

NOW THEREFORE, effective this \_\_\_\_ day of \_\_\_\_\_, 2000, all covenants, conditions, reservations and restrictions effecting the Real Estate are consolidated, amended and restated as follows:

## ARTICLE 1 DEFINITIONS

The following words, where used in this Declaration, or in any supplemental or amended declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

"Act" shall mean the Colorado Common Interest Ownership Act, §38-33.3-101 et seq., C.R.S. (1996 Cum. Suppl.), to the extent its provisions are applicable to communities created before July 1, 1992 or as otherwise expressly adopted in this Declaration.

"Articles" shall mean the Articles of Incorporation for Innsbruck in Aurora currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

"Architectural Review Committee" shall mean the committee which may be appointed by the Board of Directors pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained herein.

"Assessments" shall mean the Common Expense Assessments and Default Assessments levied herein.

"Association" shall mean and refer to Innsbruck in Aurora, a Colorado nonprofit corporation, organized under the laws of the State of Colorado, and its successors and assigns.

"Board of Directors" or "Executive Board" shall mean the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

"Bylaws" shall mean the Bylaws adopted by the Association, as amended from time to time.

"Common Area" or "Common Element" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Lots, and shall include any Common Area located upon any real property which is annexed to the Property.

"Common Expenses" shall mean (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area or any other items for which the Association is responsible for maintaining;

Common Area or any other items for which the Association is responsible for maintaining; (iii) insurance premiums for the insurance carried under this Declaration; and (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

"First Lien Security Interest" shall mean any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado, having priority of record over all other recorded liens except those governmental liens and Common Expense Assessment liens made superior by statute.

"First Mortgage" shall mean any Mortgage upon a Lot which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

"First Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any first Mortgage, or any successor to the interest of any such person under such First Mortgage.

"Governing Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

"Innsbruck Community" shall mean the planned community created by the Original Declaration, as amended and restated by this Declaration, consisting of the Property, Common Area, and any improvements constructed on the Property and the Common Area.

"Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map including the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area.

"Member" shall mean and refer to every person or entity who holds membership in the Association.

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

"Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

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

"Plat" shall mean the subdivision plats of Innsbruck in Aurora depicting the Property and Common Area subject to this Declaration and recorded in the records of the Clerk and Recorder of Arapahoe County, Colorado, as such may be amended from time to time.

"Real Estate" or "Property" shall mean and refer to that certain real property described in the Original Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Townhome" or "Townhouse" shall mean the residential dwelling improvement constructed on a Lot which is designed and intended for use and occupancy as a residence by a single family.

## ARTICLE 2 DIVISION OF REAL PROPERTY

Section 2.1 Division of Real Property. The Property was previously divided into 96 Lots and the Common Area.

Section 2.2 Description of Lots.

(a) Each Lot shall be inseparable and may be leased, devised or encumbered only as a single family residence.

(b) Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner, for each Lot. The parties, if more than one, having the ownership of a Lot shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

(c) Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Lot may describe it as follows:

Lot number \_\_, Innsbruck in Aurora, County of Arapahoe, State of Colorado, and such additions thereto, according to the Plat thereof and the Amended and Restated Declaration recorded in the records of the Clerk and Recorder of Arapahoe County, Colorado.

(d) Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed.

(e) No Owner of a Lot shall bring any action for partition or division of the Common Area.

ARTICLE 3  
MEMBERSHIP AND VOTING RIGHTS;  
ASSOCIATION OPERATIONS

Section 3.1 The Association. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership shall be the sole qualification for membership.

Section 3.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 3.3 Compliance with Governing Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots.

Section 3.4 Books and Records. The Association shall make available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Governing Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws, except those documents which the Board, pursuant to law or a written policy, determines to be confidential. The Association may charge a reasonable fee for copying such materials.

Section 3.5 Manager. The Association may engage, employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The engagement, employment or contract shall be by writing and shall be subject to cancellation by the Association on thirty (30) days notice, with or without cause, and without a cancellation fee. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the

duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.7 Voting. Each Lot shall be allocated one vote. When more than one person holds an interest in any Lot, all such persons shall become members. The vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3.8 Non-Liability of Officials. To the fullest extent permitted by law, the Board of Directors, the Architectural Review Committee, or any other committees or any members thereof, shall not be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which the Board of Directors, or such committees or officers reasonably believed to be within the scope of their respective duties.

