

DECLARATION

FOR

THE PEAKS AT GREEN MOUNTAIN II

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DECLARATION  
FOR  
THE PEAKS AT GREEN MOUNTAIN, II.

THIS DECLARATION, hereinafter referred to as "Declaration," is made this 31<sup>st</sup> day of January, 2003, by PEAKS DEVELOPMENT LLC., a Colorado limited liability company, the "Declarant," with reference to the following:

RECITALS:

A. Declarant is the owner of certain real property in the City of Lakewood, Jefferson County, State of Colorado, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, and as further described in the Map of The Peaks at Green Mountain II, a Condominium Community, consisting of condominiums, recorded on the 31<sup>st</sup> day of January, 2003, at Reception No. F1665508 in the office of the Clerk and Recorder for Jefferson County, Colorado.

B. The real property described in Exhibit A is identified as a part of Tract E Condominiums of 3<sup>rd</sup> Panorama West, Amended Official Development Plan, recorded in the office of the Clerk and Recorder of Jefferson County, Colorado on April 24, 1984 at Reception No. 84036830, and known as the Cedar Ridge Apartments. However neither a condominium map or a declaration of covenants conditions or restrictions have heretofore been filed with the Jefferson County Clerk and Recorder.

C. This Declaration is executed to constitute the Declaration for The Peaks at Green Mountain II and is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, value, desirability and attractiveness of all property which may be subject to this Declaration; (b) to provide for an Association, as a vehicle to act as the Association for The Peaks at Green Mountain II, and to perform certain functions for the benefit of owners of Units which are to become subject to this Declaration; (c) to define duties, powers and rights of the Association; and (d) to define certain duties, powers and rights of owners of property which may become subject to this Declaration with respect to the Association and with respect to the functions undertaken by the Association.

D. Declarant is the owner of forty-eight (48) Units platted as condominiums as more fully set forth in paragraph B above, and submits said the property described in Exhibit A, which includes said Units to the provisions of the Colorado Common Interest Ownership Act (C.R.S. § 38-33-101, et seq.) which provides for separate title to the Units (as hereinafter defined) appurtenant to which will be an undivided fractional interest in the Common Elements.

E. The development shall be known and marketed as The Peaks at Green Mountain, II. A Condominium Development, sometimes hereinafter referred to as the Planned Community.

F. Each Unit shall be assigned certain Limited Common Elements, sometimes hereinafter referred to as "Exclusive Use Areas" which may consist of decks, and areas above the ceilings of the third floors of the buildings in the Planned Community.

G. The Common Elements shall include the recreational areas, open space, parking areas and landscaping, in the Planned Community.

H. Each Unit shall have appurtenant to it a membership in The Peaks at Green Mountain Homeowners Association II, Inc., a Colorado Non-Profit Corporation ("Association"), the management body for the overall Planned Community.

I. The Planned Community will be consistent with the overall development plan submitted to the Secretary of Housing and Urban Development, Federal Housing Administration and the United States Department of Veterans Affairs.

J. Before selling or conveying any interests in the Planned Community, Declarant will subject the Planned Community in accordance with a common plan to certain covenants, conditions and restrictions (as set forth in this Declaration) for the benefit of Declarant and any and all present and future Owners of Units within the Planned Community.

## DECLARATION

NOW, THEREFORE, Declarant, for itself, its successors and assigns, hereby declares that Property as described in Exhibit A, attached hereto, is hereby made subject to this Declaration, and each part of such property shall, from and after the date of recording of this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, all of which shall run with the title to such property and be binding upon all parties having any right, title or interest in said property or any part thereof and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title or interest in said property or any part thereof. The Peaks at Green Mountain, II. shall consist of no more than forty-eight (48) Units. This Declaration is subject to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq.

## ARTICLE I

### DEFINITIONS

Section 1.1 Access Easements or Private Roadways shall mean and refer to those portions of the Common Elements within the Property as shown as Easements and Utility Easements on the Map and as created by this Declaration.

Section 1.2 Act shall mean and refer to the Colorado Condominium Ownership Act (as may be amended from time to time) as set forth in Colorado Revised Statutes §§ 38-33-101 et seq.

Section 1.3 Allocated Interest shall mean and refer to the following interest allocated to each Unit pursuant to Section 2.2, Undivided Interest in Common Elements, and Section 1.23: Limited Common Elements, fractional interest in Common Elements, easements and licenses in Common Elements (specifically including easement rights in Common Elements to each Owner

for the purpose of access to such Owner's Unit); liability for Common Expenses; and votes in the Association.

Section 1.4 Articles shall mean and refer to the Articles of Incorporation of the Association and any amendments to said Articles.

Section 1.5 Association shall mean and refer to The Peaks at Green Mountain Homeowners Association II, Inc. a Colorado Non-Profit Corporation, its successors and assigns.

Section 1.6 Balconies shall mean and refer to the balconies or decks on the Units as shown on the Map.

Section 1.7 Board of Directors or Board shall mean and refer to the governing body of the Association.

Section 1.8 Building shall mean the following: four (4) twelve (12) unit buildings, they as appear on the Map.

Section 1.9 By-Laws shall mean and refer to the By-Laws of the Association and any amendments to said By-Laws.

Section 1.10 Common Elements shall mean (i) the land included in the real property above described, except for Units, which at any time is subject to this Declaration; (ii) in general all apparatus and installations existing for common use; (iii) Access Easements; (iv) the Recreational Area; (v) roadways and appurtenances; (vi) landscaping and green areas; (vii) parking areas, and all other real property within this Planned Community owned by the Association, other than a Unit.

Section 1.11 Common Expenses means (i) all expenses declared to be Common Expenses by this Declaration or the Bylaws of the Association; (ii) all expenses of administering, servicing, conserving, managing, maintaining and/or repairing the Common Elements; (iii) insurance premiums for insurance required by this Declaration or by law; and (iv) lawful expenditures made by, or financial liabilities of, the Association as determined by the Board of Directors, together with any allocations to reserves.

Section 1.12 Documents shall mean and refer to following: this Declaration, the Articles, the By-Laws, and the Rules and Regulations of the Association (as those terms are defined herein).

Section 1.13 Declarant "Declarant" shall mean and refer to Peaks Development, LLC, a Colorado limited liability company and its successors and assigns specifically designated as such by an instrument executed by Declarant and such successor or assign and recorded in the office of the Clerk and Recorder of Jefferson County, Colorado.

Section 1.14 Declarant's Control Period shall mean and refer to the period of time in which the Declarant may appoint the majority of the Board of Directors of the Association as further described in [Section 3.2](#) of this Declaration.

Section 1.15 Declaration shall mean and refer to this enabling Declaration.

Section 1.16 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the By-Laws of the Association.

Section 1.17 Eligible Security Interest shall mean and refer to a holder of a first security interest on a Unit who has requested notice from the Association of those matters which such holder is entitled to notice or by reason of this Declaration or the By-Laws of the Association.

Section 1.18 Exclusive Use Area shall mean those Common Elements which are to be assigned by the Association to a particular Unit, after which shall be considered a Limited Common Element appurtenant to such Unit.

Section 1.19 Fence shall mean and refer to the fences constructed by the Declarant within the Planned Community.

Section 1.20 First Security Interest shall mean and refer to the holder of a security interest on a Unit which is senior in priority, except as limited in [Section 4.11](#) of the Declaration, to all other encumbrances, other than the lien for real property taxes and assessments.

Section 1.21 FHA shall mean and refer to the Federal Housing Administration.

Section 1.22 Improvements shall mean and refer to all structures and appurtenances thereto of every type and kind, including but not limited to buildings, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, plantings, planted trees, shrubs, poles, signs, exterior air conditioning, fixtures, or equipment.

Section 1.23 Limited Common Elements means those portion of the Common Elements designated by the Declarant or the Association including but not limited to deck and the areas above the ceiling, of the third floors of the building, as identified on the Map, or as otherwise depicted on the Map.

Section 1.24 Manager shall mean the person or entity designated by the Board to manage the affairs of the Planned Community and to perform various other duties assigned to it by the Board by the provisions of this Declaration and By-Laws.

Section 1.25 Map shall mean and refer to that map of The Peaks at Green Mountain II, filed on the 31<sup>st</sup>, day January, 2003, at Reception No. F1665508 of the real estate records for Jefferson County, Colorado, covering the Planned Community, and any amendments thereto, such as subsequent Annexing Maps and Annexing Instruments.

Section 1.26 Member of Association or Member shall mean and refer to an Owner as that term is defined in this Article 1.

Section 1.27 The Peaks at Green Mountain Homeowners Association II, Inc. Annexable Area shall mean and refer to and consist of the real property which may be added to the Planned Community, as determined by the Declarant. Declarant specifically reserves the

right to add such additional property to the Planned Community, subject to the terms and conditions of this Declaration.

Section 1.28 Mortgagee shall mean and refer to a holder of a Security Interest, including a beneficiary under or holder of a Deed or Trust given for value, which encumbers any Unit.

Section 1.29 Owner or Unit Owner shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Unit which is part of the Planned Community.

Section 1.30 Parking shall mean and refer to the parking spaces as may be shown on the Map, the use of which shall be established by the Declarant as Limited Common Elements as provided for at [Section 11.9](#) or as assigned by the Board of Directors for disabled individuals only.

Section 1.31 Patio or Decks shall mean and refer to the Limited Common Element designated as Decks adjacent to Units as such appear on the Map.

Section 1.32 Planned Community or Common Interest Community shall mean and refer to such portions of The Peaks at Green Mountain II.

Section 1.33 Public Utility Easements See definition of Access Easements at Section 1.1 of this Declaration which includes Public Utility Easements.

Section 1.34 Recreational Area shall mean and refer to the area designated as Common Elements on the Map which contain pool and other amenities.

Section 1.35 Rules and Regulations shall mean and refer to the rules promulgated by the Board of Directors of the Association regarding the use and enjoyment of Common Elements

Section 1.36 Security Interest shall mean and refer to an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association and any, other consensual lien or contract for retention of title intended as security for an obligation.

