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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
BROOKTREE TOWNHOUSES**



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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
BROOKTREE TOWNHOUSES**

This Amended and Restated Declaration is made on the date hereinafter set forth by the Brooktree Townhouses Association, a Colorado nonprofit corporation.

**RECITALS:**

A. Declarant, Broker House, Ltd., a Colorado corporation, recorded that certain Condominium Declaration for Brooktree Townhouses in Book 222, Page 743, in the Office of the Clerk and Recorder for Eagle County, State of Colorado, as amended by that certain Amendment to Condominium Declaration for Brooktree Townhouses recorded December 8, 1972 in Book 226, Page 671, in the Office of the Clerk and Recorder for Eagle County, State of Colorado (collectively, the "Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration for Brooktree Townhouses ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and instruments creating covenants, conditions, restrictions and reservations on the Property shall be superseded and replaced by this Declaration; and

C. On February 2, 2004, the District Court for Eagle County, Colorado granted the Association's Petition for Approval of Proposed Amended and Restated Declaration pursuant to the requirements of C.R.S. §38-33.3-217(7). The Court found that the Association filed a petition for approval of the Declaration with the Court which was not objected to by: (i) Owners representing more than thirty-three percent (33%) of the undivided interest in the General Common Elements, (ii) thirty-three percent (33%) of the first mortgagees, (iii) the Declarant, (iv) the Federal Housing Administration ("FHA"), or (v) the Veteran's Administration ("VA"). The Court also found that the Declaration did not terminate the Original Declaration and that the Declaration did not alter the allocated interests of the Owners within the Association. A copy of this Order is attached and incorporated by reference as Exhibit "A" hereto.

D. Pursuant to C.R.S. §38-33.3-217(7), upon recordation of the Declaration and the Court Order approving the Declaration, the Declaration, as amended, shall be effective as if all of the approval requirements set forth in the Original Declaration were met.

Now, Therefore, the Original Declaration is replaced and amended and restated as follows:

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**ARTICLE 1  
DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

(a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq., as it may be amended.

(b) "Assessment" shall include all common expense assessments, operating expense assessments, insurance assessments, utility assessments, and any other expense levied to Unit pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(c) "Association" shall mean Brooktree Townhouses Association, a Colorado nonprofit corporation, and its successors.

(d) "Board" or "Board of Directors" shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(e) "Common Elements" shall mean the Property within this Community other than the Units, which portion of the Property shall be co-owned by the Owners and as may be designated on the Map and in this Declaration. Common Elements shall consist of general common elements and limited common elements. The Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each owner of a Unit having an undivided interest in the Common Elements.

(f) "Common Expense" shall mean any funds required to be paid by each Owner as determined in this Declaration.

(g) "Community" shall mean the Community of Brooktree Townhouses, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(h) "Eligible Holder" shall mean a holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest.

(i) "Governing Documents" shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.



(j) "Improvement(s)" shall mean structures installed within or upon a Unit.

(k) "Limited Common Elements" shall mean those portions of the Common Elements, if any, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners, including certain balconies, storage areas and parking spaces.

(l) "Map" shall mean the Condominium Map of Brooktree Townhouses, which is an engineering survey (and any supplements and amendments thereto) of the Brooktree Townhouses Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon, which Map is incorporated herein and made a part of this Declaration by reference.

(m) "Member" shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(n) "Owner" shall mean the owner of record title, whether one or more persons or entities to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) "Property" shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(p) "Rules and Regulations" shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

(q) "Unit" shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

## ARTICLE 2 NAMES/DESCRIPTION OF REAL ESTATE

Section 2.1 Name and Type. The type of Common Interest Community is a condominium community. The name of the Community is "Brooktree Townhouses" and is also known as "Brooktree Townhouses Condominiums." The name of the Association is the "Brooktree Townhouses Association."