#### ARTICLE 4 PROPERTY RIGHTS

Section 4.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Members;
- (b) the right of the Association to borrow money and to pledge future assessments or mortgage the Common Area as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners, and subject to the approval of a majority of the Owners at a regular or special meeting where a quorum is present;
- (c) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid, and for any infraction of its published rules and regulations, after notice and the opportunity for a hearing;
- (d) the right of the Association to promulgate and publish rules and regulations which each member shall strictly comply with, including, but not limited to,

the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area; and

(e) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements thereon.

(f) The right of the Association to convey all or any part of the Common Area, subject to the written consent of two-thirds of all of the Owners.

Section 4.2 Delegation of Use. Any member may delegate, in accordance with the Bylaws and rules and /regulations adopted by the Board of Directors, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through rules and regulations and/or reasonable fees charged for such use.

Section 4.3 Owner Liability. Owners shall be liable to the Association for damage to the Common Area caused by the negligent or intentional actions of the Owner, his family, tenants, guests, invitees, and contract purchasers who utilize the Property and the Association may assess Owners individually for the cost of repairing, replacing or otherwise correcting the damage.

## ARTICLE 5 EASEMENTS

Section 5.1 Easement for Encroachments. Each Townhouse and the property included in the Common Area shall be subject to an easement for encroachments created by the original construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Townhouses is partially or totally destroyed, and then rebuilt, the owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 5.2 Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the Common Area for ingress, egress, installation, replacing, repairing and maintaining all Townhomes, fences, and utilities, including but not limited to water, sewers, gas, telephones and electricity, cable and a master television, antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary

equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, across and under the roofs and exterior walls of said Townhouses. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Townhouse to perform the duties of maintenance and repair of the Townhouses or Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Common Area or on Lots, except as approved by the Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Common Area without conflicting with the terms hereof. Express easements on Lots shall be obtained from individual Owners. The easements provided for in this Article shall in no way affect any other recorded easement on said premises.

Section 5.3 Easement for Party Walls. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of party wall maintenance and repair, upon reasonable notice to the Owners of the party wall. Any damage occasioned to the adjacent Lot or improvements, including the dwelling unit thereon, in exercising this easement, shall be the responsibility of the Owner whose negligent or wrongful acts or omissions caused the damage. For the purposes of this provision, the term "party wall" means all walls or fences placed on the dividing line between two adjoining Lots.

Section 5.4 Easement for Foundations. Owners of adjoining Lots shall have mutual easements of horizontal and vertical support for the foundations on which adjacent wall of their improvements rest. Easements of support from the Common Area and benefitting the Common Area, are also created.

## ARTICLE 6

### COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Each Lot shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the

Association annual Common Expense Assessments, insurance assessments, utility assessments, individual assessments and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason.

Section 6.2 Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purposes of promoting the recreation, health and welfare of the Owners and for the improvement and maintenance of the Common Area and Lots as specifically set forth in this Declaration.

Section 6.3 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

Section 6.4 Unit Specific Assessments. The Association shall have the right to add to any Owners' assessments as provided in this Article those amounts expended by the Association for the benefit of any individual Unit or Units and the Owners thereof, including, but not limited to: fines; Unit insurance, including any extraordinary insurance costs incurred as a result of the value of a particular Owner(s)' Unit or the actions of a particular Owner or Owners (or the Owners' agents, servants, guests, tenants or invitees); improvement, repair, replacement and maintenance specific to a Unit or Units; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner(s) or Owner(s) guests, employees, licensees, lessees or invitees; and all other expenditures or charges which the Executive Board, in its sole discretion, chooses to allocate to a Unit, or Units and which are readily determined to be allocable to a particular Unit or Units.