Section 1.37 Stairway shall mean and refer to the Limited Common Element shown as Stairways as shown on the Map

Section 1.38 Unit shall mean and refer to the fee simple interest in the Unit as shown by the identifying number or letters on the Map. Specifically, it shall consist of:

- (a) The separate interest in each Unit;
- (b) Limited Common Elements;
- (c) Undivided fractional interest as tenants in common in the Common Elements;

- (d) Easements and right to use of the Common Elements;
- (e) Membership in the Association, including voting rights.

Section 1.39 Unit Boundaries or Boundaries shall mean and refer to those portions of the Planned Community shown and described as Units on the Map.

- (a) Each Unit's boundaries are its ceilings, floors, windows, and walls, including all electrical outlets, wall furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finish flooring, and any other materials constituting any part of the finished surfaces within a unit. All other portions of the walls, floors, or ceilings, are part of the Common Elements. All spaces of the Unit interior, interior partitions, and other fixtures and improvements within the boundaries of the Unit are part of the Unit.
- (b) When interpreting deeds, plats, and plans, Unit Boundaries shall be the then existing physical boundaries of a Unit (whether in its original state or reconstructed in substantial accordance with the original plans thereof) and such Boundaries shall be conclusively presumed the correct boundaries of a given Unit rather than the boundaries expressed in the deed or plan, without regard to settling or lateral movement of the Building and without regard to minor variance between boundaries shown on the plan or deed, and those of the Building.

Section 1.40 VA shall mean and refer to the U.S. Department of Veterans Affairs.

## ARTICLE II

### ESTABLISHMENT OF UNITS

Section 2.1 Division into Units. The Planned Community is hereby divided into forty-eight (48) Units, each consisting of a separate fee simple estate in a particular Individual Space and an appurtenant undivided fee simple interest in the Common Elements and the use of appurtenant Limited Common Elements.

Section 2.2 Undivided Interest in Common Elements. The undivided interest in the Common Elements appurtenant to a particular Unit is a fraction, the numerator of which is one, and the denominator of which is the total number of Units then in the Planned Community. Each Owner shall own his or her appurtenant undivided interest in Common Elements as a tenant in common with all other Owners.

Section 2.3 Description of a Unit. Any instrument affecting a Unit may legally describe it by the identifying number shown on the Map covering the Unit. This identifying number for a Unit in the Planned Community is the number on the Map identifying the Individual Space which is part of that Unit. A legal description of a Unit in the Planned Community may be in the following form:

Building \_\_\_\_\_, Unit \_\_\_\_\_, The Peaks at Green Mountain Homeowners Association II, Inc., in accordance with and subject to the Declaration for The Peaks at Green Mountain Homeowners Association II, Inc., recorded on

\_\_\_\_\_, 2003, as Reception No. \_\_\_\_\_ in Book \_\_\_\_\_  
at Page \_\_\_\_\_ and the Map recorded on \_\_\_\_\_, 2003, as Reception  
No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of Clerk  
and Recorder of Jefferson County, Colorado, so known and numbered as 13095 W. Cedar  
Drive, Lakewood, Colorado, 80228.

and any conveyance or other instrument affecting title to a Unit or any part thereof describing the Unit in the Planned Community in substantially the foregoing form or otherwise effectively describing the Unit it shall be deemed to include and describe the entire Unit including the appurtenant undivided interest in Common Elements and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefiting, or burdening the Unit under the terms of this Declaration.

Section 2.4 Duration of Ownership. The ownership of the Planned Community created under this Declaration shall continue until this Declaration is terminated or revoked as herein provided.

Section 2.5 Inseparability of Unit. The interest of an Owner in a Unit and that Unit's appurtenant interest in Common Elements and Limited Common Elements shall be inseparable for the period of ownership herein above described.

Section 2.6 Partition of Common Elements not Permitted. The Common Elements shall be owned in common by all Owners of Units, and no Owner may bring any action for partition thereof.

Section 2.7 Property Taxation. All taxes, assessments, and other charges of the State of Colorado or of any governmental subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed, against and collected on each Unit separately and not on the Buildings or Planned Community as a whole as each Unit shall be carried on the tax books as a separate and distinct parcel. For the purposes of valuation and assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional undivided interests in Common Elements appurtenant to and part of the Units. The Association shall deliver to the County Assessor of Jefferson County, Colorado, a written notice as may be required by the Act or other Colorado statutes, setting forth descriptions of the Units and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessments. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

Section 2.8 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the owner thereof or his agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against either the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against any Unit, or any part thereof, of any Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner the Association shall enforce such

indemnity by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments.

Section 2.9 Utilities. Gas, electricity, telephone and (if applicable) cable television will be separately metered to each individual Unit, and the Owner of each Unit shall pay the costs of the same as billed by the appropriate utility or organization. Other costs associated with the use and occupancy of a given Unit may be individually billed to such Unit, and the respective Unit Owner shall pay the same. To the extent that water, sewer, trash removal and other costs associated with the use and occupancy of a Unit are not separately metered and/or billed to individual Units, the costs of the same shall be billed to the Association and shall be a common expense to be included in the monthly assessments levied by the Association against the Unit and payable by the Owner.

Section 2.10 Number of Units. The Planned Community number of Units in the Planned Community is forty-eight (48).

Section 2.11 Recorded Easements. The Planned Community shall be subject to all easements as shown on any map or plat of the Planned Community, those of record (including those set forth on [Exhibit B](#) attached hereto), those provided in the Act (including easements for encroachment set forth in §214 of the Act) and an easement for maintenance of any such encroachment, an easement for the use of the pool, parking areas, areas of ingress and egress, and mail box kiosk, by the Unit Owners of Peaks at Green Mountain I, as more fully set forth on the Map, and [easement](#) for the use of the common elements by the Unit Owners of Green Mountain II, and otherwise as set forth in this Declaration.

Section 2.12 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Planned Community for the benefit of the Common Elements and the Units and the structures and improvements situated on the Planned Community 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 roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Planned Community, subject to approval by the Association as to locations.

Section 2.13 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 nonexclusive right of ingress to and egress from the Owner's Unit over and across the 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 set forth in writing by the Association, such as for closure for repairs and maintenance.



Section 2.14 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 Planned Community in the proper performance of their duties.

Section 2.15 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 Planned Community or any Annexable Property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1 Membership. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any . Each Owner is obligated to comply with the Articles, Declaration, By-Laws, and the Rules and Regulations adopted by the Board of Directors of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void. If the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

Owner/Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in a Unit, all such persons shall be members. The vote for such Unit shall be exercised in accordance with the By-Laws, but in no event shall more than one (1) vote be cast with respect to any Unit.

Declarant/Member(s) shall be the Declarant or persons designated by the Declarant who shall be entitled to 3 votes for each Unit owned by Declarant and shall also be entitled to appoint and remove all or a majority of the officers and Members of the Board of Directors (Declarant Control Period); limited to the following:

- (a) Sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created pursuant to this Declaration to Non-Declarant Owners, at least twenty-five percent (25%) of the Board, but not less than one (1), shall be elected by the non-Declarant Unit Owners.
- (b) Sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Non-Declarant Owners, not less than one-third (1/3) of the Board shall be elected by the Non-Declarant Members.
- (c) Not later than the earlier of:

- (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to the Unit Owners other than the Declarant;
  - (ii) Two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or
  - (iii) Two (2) years after any right to add new Units was last exercised by the Declarant, the Unit Owners other than the Declarant shall elect the majority of the Board, which majority must be elected Non-Declarant Owners.
- (d) The Declarant may voluntarily surrender the right to appoint and remove officers and Members of the Board for termination of the [Declarant's Control Period](#); however, in such an event, the Declarant may require, for the duration of the Declarant's control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1 Creation of Lien and Personal Obligation for Assessments. The Declarant, for each Unit owned within the Planned Community, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it is stated in the deed, is deemed to covenant and agree to pay on a monthly basis without deduction or offset to the Association:

- (a) Annual assessments for Common Expenses, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Elements and those Limited Common Elements that the Association is obligated to maintain, and
- (b) Special capital assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- (c) Special unit assessments to be established and collected as hereinafter provided.

The full annual and special assessments, together with interest, costs and reasonable attorney's fees, where applicable, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successor(s) in title unless expressly assumed by them, except as expressly provided herein.

Section 4.2 Purpose of Assessments. The assessments-levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare and common good of all the residents in the entire Planned Community and for the improvement and maintenance of the Common Elements.

Section 4.3 Assessment. All owners, covenant and agree, and shall be personally obligated, to pay to the Association:

- (a) Monthly Common Expense assessment, imposed by the Association to meet the Common Expense and reserve requirements of the Association.
- (b) Special assessments, pursuant to [Section 4.5](#) of this Declaration.
- (c) Individual purpose assessments, pursuant to [Section 4.6](#) of this Declaration; and
- (d) Other charges, costs, interest, fees and assessments, including without limitation default assessment, as provided in this Declaration.
- (e) All owners of each Unit shall be jointly and severely liable to the Association for the payment of all assessments, charges, costs, interest and fees attributable to their Unit. The payment of any and all assessments is an independent covenant, with all assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand and without setoff or deduction. The personal obligation for delinquent assessment shall pass to an owner's successor in title in interest. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his Unit. In addition to the foregoing assessments, charges and fees each owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his unit, as well as charges for separately metered utilities servicing his Unit. The charges for any utilities which are not separately metered to an individual Unit by the applicable utility company may be collected by the Association as part of Common Expense assessment; however, the charges for such utilities shall be allocated among the Units based on actual usage if such is measured.

Section 4.4 Special Capital Assessments. In addition to the monthly 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 part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of members; provided, however, following the expiration of Declarant's Control Period, any such assessment shall have the vote or written assent of:

- (a) Fifty-one percent (51%) of the total voting power of the Association, or
- (b) Fifty-one percent (51%) of the total voting power of the Members including Declarant.

Section 4.5 Special Unit Assessment. In addition to the monthly Common Expense assessments, authorized above, the Board of Directors of the Association may at any time or

from time to time, determine, levy and assess a special assessment for the purpose of defraying in whole or in part, payments for any operating deficit loss or unbudgeted expense and/or unbudgeted costs, fees and expenses of any management, administration, or maintenance of the Common Elements including, without limitation, any fixtures and personal property related thereto. The Association may also levy a special assessment, including fines, against any Member and Member's Unit to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, the Articles, the By-Laws, and/or the Association Rules and Regulations. Said special assessment may be levied upon the vote of the Board after notice to the Owner and an opportunity to be heard by the Board.