Section 2.2 Subject Property. The Community is located in Eagle County, State of Colorado. The Property subject to this Declaration is described in the Original Declaration. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 2.3 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat or the Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Easements for the Board of Directors and Unit Owners. Each Unit shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) and to each Owner to allow for their performance of obligations in this Declaration. Additionally, a nonexclusive easement for ingress and egress is hereby granted to the Board of Directors (including its agents, employees and contractors), to enter upon any part of the Community in the performance of their duties for emergency repairs. Non-emergency repairs shall be made only during regular business hours on business days after at least twenty-four (24) hours notice to the occupants of a Unit wherein repairs are to be made. On exercising these easement rights, the party exercising the rights shall be responsible for any resulting damages.

Section 2.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.6 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit. The actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Map.

Section 2.7 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:



- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;
- (c) the right of the Association, upon approval of at least sixty-seven percent (67%) of the Owners, to mortgage the Common Elements as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, provided that any transfer or conveyance of the Common Elements shall be subject to the prior approval of two-thirds (2/3) of the Owners;
- (e) the right of the Association to suspend the voting rights and, after notice and the opportunity for a hearing, the right to use of any Common Elements and recreational facilities, for a period not to exceed sixty (60) days or during any period of violation of any other provision of the Governing Documents, whichever is greater; and
- (f) the right of the Association to close or limit access to the Common Elements for maintenance, repair, replacement, and improvement.

Section 2.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements and facilities to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations.

### ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be entitled to cast one (1) vote. Fractional and cumulative voting are prohibited.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Units and to further the interests of the residents, occupants, tenants and guests of the Community and Members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.



Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act, as applicable. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments, but only upon the affirmative vote of a majority of the Unit Owners present at a meeting called for that purpose.

Section 3.5 Allocated Interests. The ownership interest, Assessment liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements shall be apportioned 1/48<sup>th</sup> for each Unit;
- (b) the percentage of liability for operating Common Expenses, as determined by a budget set forth by the Association, shall be apportioned 2.236% for each two-bedroom Unit, and 1.321% for each one-bedroom Unit;
- (c) the percentage of liability for non-operating Common Expenses, such as Special Assessments, shall be apportioned 1/48<sup>th</sup> for each Unit;
- (d) the number of votes in the Association shall be apportioned one (1) vote per Unit;

If any Unit is increased in size or reduced in size, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

Section 3.6 Indemnification. To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be and hereby are indemnified by the Unit Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer, director or committee member of the Association or other volunteer appointed by the Board of Directors at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws; except in such cases where such officer or director is adjudged guilty of willful misfeasance or malfeasance in the

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performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

**ARTICLE 4  
UNITS, COMMON ELEMENTS AND  
LIMITED COMMON ELEMENTS**

Section 4.1 Number of Units. The number of Units included in the Community is forty-eight (48).

Section 4.2 Identification of Units/Unit Descriptions. The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, with reference to the Map and the Declaration. An illustrative description is as follows:

Condominium Unit \_\_\_\_\_, Brooktree Townhouses, according to the Declaration recorded \_\_\_\_\_, \_\_\_\_\_, at Reception No. \_\_\_\_\_ and the Condominium Map recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the records of the Clerk and Recorder, Eagle County, State of Colorado.

Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 4.3 Unit Maintenance. Unit Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair.

Section 4.4 Unit Boundaries.

(a) Boundaries. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls (including, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint and wall tile), or the adjoining walls, if two or more Units adjoin each other;

(ii) Unfinished interior surfaces of floors, or the lowermost floors, if it is a Unit containing more than one level;

(iii) Unfinished interior surfaces of ceilings, or the uppermost ceilings, if it is a Unit containing more than one level;



(iv) The windows and window frames, doors and door frames of the Unit.

(b) Inclusions. Each Unit includes the spaces and Improvements lying within the boundaries described above, including windows, window frames, doors and door frames, and as depicted on the Map. Each Unit also includes the spaces and Improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes from the point where such items enter the Unit boundaries, whether or not the spaces are contiguous.

(c) Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and Improvements lying outside the boundaries described above, support walls, the exterior finished surface of the building in which Units are located, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

(d) Noncontiguous Portions. Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions. Each Unit includes the spaces and Improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes from the point where such items enter the Unit boundaries, whether or not the spaces are contiguous, unless the same are maintained by a governmental agency or entity. The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

Section 4.5 Inseparability of a Unit. Each Unit, the appurtenant undivided interest in the Common Elements and the appurtenant Limited Common Elements shall together comprise one (1) Unit, shall be inseparable and may be conveyed, leased, devised or encumbered only as a Unit.