Section 6.5 Regular Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's



advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Common Expense Assessment may not be increased more than 10% over the previous year, without the approval of a majority of Owners at a meeting at which a quorum is present. Approval of the Owners is not required if the assessment increase is 10% or less. Regardless of whether an assessment increase is made or the increase is less than 10% in any year, that year's assessments shall be the basis for calculating any assessment increase for the next year. Common Expense Assessments shall be due and payable in monthly installments, in advance, unless otherwise determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.6 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or any area which the Association maintains, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments. The Association shall not levy a Special Assessment without the affirmative vote of two-thirds of the Owners present, in person or by proxy, at a meeting called pursuant to Section 6.7. Notice in writing of the amount of any Special Assessment approved by Owners and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 6.7 Meeting for Special Assessments. A special meeting shall be held for the approval of any Special Assessment as set forth in Section 6.6. Notice of such meeting shall be in compliance with the Bylaws of the Association. The quorum at such meeting shall be sixty percent (60%) of the Owners entitled to vote. In the event a quorum is not obtained at any special meeting called pursuant to this Section, the meeting may be adjourned and rescheduled at which time the quorum shall be reduced by fifty percent (50%). No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6.8 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 6.9 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, of a party wall, or of the exterior of any building is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association or another Owner for such maintenance, repair, or replacement shall be a personal obligation of such negligent or wrongful Owner, and if not repaid to the Association or other Owner within seven (7) days after notice of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Lot, and the Association or other Owner may proceed in accordance with the applicable provisions of this Article.

Section 6.10 Effect of Nonpayment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the due date thereof, or as established by the Board of Directors, shall bear interest at the rate of interest as determined by the Board of Directors on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within thirty (30) days of the due date thereof shall cause the total amount of such Owner's Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may suspend the voting rights of the Owner during any period of delinquency and may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or quarterly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or quarterly or other

installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.11 Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under this Article.

Section 6.12 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for Real Estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.13 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Board of Directors and upon the written

request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Board of Directors of the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. Unless such statement shall be issued (which shall include posting in the United States Mail) within fourteen (14) days of such written request, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Lot subsequent to requesting such statement. If the request is made by a prospective purchaser, both the lien for the unpaid Assessment and the personal obligations of the purchaser shall be released automatically if: (1) the statement is not furnished within the fourteen (14) day period provided for above; (2) after that period an additional written request is made by such purchaser and is not complied with within ten (10) days; and (3) the purchaser subsequently acquires the Lot.

Section 6.14 Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 6.15 Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

## ARTICLE 7

### ARCHITECTURAL APPROVAL/DESIGN REVIEW

Section 7.1 Required Approvals of Exterior Improvements and Changes. No building, fence, wall or structure of any kind, or doors (including garage doors and sliding glass doors) landscaping (including trees, shrubs and grass), windows, window wells, screens, patio or decks shall be commenced, erected, placed, altered, or maintained upon the Property, nor shall any exterior addition to or change or alteration, including painting and alterations in the drainage or flow of surface or subsurface water, be made on any Lot ("Improvements") until complete plans and specifications shall have been first submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Board of Directors. The Board of Directors may establish and delegate its responsibilities and duties set forth in this Article 7 to an Architectural Review Committee ("**Committee**"), in which case all references to the Board of Directors in this Article shall be deemed to include and refer to the Committee. A majority of the Board of Directors may approve or disapprove the plans and specifications under this Section and may also require that applications of

Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks, drainage patterns, and grading plan, as well as such other materials and information as may be required by the Design Guidelines.

Section 7.2 Design Guidelines. The Association, through its Board of Directors, shall have the power to make, establish and promulgate guidelines, or rules and regulations, relevant to architectural design review and approval, including, but not limited to, minimum design standards, minimum landscaping standards, procedures and fines or penalties for violation of the provisions of this Article.

Section 7.3 Review Procedures. The Board of Directors shall reply to all submittal of plans made in accordance herewith in writing within forty-five (45) days after receipt. The Board shall review and investigate all applications regarding improvements or changes and shall approve or disapprove all submittals of plans and specifications within forty-five (45) days of receipt of the complete application and such additional materials as may be requested by the Board. In the event the Board fails to approve or disapprove a request within forty-five (45) days after receipt of a complete application, the approval of the Board shall be deemed given, regardless of the number of days set forth on a Plat with respect to approval or disapproval. All communications and submittals shall be addressed to the Board at such address as the chairman of the Board shall hereafter designate in writing addressed and mailed to the Owners. It is the intent of this Article that the Board shall exercise broad discretionary powers in applying these provisions to its review process. The Board's decisions shall be final and conclusive except for an arbitrary abuse of discretion or actions taken outside the scope of its authority. The Board shall have the authority to resolve all questions of interpretation under this Article, in accordance with their general purpose and intent. All decisions of the Board shall be final.

