
23	3.5554%
24	8.1400%
25	2.9071%
26	3.5583%
27	3.6339%
28	1.7763%
29	3.5671%
30	3.5671%
31	3.5671%
32	3.5671%
34	3.6339%
35	3.6339%
36	3.6339%
37	3.6339%
38	3.6339%
39	7.9947%
40	1.5321%