The Peaks at Green Mountain Homeowners Association, II, may from time to time be assessed by the Board of Directors of the Peaks at Green Mountain Homeowners Association I, for their proportionate share of the cost of maintaining the pool as well as any fixtures and personal property related thereto, the mailbox kiosk as well as any fixtures and personal property related thereto, parking areas and other common elements, located at the Peaks at Green Mountain I and used by the Unit Owners of the Peaks at Green Mountain Homeowners Association, II . In no event shall such assessment be more than fifty per cent (50%) of the cost to maintain the pool and mailbox kiosk, as well as fixtures and personal property related thereto, parking areas and other common elements used by the Unit Owners of The Peaks at Green Mountain Homeowners Association II. The Association may also levy a special assessment, including fines, against the Peaks at Green Mountain Homeowners Association II to reimburse the Peaks at Green Mountain Homeowners Association I for costs incurred in attempting to collect such assessments. Said special assessments may be levied upon a vote of the Board of the Peaks at Green Mountain Homeowners Association I, after notice to the Peaks at Green Mountain Homeowners Association, II and an opportunity to be heard by said Board.

The Unit Owners of the Peaks at Green Mountain Homeowners Association I, shall be subject to special assessments by the Board of Directors of the Peaks at Green Mountain Homeowners Association II, for their use of the parking areas and `common areas of the Peaks at Green Mountain Homeowners Association II, as more fully set forth in the Declaration for the Peaks at Green Mountain I. In no event shall such assessment be more than fifty per cent (50%) of the cost to maintain such common areas.

Section 4.6    Membership Approval. Any membership action authorized under [Section 4.3](#) or [4.4](#) shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members not less than ten (10) nor more than fifty (50) days before the meeting. Notice may be given by hand delivery or sent prepaid by first-class mail United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. A quorum for such meeting shall be a majority of the voting power of the membership of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if

- (a)     The meeting so adjourned is an annual meeting, and

- (b) The adjourned annual meeting is actually attended, in person or by proxy, by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Association,

Then the only matters which may be voted upon thereat are matters of the general nature, notice of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%), Members who were not present in person or by proxy may give their assent in writing provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

#### Section 4.7 Individual Purpose Assessments.

- (a) In addition to the Common Expense and Special Assessments as hereinabove provided, the Board of the Directors of the Association may at any time, or from time to time, levy and collect assessments against any one or more, but fewer than all of the Units, for any matters applicable only to such Units. Such individual purpose assessments may be levied against loft Units to pay or reimburse the Association for any costs, expenses, fees, reserves and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration and maintenance or any other purpose of or with respect to any matter pertaining to the Unit(s) against which such individual purpose assessment is levied.

- (b) The amounts determined, levied and assessed pursuant to this Section 4.7 shall be due and payable as determined by the Board of Directors of the Association, provided that written notice setting forth the amount of individual purpose assessment for each Unit and the due date(s) for payment thereof shall be given to the Owners of the affected Unit not less than thirty (30) days prior to the due date.

#### Section 4.8 Uniform Rate of Assessment.

- (a) Except as otherwise provided herein, for purposes of annual and special assessments, each Unit shall constitute one (1) assessment unit, regardless of the size, value, location or use of such Unit. The amount of the assessment payable by the Owner of each Unit shall be computed by multiplying the total amount to be raised by the assessment (as shown in the Association budget for that year for annual assessments, or as determined by the Board of Directors for special assessments) by a percentage (rounded to the nearest one-tenth of one percent (0.1%)), derived from a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units in the Planned Community as of the day the assessment is effective (the "Effective Date") For purposes of this paragraph, the Effective Date, annual assessments shall be the first day of the calendar year for which the annual assessment applies; and the Effective date for special assessments shall be the date such special assessment is approved by the Board of Directors (or such later date as such special assessment is approved by a vote of the Association if such approval is required by this Declaration). The assessments shall be paid monthly by the Unit Owners.

- (b) Surplus funds remaining after payment of or provisions for common expenses shall be retained by the Association as a capital and replacement reserve.

(c) A special assessment against members to raise funds for the rebuilding or major repair of any portion of Common Elements shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the aggregate floor area of the Units in all affected Units.

(d) A special assessment against a Member to reimburse the Association for costs and fines incurred in bringing Member and/or his Unit into compliance with the provisions of the Documents shall be assessed only against that Member and his Unit.

(e) Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall bear interest at the rate of twenty-one percent (21%) per annum from the due date until paid in full. Any balance outstanding shall bear interest as noted.

(f) If an Owner shall be in default in the payment of an installment of an assessment, the Board may accelerate the remaining installments of the assessment upon notice thereof to the Owner, and thereupon the unpaid balance of the assessment shall come due on the date stated in the notice.

(g) In addition to the interest noted at Section 4.8(e), a late charge of five percent (5%) of any installment shall be charged for any installment not paid within fifteen (15) days after its due date.

Section 4.9 Date of Payment of Monthly Common Expense Assessment. The monthly common expense assessments shall be due and payable on the first day of each month, in advance, or on such other dates, and such frequency (but no less frequently than annually), as may be set by the Board of Directors of the Association from time to time. Any person purchasing a Unit between monthly assessment due dates shall pay a prorated share of the last assessment due.

Section 4.10 Effect on Non-Payment of Assessments: Remedies of the Association. Any assessment made in accordance with this Declaration shall be a separate, distinct and personal debt and obligation of the Owner(s) against whom the same is assessed from the time the assessment is due. At any time after any assessment levied by the Association against a Unit has become delinquent, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit and/or by recording in the Office of the Clerk and Recorder for Jefferson County, Colorado, a "Notice of Delinquent Assessment and Claim of Lien" as to such Unit, in the form substantially as follows:

NOTICE OF DELINQUENT ASSESSMENTS  
AND CLAIM OF LIEN  
THE PEAKS AT GREEN MOUNTAIN HOMEOWNERS ASSOCIATION II, INC.

TO: \_\_\_\_\_  
(Owner)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Lakewood, Colorado

The Peaks at Green Mountain Homeowners Association II, Inc. ("Association") claims a lien in the sum of \$\_\_\_\_\_ for maintenance assessments with interest at twenty-one percent (21 %) per annum on the property owned by you, commonly known as \_\_\_\_\_, Lakewood, Colorado, being Unit No. \_\_\_\_\_, in Building \_\_\_\_\_ as shown by the certain Map entitled The Peaks at Green Mountain Homeowners Association II, Inc., a Development, recorded at Reception No. \_\_\_\_\_ in the office of the Clerk and Recorder for Jefferson County, Colorado, for failure to pay the maintenance\* assessments due for the months of \_\_\_\_\_, 2003 and all subsequent installments, interest, accruing costs, and attorneys' fees from date hereof until paid.

(\*Revise if it is a different type of assessment, i.e., capital or special unit assessment.)

Failure to pay said assessments, all accrued interest, costs, fines, and fees within fifteen (15) days from date hereof may result in commencement of foreclosure of this lien upon your Unit, and/or filing of legal action to collect same.

Payment should be made to The Peaks at Green Mountain Homeowners Association II, Inc. \_\_\_\_\_  
\_\_\_\_\_(Address)

The Peaks at Green Mountain Homeowners  
Association II, Inc.

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF COLORADO                    )  
  )     ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_ as \_\_\_\_\_ of The Peaks at Green Mountain Homeowners Association II, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public

Such notice shall be signed by an officer or director of the Association, its manager or attorney. A copy of said notice shall be served personally upon the Owner, or be sent by first class mail, postage prepaid, to the then current address of the Owner in the Association's files.

Immediately upon recording of any notice of delinquency pursuant to this section, the amounts delinquent and subsequent installments, whether delinquent or not, together with costs (including, attorney's fees) fines, if any, and interest accruing thereon, shall be and become immediately due. The notice shall also secure all other payments and/or assessments, together with interest, costs, and attorneys' fees with respect to said Unit following such recording.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Unit together with all costs (including attorney's fees) and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien as provided for in this Article, the Board shall record a satisfaction and release of said lien similarly signed.

Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage or deed of trust upon recording of a notice of deficiency. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Suits to recover a money judgment for unpaid assessments, costs, fines, and attorney fees are permitted without foreclosure or waiver of the lien on the Unit.

Section 4.11 Notice to Lien Holders. A copy of the notice of delinquency shall be mailed certified mail or registered mail, return receipt requested, to holders of recorded liens, and to persons who have recorded requests for notice with the Association. Notice shall be mailed to the name and address as appears on the request for notice and on the recorded liens.

Section 4.12 Lien/Security interest. A lien under this section is prior to all other liens and encumbrances on the Unit except:

- (a) Liens and encumbrances recorded before the recordation of the Declaration;
- (b) Liens for real estate taxes and other governmental assessments or charges against the Unit;
- (c) Other than as provided in Section 4.12(c)(i) below, a First Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent.
  - (i) Notwithstanding the provisions of Section 4.11(c) above, the lien of the Association shall be prior to all First Security Interest liens or other first mortgage liens to the extent of six (6) months of regular common expense assessments.

This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the Association.

Recording of the Declaration, constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section 4.12 is required, except a notice of delinquent assessment must be recorded before commencement of foreclosure.



Section 4.13 Subordination of the Lien to First Security Interest. Except as provided in [Section 4.12\(c\)\(i\)](#), the lien of the assessments provided for herein shall be subordinate to the lien upon any Unit of a First Security Interest recorded prior to the date the assessment sought to be enforced becomes delinquent. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Security Interest or any conveyance in lieu thereof shall, except pursuant to [Section 4.12\(c\)\(i\)](#), extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due.