In reviewing plans submitted to it, the Board shall take into consideration the design, style and construction of the proposed Improvement, its location on the Lot, the harmony of its design, architecture and location with the terrain and surrounding neighborhood and shall determine whether such proposed improvement is consistent with the general terrain, the architecture of other buildings located upon the properties subject to this Declaration and whether or not the construction or alteration of the improvement will adversely affect or decrease the value of other Lots because of its design, location, height, type of materials or other aesthetic considerations.

Section 7.4 Prosecution of Work After Approval. After approval, proposed

Improvements shall be accomplished as promptly and diligently as reasonably possible and in complete conformity with the description thereof, any materials submitted to or approved by the Board, and any conditions imposed by the Board. Failure to diligently prosecute and complete any proposed Improvements within a reasonable time, and in any event within one hundred eighty (180) days after the date of approval of the application, or to complete the Improvements in accordance with the description and materials furnished to, and the terms, conditions, and requirements imposed by, the Board, shall constitute a violation of this Article and the approval of such proposed Improvements previously granted by the Board shall thereupon be null and void. If the work approved is not completed within the 180 day period, the owner will be required to apply for new approval.

Section 7.5 Variances. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in a development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Property or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

Section 7.6 Waivers. The approval or consent of the Board of Directors, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Board as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 7.7 Liability. Neither the Architectural Review Committee nor any member thereof nor the Board of Directors nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee's or the Board of Directors' respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Review Committee or its member or the Board of Directors or its member, as the case may be. Neither the Board nor the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building, zoning or other codes.

ARTICLE 8  
MAINTENANCE

Section 8.1 Association Responsibility. The Association shall provide exterior maintenance upon each Lot as follows:

(a) Paint, repair, replace, maintain and care for exterior building surfaces, including siding (excluding glass surfaces, doors, screens, windows and window wells, which shall be the Owners' responsibility); maintain, repair and replace the roofs, gutters, and downspouts; plant and maintain trees, shrubs and grass, except for in the individual patio areas and fences around individual patio areas, which are the Owners' responsibility.

(b) All repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon including without limitation any landscaping, sprinkler system, any roadways, driveways, utility lines (to the extent not maintained by utility companies), any light fixtures, sidewalks and pathways, except that each Owner shall be responsible for cleaning and maintaining any sidewalk, pathway, or driveway leading to his Townhome, including snow removal to the extent the Association does not contract for snow removal within these areas.

(c) Repair, replacement, improvement and maintenance of all building foundations.

(d) Repair and replacement of any buildings or improvements upon Lots insofar as the Association receives insurance or condemnation proceeds to accomplish such repair and/or replacement.

(e) The Association may provide, on a shared basis with an Owner, for maintenance, repair, replacement and improvement of that portion of a fence around an individual patio area for owners at the end of a building for that portion of the fence as would otherwise be privately maintained as a common party wall fence between the individual patio area of two Townhomes.

(f) The Association may also undertake, but shall have no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property.

Section 8.2 Association Discretion. The Association may, in its sole discretion, assume the obligation for repair or maintenance of other exterior features not expressly included herein. The Association may, in its reasonable discretion, ascertain whether a maintenance obligation is the duty of the Association or an Owner. The Association, in

its sole discretion shall determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used.

Section 8.3 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Board of Directors, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 8.4 Owner Maintenance. Each Owner shall be responsible for all maintenance and repairs within his Lot and on his Townhome which are not provided by the Association, including without limitation, maintenance of his Townhome, any fixtures, furnishings, equipment and appliances located on his Lot and any patio or deck. Owners are responsible for planting and maintaining trees, shrubs and grass within their individual patio area. Owners with individual patio areas with fences, and with a fence shared with another Owner, shall be responsible for the maintenance, repair, replacement and improvement of the fence around their individual patio area, with that obligation equally shared for that portion of any fence shared with another Owner. Owners with individual patio areas at the end of buildings, where no portion of their fence is shared with another Owner, shall be responsible for the maintenance, repair, replacement and improvement of the fence around their particular area. Further, Owners shall be responsible for the doors (including frame, hardware, and defective installation), windows, (including skylights, frame, glass, screens, and defective installation), glass surfaces, sliding glass doors, and garage doors (including frame, hardware, glass, automatic garage door openers and locks), of his Townhome. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act or allow any conditions to exist which will adversely affect the use and enjoyment of the other Lots or the provision utility services to such Lots. No Owner shall, in whole or in part, change the landscaping or drainage pattern adjacent to his Lot by the addition or removal of any items thereon without the prior written consent of the Board of Directors. If an Owner fails to fulfill his responsibilities under this Section, the Board may, at its option, take such action as it deems appropriate, including without limitation performing the Owner's obligations, after ten (10) days' notice to such



Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Lot.