Section 4.6 Association Maintenance. The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities. The Association shall be responsible for: the improvement, maintenance, upkeep, reconstruction and replacement of the Common Elements; the improvement, maintenance, repair, upkeep, reconstruction, replacement and operation of the main water and sewer lines which serve more than one Unit; the provision of common water, heat and sewer, if any; trash removal; and snow clearing. All snow that accumulates along the

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Easterly portion of Vail View Drive (a portion of Vail View Drive being the Westerly boundary of the Property) or on county right of way adjoining Vail View Drive, whether such snow results from natural accumulation or as a result of snow plowing, shall be removed by the Association in consideration of the variance granted by Eagle County to use the right of way as a means of ingress and egress to and from the parking spaces and driveway to be located on the Westerly portion of the Property (which parking spaces and driveway shall serve the Community). Such duty to remove plowed snow shall be the sole duty of the Association, all without liability of any kind on the part of the county, its employees and representatives.

Section 4.7 Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners of Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements. Nothing contained herein shall be construed as a limitation of the right of partition of a Unit between the Owners thereof, but such partition shall not affect any other Unit.

Section 4.8 Limited Common Elements. Each Owner is responsible for maintaining Limited Common Elements appurtenant to that Owner's Unit in a good, clean, orderly, and sanitary condition. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned. The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(a) If a chute, flue, plumbing, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(b) Any decks, balconies, patios, exterior doors, windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

Section 4.9 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Unit with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit. The Association may pay any sums necessary to eliminate any lien filed against Units not benefiting from the labor and/or materials furnished and the Common Elements on behalf of the other Owners and all sums paid shall be an individual Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

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**ARTICLE 5**  
**COVENANT FOR ASSESSMENTS**

Section 5.1 Creation of Association Lien and Personal Obligation to Pay Assessments. Each Unit, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit at the time when the Assessment or other charges became or fell due. The Association annual Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

Section 5.2 Apportionment of Assessments. Except as provided in this Declaration, all Assessments shall be assessed against all Units in accordance with formula for liability for Assessments as set forth in the allocated interests section of this Declaration.

Section 5.3 Annual Assessment/Commencement of Assessments. Assessments may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that any such Assessment shall have the affirmative vote of a majority of those Owners present at a duly constituted meeting.

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Section 5.5 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing 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 Governing 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 thirty (30) days prior to the due date.

Section 5.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Unit Owner's Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.7 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or

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forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.8 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct, as determined by the Board, of an Owner, or the Owner's agents, employees, guests, customers, or invitees, including, but not limited to, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine, dishwasher or hose, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within fifteen (15) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of this Article.

## ARTICLE 6 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Real Estate within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 6.1 Use/Occupancy. All Units within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation. Occupancies are also subject to any Rules and Regulations adopted by the Association. Units shall not be used for any purpose other than as a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential Community, as reasonably determined by the Board, are prohibited unless approved by the Association and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

Section 6.2 Leasing and Occupancy. Any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

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(a) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association. A copy of the lease or rental agreement shall be provided to the Association, care of any manager of the Association or an officer, upon request.

(b) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(c) All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Rules and Regulations of the Association.

(d) Leases shall be for or of the entire Unit.

The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 6.3 Units to be Maintained. Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries. Each Unit at all times shall be kept in a good and functional condition. The Association and its agents, after thirty (30) days notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean-up Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 6.4 Repairs. Any maintenance, repair and replacement of Units and properties within Units which impacts, affects or involves any other Unit or the safety, integrity or functionality of the Common Elements shall be performed only by a licensed and bonded contractor, as determined by the Board.

Section 6.5 Restrictions on Animals and Pets. Pets, including cats, dogs, birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored in a Unit, if the animal is not obnoxious to other Owners or occupants. There shall be a maximum of two (2) animals per Unit. If an animal is obnoxious to other Owners or occupants, the Unit Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, that Unit Owner, upon a second written

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notice, will be required to remove the animal from the Community. The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. Unit Owners shall hold the Association harmless from any claim resulting from any action of their animals. When on Common Elements, animals must be under the control of the Owner of the animal. Owners shall immediately remove any fecal matter left by their animal and dispose of the same in an appropriate trash receptacle.

