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FOURTH AMENDMENT
TO
CONDOMINIUM DECLARATION
OF
CUCUMBER PATCH AT SHOCK HILL

This Fourth Amendment to the Condominium Declaration of Cucumber Patch at Shock Hill is made by L & D Development Corp., a Colorado corporation ("Successor Declarant").

WHEREAS, Peak 8 Properties, LLC as "Declarant" caused the Condominium Declaration of Cucumber Patch at Shock Hill ("Declaration") and A Condominium Map of Cucumber Patch at Shock Hill Phase I to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado, on December 15, 2000 at Reception Nos. 640465 and 640468 respectively; and

WHEREAS, Declarant caused the First Amendment to Condominium Declaration of Cucumber Patch at Shock Hill ("First Amendment") and A Condominium Map of Cucumber Patch at Shock Hill Phase II ("Phase II Map") to be recorded in the office of the Clerk and Recorder of Summit County, Colorado on April 5, 2001 at Reception Nos. 649291 and 649292 respectively; and

WHEREAS, Declarant caused the Second Amendment to Condominium Declaration of Cucumber Patch at Shock Hill to be recorded in the office of the Clerk and Recorder of Summit County, Colorado on August 20, 2001 at Reception No. 660529 ("Second Amendment"); and

WHEREAS, Declarant caused the Third Amendment to Condominium Declaration of Cucumber Patch at Shock Hill ("Third Amendment") and Condominium Map of Cucumber Patch at Shock Hill Phase III ("Phase III Map") to be recorded in the office of the Clerk and Recorder of Summit County, Colorado, on December 11, 2001 at Reception Nos. 670937 and 670938 respectively; and

WHEREAS, Declarant caused the Assignment of Declarant's Rights, Special Declarant's Rights and Expansion and Development Rights Pursuant to the Condominium Declaration of Cucumber Patch at Shock Hill to be recorded in the office of the Clerk and Recorder of Summit County, Colorado, on March 14, 2002 at Reception No. 678437 ("Assignment"); and

WHEREAS, pursuant to the terms of Article 16 of the Declaration and the Assignment, Successor Declarant has the right to amend the Declaration in connection with the exercise of expansion and development rights.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The additional Condominium Units 7 and 8 described and shown on A Condominium Map of Cucumber Patch at Shock Hill Phase IV recorded herewith ("Phase IV Map") are subjected to the Declaration.
2. Exhibit B to the Declaration, entitled the Table of Allocated Interests, as amended, is hereby amended in its entirety by the Final Exhibit B attached hereto and incorporated herein, which identifies each Condominium Unit and the floor area and allocated interest for each Condominium Unit described and shown on the Map, the Phase II Map, the Phase III Map and the Phase IV Map.
3. Exhibit C to the Declaration, entitled Voting Interests, as amended, which sets forth the voting interest of each Condominium Unit, is hereby amended in its entirety by the Final Exhibit C attached hereto and incorporated herein, which identifies each Condominium Unit and the voting interest for each Condominium Unit described and shown on the Map, the Phase II Map, the Phase III Map and the Phase IV Map.

IN WITNESS WHEREOF, Successor Declarant has executed this Fourth Amendment to the Condominium Declaration of Cucumber Patch at Shock Hill this 12th day of November, 2002.

L & D DEVELOPMENT CORP., a Colorado corporation

By: 

Stephen C. West, Attorney-in-Fact

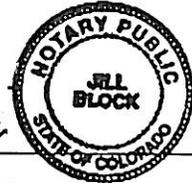
STATE OF COLORADO)
) ss:
 COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 12th
 day of November, 2002 by Stephen C. West as attorney-in-
 fact of L & D Development Corp., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 9/21/03

Jill Block
 Notary Public



My Commission Expires Sept 21, 2003
 117 Starlit Lane P.O. Box 5654
 Breckenridge, Colorado 80424

FINAL AMENDED EXHIBIT B
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Table of Allocated Interests