Section 8.5 Negligence. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject as set forth herein.

## ARTICLE 9 USE RESTRICTIONS

Section 9.1 Authority. The Association shall have the authority to issue and amend restrictions on use, occupancy and alienation of the Lots. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Existing Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (e) All penalties imposed are collectible as Assessments.

Section 9.2 Right of Owners Regarding Rules and Regulations. Except as otherwise provided in Section 9.3, the Board may not adopt any Rule in violation of the following provisions:

- (a) Equal Treatment. Rules and Regulations shall be reasonably and uniformly applied. Rules and Regulations shall be effective fifteen (15) days after delivery of written notice of adoption, amendment or repeal, together with a copy of the currently effective Rules and Regulations.

(b) Speech. The rights of Owners to display political signs and symbols in or on their Lots of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations in their Lots of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners.

(d) Household Composition. No Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit, which shall include traditional and non-traditional family groups, unmarried couples, and unrelated persons holding title as tenants in common and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair share use of the Common Elements.

(e) Activities within Lots. No Rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(f) Alienation. No rule shall prohibit transfer of any Lot, or require consent of the Association or Executive Board for transfer of any Lot.

Section 9.3 Single Family. Each Lot shall be occupied only by a single family and Owners thereof, its servants and guests, and only as a residence. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the community as a first class residential community, as reasonably determined by the Board of Directors, are prohibited. "Single family," for the purpose of this Declaration, shall be defined as an individual or two or more persons related by blood, marriage or adoption, or a group of unrelated persons living as a single housekeeping unit or pursuant to the Codes of Arapahoe County. The Board of Directors may make reasonable rules which limit the maximum occupancy permitted upon Lots in the Community.

Section 9.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets, as defined and determined by the Board of Directors, may be kept, provided that they are kept pursuant to the rules and regulations of the Association. No animals of any type may be kept for commercial purposes. The Board of Directors may institute such rules as it deems advisable for the control of pets and may impose such fines as are necessary, in its sole discretion, to enforce such rules and this Declaration.

Section 9.5 Signs. No advertising or commercial signs of any character may be placed upon a Lot or the Property without prior written approval of the Board of Directors, except that one sign containing less than 5 square feet of surface area per side and containing the words "For Rent", "For Sale", advertising a garage sale, or home security signs, may be placed upon a Lot.

Section 9.6 Common Areas. Except in the individual patio areas, no planting or gardening shall be done, and no signs, fences, hedges or walls or other structures shall be erected or maintained upon the Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or the Architectural Review Committee.

Section 9.7 Antenna. All exterior placement or installation of antenna, satellite dishes and other over the air reception devices less than one meter in diameter designed for reception of video signals within the Property shall be subject to the Association's rules and regulations to the extent permitted by federal law. Devices over one meter in diameter and radio reception devices may be installed only with the prior written approval of the Architectural Review Committee.

Section 9.8 Unsightliness. No unsightly objects or materials, as further set forth in the Rules and Regulations, shall be allowed to be placed or to remain upon the Property. Each Lot at all times shall be kept clean and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other materials shall be permitted to remain exposed upon any Lot so that the same are visible from the street. No condition shall be permitted within any Townhome, balcony, patio, deck, porch or enclosed backyard which is visible from other Townhomes or the Common Area and which is inconsistent with the design integrity of the Property as determined by the Board of Directors in its sole discretion, including, but not limited to, window treatments, draperies, shades, hangings, and articles kept or stored on balconies, patios, porches and decks.

Section 9.9 Vehicular Parking, Storage, and Repairs.

(a) All vehicles must be parked and stored in compliance with the Association Rules and Regulations.

(b) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property provided however that such activities shall not be performed for commercial purposes or the operation of a business. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

(c) Removal and/or replacement of oil and gas and their respective filters, and maintenance which has a potential of spilling oil, gas or other caustic fluids onto the Common Area is prohibited. Removal of all or part of the engine, transmission, differential, or other part of the power train, painting of a vehicle, maintenance that is not reasonably capable of being performed within three hours is also prohibited. Due to the corrosive and destructive nature of petroleum products, vehicle maintenance on asphalt parking spaces and driveways is expressly prohibited. Vehicles leaking fluids onto the asphalt will be issued a warning and towed if necessary. The Owner will be held financially responsible for any repairs to the asphalt surface.