Section 6.6 Antennae. Subject to federal statutes or regulations governing condominium communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on the Common Elements of the Community. Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is still subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Units. All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

Section 6.7 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 6.8 Vehicular Parking, Storage, and Repairs.

(a) Vehicular parking upon the Common Elements and Limited Common Elements shall be regulated by the Board of Directors.

(b) Parking designated as visitor or guest parking shall not be used by Owners or their family members residing with them. All other parking spaces shall be used by the Owners for self-service parking purposes on a "first come, first served" basis; provided, however, that no Owner shall park more than one (1) vehicle (owned or leased by such Owner, a member of his or her family or occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Board of Directors.

(c) Vehicles parked within the Community during "snow season", as this term is determined by the Board of Directors, shall be required to be moved every twenty-four hours (24) hours to a different parking area or space within the Community in order to facilitate adequate snow removal. Any vehicle not moved shall be towed, at the expense of the vehicle owner, without further notice, in order to facilitate snow removal.

(d) The following vehicles may not be parked or stored within the Community, unless authorized in writing by the Board of Directors of the Association: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to four hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement located thereon.

(e) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Unit Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on the Common Elements, except as permitted by the Association's Rules and Regulations or approval.

(g) Parking spaces within the Community are restricted to use for access or as a parking space for vehicles.

(h) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

Section 6.9 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.



Section 6.10 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of Directors. Fireworks of any kind are prohibited within the Community.

Section 6.11 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 6.12 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 6.13 Use of Patios and Balconies. No items, shades, awnings, window guards or any other temporary articles shall be kept on, hung or placed on patios, decks or balconies, except for the following: one storage container as provided for in the Rules and Regulations; patio furniture, plants, planters or hanging planters as set forth in the Rules and Regulations or as determined by the Board; gas, propane or electric grills and barbecue accessories (charcoal grill are prohibited). The Board may further restrict items which are visible from neighboring Units, Common Elements or the street as set forth in the Rules and Regulations. Balconies or patios shall not be used for storage or maintenance. No deck, balcony or patio may be covered in any material of any kind. The Association and its agents, after thirty (30) days notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment pursuant to this Declaration.

Section 6.14 Restrictions on Clothesline and Storage. No clotheslines, drying areas, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Managing Agent or if there is no Managing Agent, then by the Board of Directors of the Association. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Unit Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Unit Owner, upon written notice, will be required to remove the item/condition from their Unit and from the Community. The written notices provided for herein shall be issued by the Managing Agent as the authorized representative of the Association or, if there is no Managing Agent, then by one (1) or more of the members of the Board of Directors of the Association. Unit Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Unit.



Section 6.15 Restriction on Signs and Advertising Devices. No externally visible sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Board of Directors.

Section 6.16 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.17 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Association. No Improvement to the exterior of a building which includes a Unit or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Board of Directors.

Section 6.18 Map Restrictions. The restrictions, if any, included on the Map for the Property are incorporated herein by this reference.

Section 6.19 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time-to-time by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 6.20 Compliance with Governing Documents. Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

## ARTICLE 7 INSURANCE/CONDEMNATION

Section 7.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 7.2 Hazard Insurance on the Units and Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to Units and to the Common Elements and the other property of the Association, for the full replacement value without deduction for depreciation. Insurance obtained on the Units is not required to include Improvements and betterments installed by Unit Owners. If coverage purchased by the Association includes

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Improvements and betterments installed by Unit Owners, the cost thereof may be assessed to each Unit in proportion to risk. All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien security interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien security interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Eagle County, State of Colorado.

Section 7.3 Liability Insurance. The Association shall obtain an adequate policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time-to-time, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured.

Section 7.4 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 7.5 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 7.6 Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

Section 7.7 Other Insurance. The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:



(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Unit Owners, holders of first lien security interests and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Eligible Holders at least ten (10) days prior to the expiration of the then-current policies.

(c) All liability insurance shall include the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Unit Owners as insureds.

(d) In no event shall any casualty insurance policy contain a co-insurance clause.