<u>Unit</u>	<u>Floor Area (Sq. Ft.)</u>	<u>Allocated Interest</u>
Townhome Unit 1	2813	7.76%
Townhome Unit 2	3101	8.55%
Townhome Unit 3	3138	8.65%
Townhome Unit 4	2807	7.74%
Townhome Unit 5	2593	7.15%
Townhome Unit 6	3054	8.42%
Townhome Unit 7	2917	8.04%
Townhome Unit 8	2953	8.14%
Townhome Unit 9	2920	8.05%
Townhome Unit 10	2932	8.09%
Townhome Unit 11	2988	8.24%
Townhome Unit 12	2953	8.14%
Apartment Unit	829	2.29%
<u>Garage 1</u>	<u>266</u>	<u>.73%</u>
Total	36264	100.00%

FINAL AMENDED EXHIBIT C
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Voting Interests

<u>Unit</u>	<u>Votes</u>
Townhome Unit 1	1
Townhome Unit 2	1
Townhome Unit 3	1
Townhome Unit 4	1
Townhome Unit 5	1
Townhome Unit 6	1
Townhome Unit 7	1
Townhome Unit 8	1
Townhome Unit 9	1
Townhome Unit 10	1
Townhome Unit 11	1
Townhome Unit 12	1
Apartment Unit	0.5
Garage Unit 1	<u>0</u>
Total	12.5

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THIRD AMENDMENT
TO
CONDOMINIUM DECLARATION
OF
CUCUMBER PATCH AT SHOCK HILL

This Third Amendment to the Condominium Declaration of Cucumber Patch at Shock Hill is made by Peak 8 Properties, LLC, a Colorado limited liability company, ("Declarant").

WHEREAS, Declarant caused the Condominium Declaration of Cucumber Patch at Shock Hill ("Declaration") and A Condominium Map of Cucumber Patch at Shock Hill Phase I to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado, on December 15, 2000 at Reception Nos. 640465 and 640468 respectively; and

WHEREAS, Declarant caused the First Amendment to Condominium Declaration of Cucumber Patch at Shock Hill ("First Amendment") and A Condominium Map of Cucumber Patch at Shock Hill Phase II ("Phase II Map") to be recorded in the office of the Clerk and Recorder of Summit County, Colorado on April 5, 2001 at Reception Nos. 649291 and 649292 respectively; and

WHEREAS, Declarant caused the Second Amendment to Condominium Declaration of Cucumber Patch at Shock Hill to be recorded in the office of the Clerk and Recorder of Summit County, Colorado on August 20, 2001 at Reception No. 660529 ("Second Amendment"); and

WHEREAS, Article 16 of the Declaration gives Declarant the right to amend the Declaration in connection with the exercise of expansion and development rights.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The additional Condominium Units 9 and 10, Apartment Unit and Garage 1 described and shown on A Condominium Map of Cucumber Patch at Shock Hill Phase III recorded herewith ("Phase III Map") are subjected to the Declaration.
2. First Amended Exhibit B to the Declaration, entitled the Table of Allocated Interests, which sets forth the floor area and allocated interest of each Condominium Unit shown on the Map and the Phase II Map, is hereby amended

by replacing said First Amended Exhibit B in its entirety with the Second Amended Exhibit B attached hereto and incorporated herein, which Second Amended Exhibit B identifies each Condominium Unit and the floor area and allocated interest for each Condominium Unit described and shown on the Map, the Phase II Map and the Phase III Map.

- 3. Exhibit C to the Declaration, entitled Voting Interests, which was recorded as part of the Second Amendment and which sets forth the voting interest of each Condominium Unit shown on the Map and Phase II Map, is hereby amended by replacing said Exhibit C in its entirety with the First Amended Exhibit C attached hereto and incorporated herein, which First Amended Exhibit C identifies each Condominium Unit and the voting interest for each Condominium Unit described and shown on the Map, the Phase II Map and the Phase III Map.

IN WITNESS WHEREOF, Declarant has executed this Third Amendment to the Condominium Declaration of Cucumber Patch at Shock Hill this 10th day of December, 2001.