(d) Abandoned or Inoperable Vehicles. No inoperative, abandoned, and/or unused motor vehicles shall be stored, parked, maintained, or kept within any part of the Common Area, including any street or way of access within Innsbruck. Such vehicles may be kept wholly inside the garage. Inoperative, abandoned, and/or unused motor vehicles shall mean any automobile, truck, trailer, recreational vehicle, motorcycle, motorbike, or similar vehicle which has not been driven under its own propulsion for a period of one week or longer. Inoperative, abandoned or unused motor vehicles not in compliance with this Section shall be subject to ticketing and/or towing as provided herein or by applicable law. In the event a vehicle will not be driven for longer than one week due to vacation or illness, the vehicle owner must contact the Association's management company to avoid a determination that the vehicle is inoperative, abandoned or unused.

Section 9.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be, or may become, an nuisance to, or cause annoyance, embarrassment, or disturbance to others.

Section 9.11 No Annoying Light, Sounds, or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, searchlights, speakers, horns, whistles, bells or other light or sound devices shall not be located or used on any portion of the Community except with the prior written approval of the Architectural Review Committee.

Section 9.12 Hazardous Activities. No activities shall be conducted on the Property, nor on improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 9.13 Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in a suitable clean container suitably located, solely for the purpose of garbage pickup. No garbage, refuse, trash or cuttings shall be placed out for the purpose of pickup any sooner than 4:00 p.m. on the day before the scheduled trash pickup. All trash and refuse containers, except when placed as noted above for the sole purpose of garbage pickup, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited. No dumpsters shall be permitted on the Common Area on any Lot unless approved by the Board.

Section 9.14 Clotheslines and Storage. No clotheslines, basketball hoops and backboards, drying yards, service yards, wood piles, carports, patio covers or similar structures, equipment or storage areas shall be allowed unless approved by the Board of Directors in its sole discretion. All such approved structures shall be located out of view of the street or of any neighboring Townhomes, or the balconies of neighboring townhomes.

Section 9.15 Use of the Common Area.

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

(b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Common Area which will deny reasonable ingress and egress for a substantial period of time to any Owner having access to his Lot from any street or sidewalk.

Section 9.16 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Executive Board, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

## ARTICLE 10

### COVENANT VIOLATION AND ENFORCEMENT

Section 10.1 Who May Enforce. Enforcement of this Declaration shall be by the Association or by an Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain violation and/or to recover damages, and such Owner's Lot shall be subject to foreclosure to enforce any lien created by this Declaration. The omission or failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Any action taken by the Association to correct such violation shall be at the sole cost and expense of such Owner (including any attorney fees incurred in conjunction therewith), and the Association shall charge and assess such Owner for the full cost thereof. The Association may levy fines for violations of the governing documents and such fines are payable and may be enforced in the same manner as payment of monthly assessments.

Section 10.2 Rules and Regulations. The Board of Directors may adopt Rules and Regulations governing enforcement procedures.

Section 10.3 Violation of Covenants Creates Liens. A violation of this Declaration shall create a lien against an Owner's Lot. The Association may elect to prepare and record a Notice of Lien with respect to each such Notice of Violation.

Section 10.4 Covenant Enforcement - Remedies. The remedies provided in the Governing Documents for the enforcement of this Declaration are cumulative and the

selection of less than all methods of enforcement shall not constitute an election of remedies so as to preclude other methods of enforcement subsequently or simultaneously.

Section 10.5 Limitations on this Article. Nothing in this Article is intended to limit or contravene, nor shall any provision thereof be construed to limit or contravene, any appropriate provision of the Governing Documents.

Section 10.6 Covenant Enforcement — Temporary or Permanent Restraining Orders. In the event of the recording of a Notice of Violation, the Association may, in addition to other remedies, commence an action for an injunction and for damages and for the issuance of a temporary or permanent restraining order. By acceptance of a conveyance as an Owner, said Owner waives any further notice of application to court for a temporary or permanent restraining order and waives the requirement of the posting of any bond as a condition thereof. The rules of court and statutes of the State of Colorado are expressly waived in the foregoing particulars. The within waiver shall extend to all persons or entities deriving any interest in said land by or through said Owner, including lienors and encumbrances.