Where the holder of a recorded First Security Interest or other purchaser of a Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his successors and assigns, shall not, except pursuant to [Section 4.12\(c\)\(i\)](#), be liable for the share of the common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

Section 4.14 Estoppel Certificate. The Association shall, within ten (10) days upon written request by a Unit Owner or holder of a Security Interest on a Unit, provide a certificate in recordable form signed by an officer or designated representative of the Association setting forth the amount of the unpaid assessment on the Unit and whether or not it is delinquent. A properly executed certificate of the Association as to the status of assessment on a Unit is binding upon the Association, the Board and every Unit Owner as of the date of its issuance. The Association shall charge a fee in an amount established by the Board of Directors for providing said certificate.

Section 4.15 Personal Liability of Owner. No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Unit owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit.

Section 4.16 Taxation of Association. If any taxes are assessed against the Common Elements or the personal property of the Association, rather than against the individual Units, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Unit in an amount equal to said taxes, to be paid in equal installments, the number of installments and date for payment based upon the number of installments permitted by the County Treasurer, payable thirty (30) days prior to the due date of each tax installment.

Section 4.17 Working Capital Fund. Upon acquisition of record title to a Unit from Declarant, Owners, shall contribute to the working capital fund of the Association an amount equal to one-fourth (1/4) the amount of the then annual assessment for that Unit as determined by the Board plus a non-refundable transfer fee of \$200.00. The working capital shall not be considered prepayment of the annual assessment. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Upon the sale of any Unit by an Owner other than Declarant, the selling Owner shall be reimbursed at closing for this working capital contribution or the transfer fee, by the purchaser of said Unit. Each purchaser of a Unit shall pay the applicable transfer fee.

Section 4.18 Reserve Fund. In addition to the Working Capital Fund, the Association shall establish and maintain a reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that the Association is obligated to maintain. This fund shall be funded and maintained out of regular assessments for common expenses. Any payments made to such reserve fund shall not be considered an advance payment of regular assessments.

## ARTICLE V

### RESPONSIBILITIES OF MAINTENANCE

Section 5.1 Owner Maintenance of Unit. Each Owner of a Unit shall be responsible for cleaning, sweeping, and keeping clear the Limited Common Elements (including the Exclusive Use Areas) appurtenant to the Unit such, the Patio and/or Balcony of his Unit. Each Owner of a Unit shall be responsible for the maintenance and repair of doors and windows enclosing his Unit, the interior of his Unit, including walls, floors, plumbing (within the Unit Boundaries), and ceilings, and also all appliances whether "built-in" or freestanding within a Unit. The Owner shall also be responsible for the maintenance and repair (and damage as a result of any repair) of the plumbing, gas, electrical, T.V. cable systems, and air conditioning, heating units and ducts servicing the Unit, including computer and television cable equipment and connections.

Section 5.2 Owner's Grant of Easements. Each Owner hereby grants easements to other Owners and to the Association to enter into each Unit and to have utility repairmen and companies enter into Units to repair the plumbing, heating, and electrical systems located thereon, subject to the following limitations. Entry into a Unit for emergency purposes may be immediate and without prior notice; provided, however, such entry shall be made with as little inconvenience as possible to the Owner. Any damage caused thereby shall be repaired by the entering party at such party's expense. Entry into a Unit for other than emergency repairs shall be made only after one (1) day notice to the Owner and shall be made with as little inconvenience as possible to the Owner. Any damage caused thereby shall be repaired by the entering party at such party's expense.

Section 5.3 Association Maintenance of Common Elements. Except as otherwise provided herein, the Association acting through the Board and its officers shall have the sole and exclusive right and duty to manage, maintain, operate, control, repair, replace or restore all of the Common Elements (including Limited Common Elements), and any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the By-Laws, including, but not limited to, fenced areas of the Limited Common Elements. The Association shall be responsible for snow removal in driveways, walkways and stairways in both the Common Elements and the Limited Common Elements. Should said maintenance or repair result from the negligence of an Owner, his guests or licensees, the Owner shall reimburse the Association for the costs of such maintenance or repair immediately upon receipt of an invoice for said costs.

Section 5.4 Association Right of Entry. For the purpose of performing the maintenance of the Common Elements or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association agents or employees shall have the right to enter any Unit or upon any portion of the Common Elements to

effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Unit or any portion of the Common Elements to effect repairs, improvements, replacements or maintenance which the Association deems necessary, after approval by two-thirds (2/3) vote of the Board. Such entry shall be made with as little inconvenience to the Owner as possible. Any damage caused thereby shall be repaired by the Association. Such entry for other than emergency repairs shall be made only upon one (1) day notice to the Owner.

Section 5.5 Association Right to Adopt Rules and Regulations. The Board shall have the right to adopt reasonable Rules and Regulations not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Elements (including Limited Common Elements) and facilities situated thereon by Owners, their tenants or guest, and the conduct of such persons with respect to the Common Elements, including but not limited to vehicle parking, outside storage of boats, motor homes, campers, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets, storage of items on Patios and decks, and other activities which, if not so regulated, might detract from the appearance of the Planned Community or offend or cause inconvenience or danger to persons residing or visiting therein.

Such Rules and Regulations may provide that the Owner of a Unit whose occupant leaves property or the Common Elements in violation of the Rules and Regulations may be fined and assessed for expenses incurred by the Association in removing, storing or disposing of such property after appropriate notice and an opportunity for a hearing before the Board. A two-thirds (2/3) vote of the Board is required for said assessment.

The Board may suspend the voting rights and/or right to use the recreational facilities (or other Common Elements) of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid and for a period not to exceed thirty (30) days after reasonable written notice and an opportunity for a hearing before the Board for any infraction of its published Rules and Regulations.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 6.1 Approval Required. No building, fence, wall, structure, improvement or alteration, including removal of partitions between Units, shall be commenced, placed, erected, or altered upon the Common Elements, including the Limited Common Elements, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of not less than three (3) members.

Section 6.2 Failure to Act. If the Board or the Architectural Committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after the receipt thereof, so long as such location, plans and specifications or other requests are completed on a form approved by the Board and submitted by certified U.S. Mail return receipt requested to the address of record of the Association, then such approval will not be

required, provided that any structure or improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Planned Community. Should said application not be completed on the form approved by the Board, then said thirty (30) day period shall not be deemed to have commenced. Said failure to approve or to disapprove a submission shall not constitute a waiver of subsequent compliance with this Article by an Owner.

The grade, level, or drainage characteristics of the Planned Community or any portion thereof, shall not be altered without the prior written consent of the Board or the Architectural Committee.

Section 6.3 Handicapped. Notwithstanding any other rule, regulation, or restrictions, the Board of Directors shall make reasonable accommodations in the Rules and Regulations, regulations, or restrictions if those accommodations may be necessary or be required by law to afford a handicapped person equal opportunity to use and enjoy the Planned Community.

Section 6.4 Declarant Exception. At no time, shall the provisions of this Article apply to the construction, reconstruction or remodeling by Declarant of Units or other improvements to the Planned Community, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove any construction, reconstruction or remodeling by the Declarant of Units or other improvements to the Planned Community, while the Declarant is still operating a sales office on the property described in Exhibit A, or during the Declarant Control Period, whichever is later.

## ARTICLE VII

### PROHIBITION OF PARTITION OR SEPARATION OF INTEREST

Section 7.1 Separation of Interest. No Owner shall sell, assign, lease or convey:

- (a) His or her interest in the Allocated Interest separate and apart from his Unit, nor
- (b) His or her Unit separate and apart from the Limited Common Elements reserved or assigned to his or her Unit, nor
- (c) His or her interest in any Limited Common Elements, separate and apart from his or her interest in the Common Elements and his or her Unit, nor
- (d) Any rights to the use of the Common Elements, other than as permitted by this Declaration, the By-Laws or the Rules and Regulations as established from time to time by the Association.

Any attempt to make a prohibited sale, assignment, lease, conveyance or other transfer is void.

Section 7.2 Prohibition of Partition. Each of the Owners of a Unit, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Planned Community, except upon the showing that:

(a) More than three (3) years before the filing of the action, the Planned Community was damaged destroyed so that a material part thereof was unfit for its use and the Planned Community has not been rebuilt and/or repaired substantially to its state prior to its damage or destruction, or

(b) That three-fourths (3/4) or more of the Planned Community has been destroyed or substantially damaged and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Elements are opposed to repair or restoration of the Planned Community, or

(c) That the Planned Community has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Elements are opposed to retention of the Planned Community;

provided, however, that if any Unit shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants. nothing herein shall be deemed to prevent a judicial partition as between such co-tenants, so long as there is not a physical division of the unit. No Unit may be partitioned or subdivided without the prior written approval of the Board of Directors and the Mortgagee holding the first security interest on that Unit.

Section 7.3 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Planned Community for the benefit of all the Owners thereof when the partition of the Owners' interests in said Planned Community may be had pursuant to Section 7.2 above. This is a power coupled with an interest in the property comprising the Unit, Common Elements, Limited Common Elements, and appurtenants and is irrevocable. The power of attorney herein granted may be exercised after the vote or written consent (i) of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Elements; and (ii) by any two (2) Members of the Board. The Board shall record a copy of the resolution implementing the power of attorney in the office of the County Clerk and Recorder, Jefferson County, Colorado. Said resolution shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary of Housing and Urban Development or the Department of Veterans Affairs.

## ARTICLE VIII

### RIGHT OF SECURITY INTEREST

Section 8.1 Security Interest's Consent. Provided that the holder of the First Security Interest informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least sixty-seven (67%) percent of the Eligible Security Interests which encumbers Units (based upon one (1) vote for each Security Interest) have given their prior written approval:

(a) Seek, by act or omission, to abandon the Planned Community or to terminate the Map or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Elements;

- (b) Terminate the legal status of the Planned Community after substantial destruction or condemnation of the same occurs;
- (c) Change the pro-rata interest or obligations of any Unit for purposes of levying assessment or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of the Common Elements appurtenant to each Unit.
- (d) Partition or subdivide any Unit\* (\*applies only to affected Security Interest.)
- (e) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; however, the granting of easements for public utility or other public purposes which is consistent with the normal or traditional uses in the geographical area in which the Planned Community is located shall not be deemed a transfer within the meaning of this provision;
- (f) Apply hazard insurance proceeds for losses to any portion of the Planned Community for other than a repair, replacement or reconstruction of the Planned Community, except as may be provided by statute upon substantial loss to the Units or Common Elements;
- (g) Fail to maintain fire and extended coverage insurance on the Planned Community and all Common Elements and the improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

Section 8.2 Notice to Security Interest. Upon written request to the Association, identifying the name and address of the Holder, Insurer or Guarantor and the Unit number of address, any Eligible Security Interest or Eligible Insurer or Guarantor will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Security Interest or Eligible Insurer or Guarantor, as applicable.
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Security Interest held, insured or guaranteed by such Eligible Security Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Security Holders as required in this Declaration or the By-Laws for the Owners' Association.