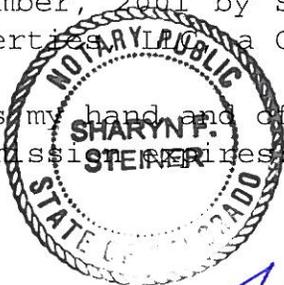
PEAK 8 PROPERTIES, LLC,
a Colorado limited liability company

By: [Signature]
Stephen C. West, Attorney-in-Fact

STATE OF COLORADO)
) ss:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 10th day of December, 2001 by Stephen C. West as attorney-in-fact of Peak 8 Properties, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires _____



My Commission Expires

5/4/02

[Signature]
Notary Public

SECOND AMENDED EXHIBIT B
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Table of Allocated Interests

<u>Unit</u>	<u>Floor Area (Sq. Ft.)</u>	<u>Allocated Interest</u>
Townhome Unit 1	2813	9.26%
Townhome Unit 2	3101	10.20%
Townhome Unit 3	3138	10.32%
Townhome Unit 4	2807	9.24%
Townhome Unit 5	2593	8.53%
Townhome Unit 6	3054	10.05%
Townhome Unit 9	2920	9.61%
Townhome Unit 10	2932	9.65%
Townhome Unit 11	2988	9.83%
Townhome Unit 12	2953	9.72%
Apartment Unit	829	2.73%
<u>Garage 1</u>	<u>266</u>	<u>.88%</u>
Total	30394	100.00%

THIRD AMENDED EXHIBIT C
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Voting Interests

<u>Unit</u>	<u>Votes</u>
Townhome Unit 1	1
Townhome Unit 2	1
Townhome Unit 3	1
Townhome Unit 4	1
Townhome Unit 5	1
Townhome Unit 6	1
Townhome Unit 9	1
Townhome Unit 10	1
Townhome Unit 11	1
Townhome Unit 12	1
Apartment Unit	1/2
Garage Unit 1	0



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SECOND AMENDMENT TO
CONDOMINIUM DECLARATION OF
CUCUMBER PATCH AT SHOCK HILL

This Second Amendment to Condominium Declaration for Cucumber Patch at Shock Hill is made by Peak 8 Properties, LLC, a Colorado limited liability company ("Declarant").

WHEREAS, Declarant caused the Condominium Declaration of Cucumber Patch at Shock Hill to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado on December 15, 2000 at Reception No. 640465 ("Declaration"); and

WHEREAS, Declarant caused the First Amendment to Condominium Declaration of Cucumber Patch at Shock Hill to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado on April 5, 2001 at Reception No. 649291 ("First Amendment"); and

WHEREAS, Exhibit C to the Declaration set forth the voting interests for Townhome Unit 1 and Townhome Unit 2, but should have set forth the voting interests for Townhome Unit 3 and Townhome Unit 4; and

WHEREAS, the First Amendment was recorded without an amended Exhibit C setting forth the voting interests of all of the Units then subjected to the Declaration; and

WHEREAS, Declarant wishes to correct the foregoing described technical errors; and

WHEREAS, Section 205(4) of Article 33.3 of Title 38 of the Colorado Revised Statutes grants Declarant the power and right to amend the Declaration to correct typographical or technical errors.

NOW, THEREFORE, Declarant hereby amends the Declaration and First Amendment by attaching hereto and filing herewith a First Amended Exhibit C setting forth the voting interests for all of the Units originally subjected to the Declaration by the filing thereof and subsequently subjected to the Declaration by the filing of the First Amendment.

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IN WITNESS WHEREOF, Declarant has executed this Second Amendment to Condominium Declaration of Cucumber Patch at Shock Hill this 20th day of August, 2000.

PEAK 8 PROPERTIES, LLC,
a Colorado limited liability
company

David Wilke

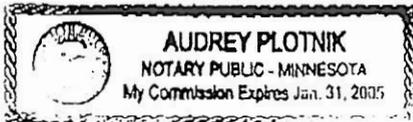
By:

David Wilke, Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF Wright)

The foregoing instrument was acknowledged before me this 20th day of August, 2001 by David Wilke as Manager of Peak 8 Properties, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: Jan 31, 2005

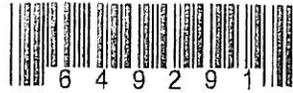


Audrey Plotnik
Notary Public

EXHIBIT C
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Voting Interests

<u>Unit</u>	<u>Votes</u>
Townhome Unit 1	1
Townhome Unit 2	1
Townhome Unit 3	1
Townhome Unit 4	1
Townhome Unit 5	1
Townhome Unit 6	1
Townhome Unit 11	1
Townhome Unit 12	1



FIRST AMENDMENT
TO
CONDOMINIUM DECLARATION
OF
CUCUMBER PATCH AT SHOCK HILL

This First Amendment to the Condominium Declaration of Cucumber Patch at Shock Hill is made by Peak 8 Properties, LLC, a Colorado limited liability company, ("Declarant").