(e) Unit Owners may carry and are advised to carry other insurance on the Improvements and personal property in their Unit for their benefit and at their expenses, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, the Association's insurance coverage, as specified hereunder, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

(f) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit 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 interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 7.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be included as a part of the annual Assessments levied by the Association.



Section 7.10 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 7.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 7.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien security interests as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Unit Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds. The Association, through the Board of Directors, may determine how a surplus of proceeds, if any, shall be utilized.

Section 7.13 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner.

Section 7.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 7.15 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under of this Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Units involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.





Section 7.16 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered a special Assessment as discussed in this Declaration and shall not require any vote of the Owners.

Section 7.17 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

## ARTICLE 8 SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 8.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien security interest shall have the same rights as Eligible Holder.

Section 8.2 Special Rights. Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association

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receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a security interest, if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 8.3 Special Approvals. Unless at least sixty-seven percent (67%) of the Eligible Holders of first lien security interests (based on one (1) vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any Improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Real Estate by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the Improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 8.4 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units.



**ARTICLE 9  
GENERAL PROVISIONS**

Section 9.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending the right to vote;

(iii) exercising self-help or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.



(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a specific Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 9.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 9.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

{0032266.DOC;1}



Section 9.4 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and sixty-seven percent (67%) of Eligible Holders, and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 9.5 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law, and/or to bring the Declaration into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

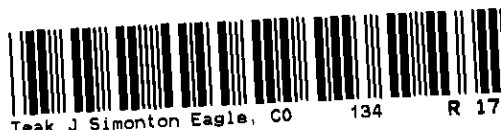
Section 9.6 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 9.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 9.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 9.9 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 9.10 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.



In Witness Whereof, the undersigned, being the president and the secretary of Brooktree Townhouses Association, hereby certify that the Association obtained court approval of this Declaration on February 2, 2004, pursuant to the provisions of the Act, Section 217(7).

**BROOKTREE TOWNHOUSES  
ASSOCIATION,**  
a Colorado nonprofit corporation

By: *Rick A. Schwartz*  
Rick Schwartz, President

ATTEST:

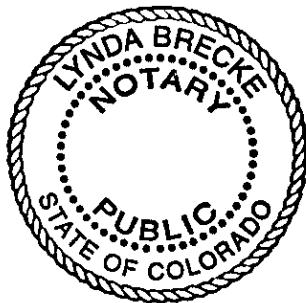
By: *Janet Talbot*  
Janet Talbot, Secretary

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF Denver        )

The foregoing Declaration was acknowledged before me on this 29 day of February, 2004, by Rick Schwartz as President of Brooktree Townhouses Association a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10/02/2004



*Lynda Brecke*  
Notary Public

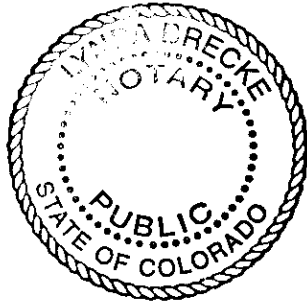
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing Declaration was acknowledged before me on this 29 day of February, 2004, by Janet Talbot as Secretary of Brooktree Townhouses Association a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10/02/2004

*Synda Brecke*  
Notary Public



**EXHIBIT A**  
**COURT ORDER**

(attached)

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Page: 32 of 35

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DISTRICT COURT, COUNTY OF EAGLE,  
STATE OF COLORADO

Court Address: 885 Chambers Ave.  
Eagle, CO 81631  
Phone Number: (970) 328-6373

Petitioner:

**Brooktree Townhouses Association,**  
a Colorado nonprofit corporation

Attorney: Jerry C.M. Orten, Esq.  
Laura K. Sanchez, Esq.

Name: Orten & Hindman, P.C.