## ARTICLE IX

### DESTRUCTION OF COMMON ELEMENTS

Section 9.1 Casualty Destruction of Common Elements. If any portion of the Common Elements is damaged or destroyed by fire or other casualty, then:

(a) If the cost to repair or rebuild does not exceed the amount of available insurance proceeds, the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications therefore pursuant to [Section 9.7](#).

(b) If the cost to repair or rebuild exceeds the amount of available insurance proceeds, then the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications therefore, unless at least eighty percent (80%) of the Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, elect not to repair or rebuild the Planned Community.

(c) If the Owners elect not to the repair or rebuild the Common Elements as provided in Section 9. 1 (b), then each Owner (and his mortgagee(s)) as their respective interest shall then appear shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Unit as compared to the aggregate decrease in the fair market values of all the Units caused by such damage or destruction. For purposes hereof, fair market value shall be determined by an appraiser licensed by the State of Colorado, selected by the Board and hired by and at the expense of the Association.

(d) Should a dispute arise as to the distribution of insurance proceeds as provided in Section 9.1(c), the dispute shall be decided by the American Arbitration Association pursuant to its Commercial Rules of Arbitration, with the arbitration proceedings held in the Denver, Colorado, metropolitan area.

(e) If a bid to repair or rebuild is accepted, the Board shall have the right to levy a special assessment against each Unit in the damaged or destroyed Building(s) in the proportion the Units are assessed, pursuant to [Section 4.4](#) of this Declaration, for purposes of raising funds for the rebuilding or major repair of the structural Common Elements, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding. Such assessment and all insurance proceeds, whether or not subject to liens of mortgage, shall be paid to the account of the Association to be used for such rebuilding.

Section 9.2 Taking of Common Elements. If any portion of the Common Elements is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefore is not apportioned among the Owners and holders Security Interests on such Owner's Unit, as their respective interests then appear, by court judgment or by agreement between the condemning authority and each of the affected Owners, then the Owners of the Common Elements, and the Security Interest as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance

proceeds will be distributed pursuant to [Section 9.1 \(c\)](#). However, if it should be determined to repair or rebuild any portion of the Common Elements, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth in [Section 9.1](#) for the repair of damaged or destroyed portions of the Common Elements. Any decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in [Section 9.1](#) to determine whether or not to rebuild or repair the damage or destruction.

Section 9.3 Casualty Destruction of Unit. In the event of damage or destruction of any Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefore; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof by the Association, they shall be deemed to have been approved.

Section 9.4 Taking of Unit. In the event of the taking of a Unit, the Owner (and his mortgagees as their interests may appear) of the Unit shall be entitled to receive the award for such taking and after acceptance thereof, said Owner or said Owner's Mortgagee shall be divested of any further interests in the Planned Community if such Owner shall vacate his or her Unit as the result of such taking. In such event said Owner shall grant his or her remaining interests in the Common Elements appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Elements, such grant to be in proportion to the fractional interest in the Common Elements then owned by each.

Section 9.5 Power of Attorney.

(a) Each Owner by his acceptance of the deed or other conveyances vesting his interest in a Unit does irrevocably constitute and appoint the Association with full power of substitution as his true and lawful attorney in his name, place and stead to deal with such interest upon damage to or destruction, obsolescence, condemnation, liquidation of all or part of the Planned Community, or the termination of the Planned Community, and to represent the Owner in any related proceedings, negotiations, settlements or agreements. If requested to do so by the Association, each Unit Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage, condemnation, liquidation or termination claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in case of fraud or gross negligence.

(b) In the event of a casualty destruction, taking or liquidation of all or any portion of the Planned Community, or in the event of a termination of the Planned Community, the Association (as attorney-in-fact for the Owners) shall represent the Owners in any related proceedings, negotiations, settlements, or agreements. Any payment from any settlement award or insurance claim obtained in relation to any condemnation, destruction, taking or liquidation of any or all of the Planned Community shall be payable to the Association for the benefit of affected Owners and First Security Interest. In the event the Association receives funds from the sale of property as discussed in [Article IX](#) of this Declaration, or if the Association realizes



any losses, awards or proceeds from any other source, or from the termination of the Declaration, these proceeds, awards or losses shall be allocated among the Owners of Units in proportion to the relative value of the Units (subject to the provision of [Section 9.1\(c\)](#)).

**Section 9.6 Association Insurance.** The Association shall obtain and continue in effect the following insurance:

(a) A master fire insurance policy with extended coverage endorsement for the full insurable value of all of the improvements within the Planned Community. "Improvements" means and refers to the Common Elements together with those appliances and improvements located within the Units provided by Declarant to the initial Owners of Units and does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional First Security Holders Interest and shall meet the maximum standards of the various institutional first mortgage lenders whose loan(s) encumber any of the Units.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use the Common Elements. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death personal injury and property damage arising out of a single occurrence. Such policies must provide that they may not be cancelled or substantially modified by any party without at least thirty (30) days' prior written notice to the Association and to each holder of a First Security Interest which is listed as a scheduled holder of a First Security Interest in the insurance policy.

(c) Flood loss for the maximum amount available if the Planned Community is located in a federal identified Flood Hazard Area.

(d) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as insured and written in an amount equal to at least the estimated maximum funds, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. However, the bond shall not be less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds or such greater amounts as may be required by the Act or other statutes of the State of Colorado.

(e) Workman Compensation Insurance covering any employees of the Association.

(f) Any other insurance coverage as required by the Act.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Unit. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Unit. No Owner shall insure his Unit in any manner which would cause any diminution in insurance proceeds

from the master policy. Should any Owner violate this provision he shall be responsible to the Association for any such diminution.

Section 9.7 Security Interest Approval. Any restoration or repair of the Planned Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Holders of First Security Interests on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Security Interests.

Section 9.8 Deductible, Owners. The Association is required to maintain blanket fire, hazard and liability insurance which covers the roofs and exterior walls of all Buildings. If the claim is made by an Owner against any policy owned by the Association, then the Owner shall be responsible for all deductibles up to \$ 10,000 per occurrence not covered by the policies on such claims. Any work to be done as a result of said Owner's claim shall begin only upon the Association's receipt of the deductible amount from the Owner.

The Board of the Association as owner of the policies shall have the exclusive right to file and administer the settlement of any claim made against an Association policy. Owners are responsible for carrying at their expense insurance to augment or cover losses and damages not covered by the blanket insurance carried by the Association.

## ARTICLE X

### USE OF UNITS AND COMMON ELEMENTS AS DESCRIBED IN PLAN

#### Section 10.1 Residential Purposes (Declarant's Exceptions).

Each Unit shall be improved, used and occupied for private, residential single-family dwelling purposes only. No portion of the Units or Common Elements shall be used for any commercial purposes whatsoever; provided, however, Declarant and/or its real estate broker may use any of the Units and Limited Common Elements owned or leased by Declarant as model homes, sales offices and real estate offices during that period of time commencing when the Units are first offered for sale to the public and ending sixty (60) days after all the Units in the Planned Community are sold and conveyed by Declarant to separate Owners thereof or ten (10) years after the date of the sale to a purchaser of the last Unit in the Planned Community, whichever shall first occur. Declarant shall have the right to use at least three (3) Units as model homes, sales offices and real estate offices during the time described above. Declarant shall have a right to use any size Unit available, and shall have absolute discretion on the location of such model homes and sales offices. Declarant shall have the right to relocate model homes and/or sales offices at its absolute discretion. Declarant shall have the right to place temporary structures and barriers on the Common Elements, including without limitation sale trailers, construction trailers, storage trailers, signage and fences. Declarant hereby reserves the broadest possible rights and power allowed under the Act with regard to use of the Planned Community for model homes and sales purposes.

Section 10.2 Lease (Timeshare). Each Owner shall have the right to lease his Unit, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the By-Laws and the Rules and Regulations of the

Board. Failure to comply with the provisions of these documents shall be a default under the Lease. No Owner shall lease his Unit for transient or hotel purposes. Any lease which is either for a period of less than six (6) months or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Each Owner shall file a copy of the lease with the Association within ten (10) days of its signing by the Owner and the tenant.

TIMESHARE OF THE Planned Community as defined under Colorado Law is prohibited.

Section 10.3 Unit Maintenance. Each Owner shall at Owner's expense, maintain, replace and/or repair, paint, paper, panel, sheetrock, plaster, tile and walls, including inside facing walls, the interior partitions, ceilings, floors, plumbing fixtures and pipes after the same exit the common walls, windows, window frames and door frames of the Owner's Unit. Each Owner shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of the Unit.

Section 10.4 Limited Common Elements Appurtenant. Each Limited Common Element shall be:

- (a) Appurtenant to the Unit with which the Limited Common Element is conveyed or assigned; and
- (b) Used only for the purposes set forth in this Declaration.

The right to use a Limited Common Element shall be exercisable only by the Owner(s) of the Unit appurtenant thereto and/or said Owner's tenants and licensee(s). The allocation of a Limited Common Element shall not be altered without the written consent of all Owners whose Units are affected by such reallocation. No Limited Common Element or any rights, thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant. Each Limited Common Element shall be deemed to be Common Elements, for all those purpose, set forth in this Declaration which are not inconsistent with this Article X or [Article V](#).

Section 10.5 Use of Limited Common Elements. Subject to the Rules and Regulations, each Owner shall have the following rights with regard to the Limited Common Elements, which such Owner has the exclusive right to use:

- (a) To place furniture and potted plants upon said area.
- (b) To repair and maintain, including the interior of any storage area, in a neat, clean condition and not store flammable, volatile or hazardous liquids or materials within such storage area.