## ARTICLE 11

### INSURANCE

Section 11.1 Insurance Carried. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least forty-five (45) days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(b) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to any First Mortgagees at least ten (10) days prior to expiration of the then current policies.

(c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(d) Prior to renewing casualty insurance and not less than every three (3) years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhouses and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(e) All policies of insurance shall provide that the insurance thereunder shall not be invalidated or suspended due to an Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy shall not be invalidated or suspended and shall remain in full force and effect.

Section 11.2 Casualty Insurance on the Townhouses and Common Areas. The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Areas, the Townhomes, and the other property of the Association in such amounts as it deems adequate to protect this property. The Association may provide additional insurance for the benefit of individual Lots. The insurance obtained by the Association on the Townhomes is not required to include improvements and betterments installed by Owners, personal property of the Owners, or liability for incidents occurring within the Lots or through the Owners' personal actions. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Arapahoe County. The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors, including but not limited to "inflation guard endorsement", "agreed upon amount endorsement," "Demolition endorsement," "increased cost of construction endorsement," "contingent liability endorsement," and a "code compliance or operation of building laws endorsement."



The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article. At least every three (3) years, the Association may obtain an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents one hundred percent (100%) of the replacement value of each Lot and the facilities in the Common Area.

Section 11.3 Liability Insurance. The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Townhomes and the Common Areas, including structural coverage of the Townhomes, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 11.4 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 11.5 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 11.6 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 11.7 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including workers' compensation insurance, officers' and directors' liability insurance, and flood insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 11.8 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 11.9 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including workers' compensation, unemployment and fidelity coverage.

Section 11.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 11.11 Insurance Guidelines. The Association may adopt insurance guidelines, separately, or as a part of any rules and regulations as the Association may adopt, and/or as a part of any design guidelines.

Section 11.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any First Mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, in its sole discretion, shall determine the use of any surplus of proceeds after the damaged property has been completely repaired or restored.

Section 11.13 Duty to Repair. Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 11.14 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 11.15 Insurance Obtained by Owners. Owners should carry other insurance on their Lots and personal property on their Lots for their benefit and at their expense, including all areas for which the Owner has a maintenance responsibility, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. Owners are further advised to obtain liability coverage for their individual lots and personal actions, including liability for personal injury, death or property damage. Insurance on personal property should include, but is not limited to, all furnishings, fixtures, appliances and equipment within a Townhome. All policies obtained by Owners shall contain waivers of subrogation.

Section 11.6 Claims. The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Area or an area for which the Association has a maintenance responsibility, or for damage to Common Area or any area which the Association maintains that originates in the Common Area or an area that the Association maintains, or for damages to the Common Area or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees.

(b) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to his or her Lot, to the Common Area, or to any area that the Association maintains, as the Association shall, in its sole discretion, determine to be the responsibility of the Owner.

(c) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 11.17 Association as Attorney-in-fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

## ARTICLE 12

### MISCELLANEOUS AND GENERAL PROVISIONS

Section 12.1 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.2 Covenants to Run. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 12.3 Termination. Termination of this Common Interest Community shall be in accordance with the Act.

Section 12.4 Attorney Fees. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association or any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce provisions of the Governing Documents, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

Section 12.5 Amendment of Declaration by Lot Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and for

time to time upon approval of at least two-thirds (2/3) of the votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Arapahoe County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.6 Repeal of the Act. In the event that the Act is repealed, the provisions of the Act in effect immediately before its repeal shall control this Declaration.

Section 12.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.10 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 12.11 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.12 Registration. Each Owner shall register his 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 shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices and demands intended to be served upon the Board of Directors or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of

the State of Colorado, together with a copy addressed to the President of the Association at his registered address.

Section 12.13 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.

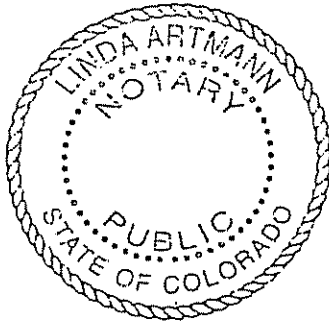
Section 12.14 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.



STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

The foregoing was acknowledged before me this 13 day of MARCH, 2000, by JAMES W. ROSS, as Secretary of Innsbruck in Aurora Homeowners Association, a Colorado nonprofit corporation.

Witness my hand and official seal.



Notary Public *Linda Artmann*  
My commission expires: 9/23/2001