Address: 11901 W. 48<sup>th</sup> Avenue  
Wheat Ridge, Colorado 80038-2166

Phone Number: (303) 432-9999  
or (800) 809-5242

Fax Number: (303) 432-0999

E-mail: jorten@ortenhindman.com

Atty. Reg. #: 11440, 21050  
lsanchez@ortenhindman.com

FILED IN THE  
COMBINED CLERKS OFFICE

FEB - 2 2004

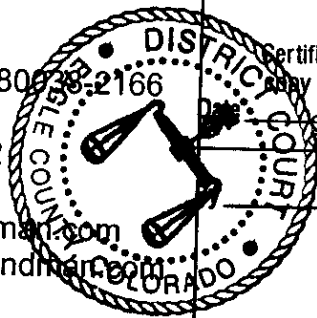
EAGLE COUNTY, COLORADO  
BY [Signature]

▲ COURT USE ONLY ▲

Case Number: 03CV796

Div.:

Ctrm.:



Eagle County, Colorado

Certified to be full, true and correct  
copy of the original in my custody.

Date: 2/2/04  
[Signature]  
Clerk  
[Signature]  
Deputy Clerk

**ORDER APPROVING AMENDED AND RESTATED DECLARATION, PURSUANT  
TO C.R.S. §38-33.3-217(7)**

**THIS MATTER** comes before the Court for hearing on February 2, 2004. After reviewing the pleadings filed in the matter and considering the statements of Counsel, the Court makes the following Findings of Fact and Conclusions of Law and Orders:

Findings of Fact and Conclusions of Law

1. Brooktree Townhouses Association ("Association") seeks to amend and restate the Condominium Declaration for Brooktree Townhouses recorded in the real property records of the Eagle, Colorado in Book 222 at Page 743 ("Declaration") by means of a proposed Amended and Restated Condominium Declaration for Brooktree Townhouses (the "Proposed Amended and Restated Declaration").
2. The Association notified its Owners of the Proposed Amended and Restated Declaration on July 15, 2003 and August 5, 2003.
3. The Members of the Association discussed the Proposed Amended and Restated Declaration (as submitted to the Court in the Petition filed herein) at special meetings of the Members of the Association held on July 23, 2003, July 26, 2003, and August 23, 2003.



4. Based on the foregoing, the Association has complied with the notice and meeting requirements set forth in Section 38-33.3-217(7)(a)(I) and (II).

5. At least half of the Members required by the Declaration to approve the Proposed Amended and Restated Declaration have voted for the Proposed Amended and Restated Declaration, pursuant to C.R.S. §38-33.3-217(7)(a)(III). Specifically, the Association has obtained approval from Owners representing 54% of the ownership interests of the general Common Elements, which approval is over half of the current Declaration's required approval of Owners representing an aggregate ownership interest of at least 60% of the general Common Elements

6. Based on the Certificate of Mailing filed in this case, Notice of the Petition was mailed to all of the Owners within the Association, and to lenders with a security interest in a Unit within the Brooktree Condominium community.

7. A hearing regarding the petition was held, as referred to above, on February 2, 2004, before this Court.

8. The Association has satisfied all of the requirements of C.R.S. §38-33.3-217(7).

9. Not more than 33% of the Owners, 33% of the lenders with security interests in one or more Units or the declarant have filed written objections with the Court prior to the hearing.

10. Neither the Federal Housing Administration nor the Veterans Administration is entitled to vote on the proposed amendment.

11. The Proposed Amended and Restated Declaration presented to the Court does not terminate the Declaration. The preponderance of the evidence and application of plain language of the Declaration indicates that the Proposed Amended and Restated Declaration is an amendment, and not a termination.

12. The Proposed Amended and Restated Declaration presented to the Court does not change the allocated interests of the Owners.

13. Based upon these Findings of Fact and Conclusions of Law and pursuant to the requirements of C.R.S. §38-33.3-217(7)(e) and (f), it is hereby:



**ORDERED THAT** the Proposed Amended and Restated Declaration is approved by this Court and shall be binding upon all Owners in the Brooktree Condominium community and shall have the same legal effect as if were adopted pursuant to the amendment requirements set forth in the Declaration upon recording, with this order attached, in the office of the Clerk and Recorder for Eagle County.

**IT IS FURTHER ORDERED THAT** the Association record a copy of the approved Amended and Restated Declaration together with a copy of this Order with the Clerk and Recorder's office for Eagle County, Colorado.

DONE this 2<sup>nd</sup> day of February, 2004.

BY THE COURT:



\_\_\_\_\_  
DISTRICT COURT JUDGE