Section 10.6 Reallocation of Limited Common Elements.

- (a) Notwithstanding any other provision of this Declaration, a Limited Common Element may be reallocated between or among Units after compliance with the procedure set forth in this Section 10.6. In order to reallocate Limited Common

Elements between or among Units, the Unit Owners of those Units, as the applicants, must submit an application for approval to the Board of Directors, which application shall be executed by those Unit Owners and shall include:

- (i) The proposed form for an amendment to the Declaration as may be necessary to show the reallocation of limited common elements between or among Units;
- (ii) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and
- (iii) Such other information as may be reasonably requested by the Board of Directors.

No allocation shall be effective without the approval of the Board of Directors. The reallocation shall be effectuated by an amendment signed by the Association and by those Unit Owners between and among whose Units the reallocation is made, which amendment shall be recorded, as provided by C.R.S. §38-33.3-207(3) as may be amended. All costs and attorney fees incurred by the Association as a result of the application shall be the sole obligation of the Applicants. If any costs and fees incurred by the Association with regard to any such application are not paid within thirty (30) days after notice from the Association to the applicable Owners, the amount of such costs and fees shall become a lien against the appropriate Units as provided in this Declaration.

- (b) Except for Exclusive Use Areas which are allocated by the Declarant pursuant to this Declaration, a Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions in this Declaration, made in accordance with C.R.S. §38-33.3-205(1)(g). Any such allocation must be made by amendments to the Declaration prepared, executed and recorded by the Declarant.

Section 10.7 Use of Common Elements. Except as otherwise provided herein, the Common Elements shall be improved and used only for the following purposes:

- (a) Vehicular passage and pedestrian movement within the Planned Community, including access to the Units;
- (b) Recreational use by the Owners and occupants of Units in the Planned Community and their guests subject to this Declaration and the Rules and Regulations as established by the Board;
- (c) Beautification of Common Elements and to provide privacy to the residents of the Planned Community through landscaping and such other means as the Board shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided herein or as may be designated and approved by the Board upon such terms and conditions and for such fees as may from time to time be determined by the Board

(e) As Limited Common Elements to be used in the manner hereinbefore described. Nothing herein shall be deemed to allow persons other than the Owner (or his tenants as lessees) of the Unit to which a Limited Common Element is appurtenant to enjoy the use thereof.

Common Elements shall not be used by anyone so as to interfere with its use for the purposes herein above permitted. Common Elements shall not be used for storage purposes (except as incidental to a permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements or in storage areas designated by the Board), nor in any manner which shall increase the rate of insurance against loss by fire, or the perils of the extended coverage endorsement to the standard fire policy form used in Colorado, or bodily injury, or property damage liability insurance covering the Common Elements and improvements situated thereon may be, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof

Section 10.8 Owners Liable for Damage. Each Owner shall be liable to the Association for all damage to the Common Elements and any improvements thereto, including, buildings, Recreational Area and landscaping, caused by such Owner licensee(s) or any occupant of said Owner's Unit.

Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, By-Laws and Rules and Regulations of the Board by his guests, lessees and all occupants of his Unit, and shall, after written notice have an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Declaration, the By-Laws or Rules and Regulations for any violation by the Owner, his guests, lessees and occupants of his Unit.

Section 10.9 Pets. No more than a maximum of two (2) household pets (exclusive of caged birds or aquarium fish may be kept in any Unit (including appurtenant Limited Common Element) without the prior written consent, of the Board, which consent may be withheld at the sole discretion of the Board, and all pets must comply with any restrictions or limitations as set forth in the Rules and Regulations. Pets shall not be allowed on other portions of the Common Elements except as may be permitted by Rules and Regulations established by the Board. Except as provided herein, no animals, livestock, birds or poultry shall be brought within the Planned Community or kept in any Unit, or on any portion of the Common Elements. No pet shall be permitted to be kept within any portion of the Planned Community if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners as determined by the Board.

Section 10.10 Nuisance. No Unit or Common Element shall be used in such manner as to interfere with the enjoyment of other Owners or annoy them by unreasonable noise or otherwise, nor shall any nuisance or waste be committed or permitted to occur in any Unit nor on the Common Elements.

Section 10.11 Sign Control (Declarant Exception). No signs other than one (1) sign of customary and reasonable dimensions advertising a Unit for sale or rent shall be displayed in front of any Unit, without the prior written consent of the Board. No Unit shall display such sign unless advertising the sale or rent of that Unit (i.e., no Unit shall advertise the sale or rent of another Unit). No signs shall be displayed on the Common Elements except signs of the

Declarant, the Declarant's Real Estate Broker or those approved by the Board. Declarant or its real estate broker, however, shall have the right to install and maintain during the sales period set forth in [Section 10.1](#) above, such signs, poles, banners, displays and advertisements in the Planned Community as it deems appropriate in connection with its sales of Units to the public.

Section 10.12 Use Causing Loss of Insurance. No Unit, Common Elements or improvements situated therein shall be used in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of an extended coverage endorsement to the Colorado standard fire policy form or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof

Section 10.13 Parking and Vehicular Restrictions. No Owner shall park, store or keep on any street (public or private) or any open parking space within the Planned Community any truck or commercial type vehicle, any recreational vehicle (including, but not limited to, any camper unit, house/car or motor/mobile home), any bus, trailer, trailer coach, camper trailer, boat, or any inoperable vehicle. The above excludes pick-ups, camper trucks, vans, and similar vehicles up to three-quarter (3/4) ton when used for everyday transportation by the Owner of a Unit or the Owner's tenant.

No Owner shall park, store, or keep anywhere within the Planned Community any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. Except up to 3/4 ton pick-ups in daily use as provided above, trailers, campers, motor homes and similar recreational vehicles shall be parked or stored off of the Planned Community.

Owners shall not conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon the Common Elements or Limited Common Elements. Owners of Units in Type I buildings shall be permitted to conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle within the garages. Declarant however, may park construction vehicles for purposes of construction, reconstruction or remodeling within the Planned Community.

Section 10.14 Alteration of Units. Subject to the provisions of this Declaration and any applicable law, a Unit Owner:

- (1) May make any improvements or alterations to any Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community;
- (2) May not change the appearance of the Common Elements, or the exterior appearance of a Unit or other portion of the Planned Community except, with the prior written permission of the Board;
- (3) After acquiring an adjoining Unit or part of an adjoining Unit, an Owner may, subject to Architectural Committee approval, remove or alter any intervening partition or create openings therein, even if the partition in which or in part is a Common Elements, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community. Removal of

partitions or creation of apertures under subsection is not an alteration of boundaries;  
and

- (4) Association assessments of merged Units will continue to be assessed on the same basis as they were prior to the merger or combination of Units.

Notwithstanding the foregoing, Declarant, shall not be obligated to submit it's plans for construction, reconstruction, improvement, alterations or remodeling and additional improvements, upon the Planned Community.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1 Enforcement. The Association, the Declarant and any Owner shall have the right to enforce by any proceedings at law or in equity, each covenant, condition, restriction and reservation, now or hereafter imposed by this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of this Declaration or of the By-Laws or Articles. Failure by the Association, the Declarant, or any Owner to enforce any covenant, condition, restriction or reservation contained in this Declaration shall not be deemed a waiver of the right to do so thereafter. In such action the court may award reasonable attorney's fees and costs to the prevailing party.

Section 11.2 Severability. Should any provision in this Declaration be void or become unenforceable in law or equity by judgment or court order, the remaining provisions of this Declaration shall remain in full force and effect.

Section 11.3 Amendments. Unless otherwise required by FHA or the VA, during the period of time prior to expiration of Declarant's Control Period, this Declaration may be amended by an instrument approved by the Declarant. The amendment shall become effective upon its recording in the Office of the Clerk and Recorder of Jefferson County, Colorado. At the expiration of the Declarant's Control Period, the Declaration may be amended by approval of:

- (a) Sixty-seven percent (67%) percent of the total voting power of the Association,  
and
- (b) At least sixty-seven (67%) percent of the voting power of Members of the Association other than Declarant.
- (c) No amendment material to an Eligible Security Interest may be made to this Declaration without the prior written consent of Eligible Security Holders whose Security Interests encumber fifty-one percent (51 %) or more of the Units within the Planned Community. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material":

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;

- (3) Reserves for maintenance, repair and replacement for the Common Elements, including Limited Common Elements;
- (4) Casualty insurance, liability insurance or fidelity bonds;
- (5) Reallocation of interests in Limited Common Elements or rights to use of the Common Elements
- (6) Responsibility for maintenance and repair of the several portions of the Planned Community;
- (7) Expansion or contraction of the Planned Community or the addition, annexation or withdrawal of property to or from the Planned Community, except as reserved by the Declarant in accordance with Article XI;
- (8) Redefinition of boundaries of any Unit;
- (9) A decision by the Association to establish self-management when professional management had been required previously by the Planned Community documents or by an eligible mortgage holder;
- (10) Restoration or repair of the Planned Community (after a hazard damage or partial condemnation in the manner other than that specified in the Documents.
- (11) Convertibility of Units into Common Elements or of Common Elements into Units;
- (12) Leasing of Units;
- (13) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Unit;
- (14) Any provisions which are for the express benefit of Security holders, Eligible Security Holders or Eligible Insurers or Guarantors.

An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors, typographical errors or for clarification only. An Eligible Security Holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 11.4 Encroachment Easement. In the event any portion of the Common Elements, including Limited Common Elements, encroaches upon any Unit or any Unit encroaches upon the Common Elements, including Limited Common Elements, or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.



There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement, or shifting, provided, however, that in no event shall an easement relieve a Unit Owner of liability in case of willful misconduct of such Owner. In the event any portion of a structure on the Planned Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Elements shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 11.5 Annexation of Additional Property. Upon approval in writing by the Declarant and there after upon expiration of the Declarant Control Period, upon approval in writing by the Association, (pursuant to 67% or more of the voting powers of each class of Members of the Association), the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

Section 11.6 Owner Compliance. Each Owner, tenant, or occupant of a Unit shall comply with the provisions of this Declaration, the By-Laws, the Rules and Regulations, decisions and resolutions of the Association, and amendments, additions, and modifications. Failure to comply with any such provisions, decisions, or resolutions shall permit an action to recover sums due for damages and injunctive relief

Section 11.7 Declarant's Rights. Certain specific rights are reserved by this Declaration to the Declarant. These Declarant Rights are to facilitate the work of construction, reconstruction, remodeling, repairs, alterations of Units, Common Elements, Limited Common Elements and additional improvements upon the Planned Community. The completion of the work, sale, rental or other disposition of said Units is essential to the establishment of the Planned Community as a residential community. So that this work can be completed and the Planned Community established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood to

- (a) Prevent Declarant or its contractors or subcontractors from doing on the Planned Community or in any Unit, Limited Common Element, Common Elements, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant or its representatives from constructing and maintaining on any part or parts of the Planned Community, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Planned Community as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Planned Community its business of completing its work, and of establishing a plan of Unit ownership and of disposing of the Planned Community in the form of Units by sale, lease or otherwise, or
- (d) Prevent Declarant or Declarant's Real Estate Broker from maintaining such sign or signs on any portion of the Planned Community as may be necessary for the

sale, lease or disposition thereof provided, however, that the maintenance of any such signs shall, during the sales period set forth in [Section 10.1](#) above not unreasonably interfere with the use of any Owner of his Unit, or the Limited Common Elements Area.

No trailer, model home, or construction, sales or leasing office located in a Unit owned by Declarant shall constitute a Common Element, or otherwise be owned by the Association or any Owner of any Unit (other than Declarant). Nothing contained in this Declaration shall limit the right of Declarant or to require Declarant to obtain approval (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvement on any property owned by Declarant, or (b) to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Planned Community, or (c) to require Declarant to seek or obtain the approval of the Association or other Owners for any such activity or Improvements to Property by Declarant on any Property owned by Declarant. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

In addition to the foregoing, the Declarant hereby specifically reserves the right (i) to complete Improvements indicated on the Map; (ii) to exercise any development right stated in this Declaration; (iii) to use easements through the Common Elements for the purpose of making improvements within the Planned Community or within the property that may be added to the Planned Community; or (iv) to appoint or remove any officer of the Association or any member of the Board of Directors during the period of Declarant Control as set forth herein.

Section 11.8 Commencement of Declarant's Rights. The rights of Declarant provided for herein shall commence when the Units are first offered for sale to the public and end when all the Units in the Planned Community are sold and conveyed by the Declarant to separate Owners thereof, or ten (10) years after the date of the sale of the last Unit to a purchaser in the Planned Community, whichever shall first occur.

Section 11.9 Assignability. Declarant shall have the power to assign all or any of its rights under this Declaration to any other party without the consent of the Association or the Unit Owners. In the event this assignment occurs and the assignee assumes the obligations and liabilities of the Declarant, the Declarant shall be relieved, discharged and released from all obligations under this Declaration, and such obligations shall pass to and be assumed by the assignee to the extent of any such assignment and assumption.

Section 11.10 Declarant Subject to Declaration. So long as Declarant, its successors or assigns owns one (1) or more of the Units described herein, Declarant, its successors or assigns shall be subject to the provisions of this Declaration. Declarant, in exercising its rights under this Declaration, shall not unreasonably interfere with the use of the Common Elements by any Owner.

Section 11.11 Consistency in Improvements. Notwithstanding any provision of this Declaration to the contrary, all future Improvements within or annexed into the Planned Community will be consistent with the initial Improvements and structure type and quality of construction.

Section 11.12 Association's Right to Convey. The Association shall have the right to the fullest extent exercisable under the Act to grant permits, licenses, and easements over the Common Elements of the Planned Community for utilities, roads and other purposes reasonably necessary for the proper operation of the Planned Community.

Section 11.13 Registration by Owner of Mailing Address. Each Owner shall register a mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Planned Community) shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address, shall be the mailing address of the Unit owned by such Owner. All notices, demands or other notices intended to be served on the Board of Directors of the Association or the Association shall be sent certified mail, postage prepaid, to the office Association at such address as identified by the Association in writing to each Owner.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

PEAKS DEVELOPMENT LLC,  
a Colorado limited liability company

By: Manager

By: \_\_\_\_\_

STATE OF COLORADO     )  
  )     ss.  
COUNTY OF                     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2003, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, Manager of Peaks Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

RESERVED

**EXHIBIT A**  
**LEGAL DESCRIPTION FOR THE PEAKS AT GREEN MOUNTAIN II**

A PARCEL OF LAND LOCATED IN A PORTION OF BLOCK "E",  
RESUBDIVISION OF A PORTION OF PANORAMA WEST. LOCATED IN THE  
SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 69 WEST,  
OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF  
COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 8, WHENCE THE WEST QUARTER  
CORNER BEARS N00°09'02"W;

THENCE N45°18'52"E A DISTANCE OF 462.04 FEET TO A SOUTHWEST CORNER OF SAID  
BLOCK "E";

THENCE N01°05'07"W ALONG A WESTERLY LINE OF SAID BLOCK "E", A DISTANCE OF  
200.04 FEET TO THE POINT OF BEGINNING.

THENCE S88°54'53"W, ALONG A SOUTHERLY LINE OF SAID BLOCK "E", A DISTANCE OF  
153.41 FEET;

THENCE N00°07'00"W, ALONG A WESTERLY LINE OF SAID BLOCK "E", A DISTANCE OF  
148.06 FEET;

THENCE N84°44'04"E, ALONG A NORTHERLY LINE OF SAID BLOCK "E", A DISTANCE OF  
138.66 FEET;

THENCE N54°51'53"E, ALONG A NORTHWESTERLY LINE OF SAID BLOCK "E", A DISTANCE  
OF 162.70 FEET;

THENCE N39°32'11"E, ALONG A NORTHWESTERLY LINE OF SAID BLOCK "E", A DISTANCE  
OF 115.60 FEET;

THENCE S40°05'44"E A DISTANCE OF 176.13 FEET

THENCE S50°05'36"W A DISTANCE OF 244.15 FEET

THENCE S67°10'56"W A DISTANCE OF 127.13 FEET TO THE POINT OF BEGINNING.

CONTAINING 74,359 SQUARE FEET (1.707 ACRES), MORE OR LESS.

## EXHIBIT B

### DECLARATION OF EASEMENT

This Declaration made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by Peaks Development, LLC, hereinafter designated as "Declarant".

#### RECITALS

A. The Declarant is the owners of the following described property located in the City of Lakewood, Jefferson County, State of Colorado described in Exhibit A, attached hereto and incorporated by reference herein and as further described in the Map of the Peaks at Green Mountain I (hereinafter GMI), a condominium community, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Reception No \_\_\_\_\_, in the office of the Clerk and Recorder of Jefferson County, Colorado.

B. Declarant is also the owner of certain real property located in the City of Lakewood, Jefferson County, State of Colorado, more particularly described in Exhibit B, attached hereto and incorporated by reference herein, and as further described in the Map of the Peaks at Green Mountain II (hereinafter GMII), a condominium community, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Reception No \_\_\_\_\_, in the office of the Clerk and Recorder of Jefferson County, Colorado.

NOW THEREFORE, Declarant do hereby declare:

1. That a perpetual nonexclusive easement is hereby granted for the use and benefit of the Unit Owners of GMI, of the Common Elements identified in the Map for GMII, and subject to the Rules and Regulations established by the Homeowners Association for GMII. Said easement shall run with the land identified as the Common Elements for GMII.

2. That a perpetual nonexclusive easement is hereby granted for the use and benefit of the Unit Owners of GMII, of the Common Elements identified in the Map for GMI, and subject to the Rules and Regulations established by the Homeowners Association for GMI. Said easement shall run with the land identified as the Common Elements for GMI.

3. This Declaration of Easement made by the Declarant shall run with the title to the subject Common Elements of GMI and shall bind and inure to the benefit of the Unit Owners of GMI, their heirs, successors and assigns.

4. This Declaration of Easement made by the Declarant, shall run with the title to the subject Common Elements of GMII and shall bind and inure to the benefit of the Unit Owners of GMII, their heirs and successors and assigns.

Declaration of Easement

Page 2

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

IN WITNESS WHEREOF, the Declarant has set their hands the day and year first written above.

\_\_\_\_\_  
The Peaks Development, LLC

STATE OF COLORADO     )  
  )     ss.  
COUNTY OF ARAPAHOE    )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2003, by \_\_\_\_\_, General Manager for  
the Peaks Development, LLC.

My commission expires:

Witness my hand and seal: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

CONSENT OF LENDER

As beneficiary of that certain Deed of Trust recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Reception No. \_\_\_\_\_ in the real estate records of Jefferson County, Colorado, Citywide Bank of Denver, 3345 S. Wadsworth Blvd., Lakewood, Colorado, hereby consents to the recordation of the above Declaration; however, such Consent shall not be construed to waive, modify or amend any rights of the Bank or obligations of the borrower contained in the Deed of Trust, all terms and provisions of which shall remain in full force and effect.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

CITYWIDE BANK OF DENVER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by: \_\_\_\_\_ as \_\_\_\_\_ of Citywide Bank of Denver, 3345 S. Wadsworth Blvd., Lakewood, Colorado

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public



## ADDENDA

RECEPTION NO. F1665506  
1/31/2003 14:21:21 PG: 001-041  
PAGE FEE: 206.00 DOC.FEE: 0.00  
RECORDED IN JEFFERSON COUNTY, COLORADO

DECLARATION

FOR

THE PEAKS AT GREEN MOUNTAIN II

After recording return to:



76  
Section 11.12 Association's Right to Convey. The Association shall have the right to the fullest extent exercisable under the Act to grant permits, licenses, and easements over the Common Elements of the Planned Community for utilities, roads and other purposes reasonably necessary for the proper operation of the Planned Community.

Section 11.13 Registration by Owner of Mailing Address. Each Owner shall register a mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Planned Community) shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address, shall be the mailing address of the Unit owned by such Owner. All notices, demands or other notices intended to be served on the Board of Directors of the Association or the Association shall be sent certified mail, postage prepaid, to the office Association at such address as identified by the Association in writing to each Owner.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

PEAKS DEVELOPMENT LLC,  
a Colorado limited liability company

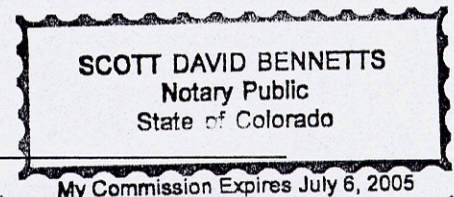
By: Manager

By: Mark Bradley Manager.

STATE OF COLORADO     )  
  )     ss.  
COUNTY OF                     )

The foregoing instrument was acknowledged before me this 31<sup>ST</sup> day of JANUARY, 2003, by Mark Bradley as ~~Manager~~ of ~~Peaks Development, LLC~~, a Colorado limited liability company.

Witness my hand and official seal. [Signature]  
My commission expires: 7-6-2005



Notary Public

\*\* AS MANAGER OF SOL GLORY BUILDERS, LLC, A COLORADO LIMITED LIABILITY COMPANY, BY SPECTRA MANAGEMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY, AS GENERAL PARTNER OF JEFFERSON OFFICE PARK, LLP, A COLORADO LIMITED LIABILITY LIMITED PARTNERSHIP, AS



CONSENT OF LENDER

As beneficiary of that certain Deed of Trust recorded on the 2nd day of July, 2003, at Reception No. 1514824 in the real estate records of Jefferson County, Colorado, Citywide Bank of Denver, 3345 Wadsworth Blvd., Lakewood, Colorado, hereby consents to the recordation of the above Declaration; however, such Consent shall not be construed to waive, modify or amend any rights of the Bank or obligations of the borrower contained in the Deed of Trust, all terms and provisions of which shall remain in full force and effect.

Dated this 31 day of January, 2003.

CITYWIDE BANK OF DENVER

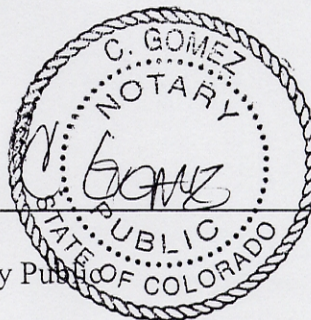
By: Randall L. Hoffman  
Name: Randall L. Hoffman  
Title: President

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF                     )

The foregoing instrument was acknowledged before me this 31 day of Jan., 2003, by: Randall L. Hoffman as President of Citywide Bank of Denver, 3345 Wadsworth Blvd., Lakewood, Colorado

Witness my hand and official seal.

My commission expires: 9-7-04



Notary Public



2

FIRST AMENDMENT TO THE DECLARATION  
FOR PEAKS AT GREEN MOUNTAIN II

This First Amendment to the Declaration For Peaks at Green Mountain II (Declaration) is made this 13<sup>th</sup> day of March, 2003, as follows:

11.00  
11.00  
WHEREAS the Declarant, Peaks Development, LLC, caused to be recorded the Declaration for the Peaks at Green Mountain II on the 31<sup>st</sup> day of January, 2003, at Reception No. F1665506, in the Office of the Clerk and Recorder for Jefferson County, Colorado;

WHEREAS the Declarant has determined that Section 1.10 must be amended and;

WHEREAS Section 11.3 of the Declarant provides that during the period of time prior to the expiration of Declarant's Control Period, the Declaration may be amended by an instrument approved by the Declarant;

NOW THEREFORE The Declarant amends Section 1.10, Common Elements, of the Declaration to read as follows:

Common Elements shall mean (i) the land included in the real property above described, except for Units, which at any time is subject to this Declaration; (ii) in general all apparatus and installations existing for common use; (iii) Access Easements; (iv) the Recreational Area; (v) roadways and appurtenances; (vi) landscaping and green areas; (vii) parking areas, pool and mail box kiosk; and all other real property within this Planned Community owned by the Association.

IN WITNESS whereof, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

PEAKS DEVELOPMENT LLC,  
a Colorado limited liability company

By: Spectra Management, LLC, Manager

By: Edward Lance Payet

STATE OF COLORADO )

COUNTY OF Denver )

ss.

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2003, by Edward Lance Chayet, Manager of Spectra Management, LLC, Manager of Peaks Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 4/15/05



My Commission Expires April 15, 2005

Notary Public

*[Handwritten Signature]*

*[Handwritten Signature]*



SECOND AMENDMENT TO THE DECLARATION  
FOR PEAKS AT GREEN MOUNTAIN II

210<sup>00</sup>  
This Second Amendment to the Declaration For Peaks at Green Mountain II (Declaration) is made this 15th day of July, 2003, as follows:

WHEREAS the Declarant, Peaks Development, LLC, caused to be recorded the Declaration for the Peaks at Green Mountain I on the 31<sup>st</sup> day of January, 2003, at Reception No. F1665506, in the Office of the Clerk and Recorder for Jefferson County, Colorado;

WHEREAS the Declarant, Peaks Development, LLC, caused to be recorded the First Amendment to the Declaration for Peaks at Green Mountain I on March 13, 2003, at Reception No. F1698042, in the Office of the Clerk and Recorder for Jefferson County, Colorado;

WHEREAS the Declarant, Peaks Development, LLC, has determined that amendments to the Declaration must be made in order for it to be in compliance with various Fannie Mae requirements;

NOW THEREFORE The Declarant amends the Declaration as follows:

Section 2.3. Description of a Unit.

Description of a Unit shall be amended to read as follows:

Description of a Unit. Any instrument affecting a Unit may legally describe it by the identifying number shown on the Map covering the Unit. This identifying number for a Unit in the Planned Community is the number on the Map identifying the Individual Space which is part of that Unit. A legal description of a Unit in the Planned Community may be in the following form:

Building \_\_\_\_\_, Unit \_\_\_\_\_, The Peaks I Homeowners Association, Inc., in accordance with and subject to the Declaration for The Peaks I Homeowners Association, Inc., recorded on \_\_\_\_\_, 2003, as Reception No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ and the Map recorded on \_\_\_\_\_, 2003, as Reception No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Office of Clerk and Recorder of Jefferson County, Colorado, so known and numbered as 13095 W. Cedar Drive, Lakewood, Colorado, 80228.

and any conveyance or other instrument affecting title to a Unit or any part thereof describing the

ELC

Unit in the Planned Community in substantially the foregoing form or otherwise effectively describing the Unit it shall be deemed to include and describe the entire Unit including the appurtenant undivided interest in Common Elements and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefitting, or burdening the Unit under the terms of this Declaration. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the common elements will be void unless the Unit to which that interest is allocated is also transferred. 2

Section 4.12. Liens/Security Interest.

The first sentence in Section 4.12(c) shall be amended to read as follows:

Other than as provided in Section 4.13 below, a First Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent.

Section. 4.13. Assessment.

The third sentence in Section 4.13(e) shall be amended to read as follows:

The personal obligation for delinquent assessment shall not pass to an owner's successor in title and interest.

Section 4.17. Working Capital Fund. is amended to read as follows:

Working Capital Fund. Declarant shall establish the initial Working Capital Fund in an amount that is at least equal to two (2) months of estimated common expenses for each Unit. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit owners. The Declarant is prohibited from using the Working Capital Funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. When unsold Units are sold, the Declarant may reimburse itself for funds it has paid the Association for an unsold Unit's share of the Working Capital Fund by using funds collected at closing when a Unit is sold.

Upon acquisition of record title to a Unit from Declarant, Owners, shall contribute to the working capital fund of the Association an amount equal to one-fourth (1/4) the amount of the then annual assessment for that Unit as determined by the Board plus a non-refundable transfer fee of \$200.00. The working capital shall not be considered prepayment of the annual assessment. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Upon the sale of any Unit by an Owner other than Declarant, the selling Owner shall be reimbursed at closing for this working capital contribution or the transfer fee, by the purchaser of said Unit. Each purchaser of a Unit shall pay the applicable transfer fee.

ELC



Section 4.19. Association Documents. shall be added and will read as follows:

The association shall maintain current copies of the Declaration, Articles of Incorporation, Bylaws, and other rules concerning the plan development, as well as its own books, records and financial statements, available for inspection by Unit owners or by holders, insurers, and guarantors of first mortgages that are secured by Units in the plan development. These documents shall be available during normal business hours.

2

Section 4.20. Budget. shall be added and will read as follows:

No later than thirty (30) days prior to the Association's fiscal year-end, it shall adopt a budget for revenues, expenditures, and reserves and shall deliver the same to all Unit owners, in accordance with the Act.

Section 11.3. Amendments.

The last sentence in the final paragraph under Section 11.13 shall be amended to read as follows:

An Eligible Security Holder who receives a written request, via certified or registered mail, with a "return receipt" who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request

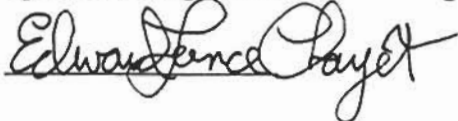
Section 11.14. Termination of Legal Status. shall be added and will read as follows:

Subject to Section 8.1(b) the legal status of the planned community may be terminated after substantial destruction or condemnation of the same occurs, upon approval of sixty seven percent of the voting power of the members of the association. The legal status of the planned community may be terminated for reasons other than substantial destruction or condemnation upon the approval of at least sixty seven percent (67%) of the voting power of the members of the Association and at least sixty seven percent(67%) of the Eligible Security Interest which encumber Units (based upon one (1) vote for each Security Interest).

IN WITNESS whereof the undersigned being the Declarant herein has executed this instrument the day and year first above written.

PEAKS DEVELOPMENT LLC,  
a Colorado limited liability company

By: Spectra Management, LLC, Manager

By: 



STATE OF COLORADO     )  
                                      )  
COUNTY OF                )     ss.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 2003, by Edward Lance Chayet, Manager of Spectra Management, LLC, Manager of Peaks Development, LLC, a Colorado limited liability company. 4

Witness my hand and official seal.  
My commission expires:

Joanna L. McKinley  
Notary Public



My Commission Expires 1/29/2007

EJC