WHEREAS, Declarant caused the Condominium Declaration of Cucumber Patch at Shock Hill ("Declaration") and A Condominium Map of Cucumber Patch at Shock Hill Phase I to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado, on December 15, 2000 at Reception Nos. 640465 and 640468 respectively; and

WHEREAS, Declarant wishes to expand the Project by the creation of additional Condominium Units pursuant to the terms and provisions set forth in Article 16 of the Declaration;

WHEREAS, Article 16 of the Declaration gives Declarant the right to amend the Declaration in connection with the exercise of expansion and development rights;

WHEREAS, Declarant wishes to correct a technical error on Exhibit B to the Declaration whereon the square footages of Townhome Units 3 and 4 were understated as the result of the omission of the area of the garage included as a part of each such Unit; and

WHEREAS, Section 205(4) of Article 33.3 of Title 38 of the Colorado Revised Statutes grants Declarant the power and right to amend the Declaration to correct such technical errors.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The additional Condominium Units, numbered 1, 2, 5, 6, 11 and 12, described and shown on A Condominium Map of Cucumber Patch at Shock Hill Phase II recorded herewith ("Phase II Map") are subjected to the Declaration.
2. Exhibit B to the Declaration, entitled the Table of Allocated Interests, which sets forth the floor area and allocated interest of each Condominium Unit shown on the Map, is hereby amended by replacing said Exhibit B in its

FIRST AMENDED EXHIBIT B
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Table of Allocated Interests

<u>Unit</u>	<u>Floor Area (Sq. Ft.)</u>	<u>Allocated Interest</u>
Townhome Unit 1	2813	12.00%
Townhome Unit 2	3101	13.23%
Townhome Unit 3	3138	13.38%
Townhome Unit 4	2807	11.97%
Townhome Unit 5	2593	11.06%
Townhome Unit 6	3054	13.03%
Townhome Unit 11	2988	12.74%
Townhome Unit 12	2953	12.54%
Total	23447	100.00%

for all purposes. All conveyances of Condominium Units after such expansion shall be effective to, transfer rights in all Common Elements as expanded, whether or not reference is made to any Amendment to this Declaration or the Map. Reference to this Declaration or the Map in any instrument shall be deemed to include all Amendments to this Declaration and Supplements to the Map without specific reference thereto.

Section 16.6. Maximum Number of Units. The maximum number of Units in the Project shall not exceed sixty (60), not including Garage Units, or, if allowed by the Act, the maximum number of Units allowed by any governmental entity having jurisdiction over the property, pursuant to any development plan for the Property and the Expansion Property. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

Section 16.7. Construction Easement. Declarant expressly reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion thereof. All work may be performed by Declarant without the consent or approval of any Owner or First Mortgagee or holder of any Security Interests. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on any of the property reserved for future development and/or other Real Estate owned by the Declarant. Declarant's reserved construction easements include the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement containing Units.

Section 16.8. Reciprocal Easements. If all or any part of the Expansion Property is not submitted to this Declaration, and until such time as such submission should occur if at all:

- (a) the owner(s) of the Expansion Property shall have whatever easements are necessary or desirable, if any, for access, utility services, repair, maintenance and emergencies over and across the Project; and
- (b) the Owner(s) in the Project shall have whatever easements are necessary or desirable, if any, for access, utility services, repair, maintenance and emergencies over and across the Expansion Property.

Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements, if any, and shall amend Exhibit D to this Declaration to include reference to the recorded easement(s). Such recorded easements shall specify that the owners of the Expansion Property and the Owners in the Project, shall be obligated to pay a proportionate share of the

cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s) so created. Preparation and recordation by the Declarant of any easement pursuant to this Section shall conclusively determine the existence, location, extent and validity of the reciprocal easements that are necessary or desirable and as contemplated in this Section.

Section 16.9. Termination of Expansion and Development Rights. The expansion and development rights reserved to Declarant, for itself, its successors and assigns, shall expire seven (7) years after the date of recordation of this Declaration in the Records, unless the expansion and development rights are reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board of Directors may impose on the subsequent exercise of the expansion and development rights by Declarant as provided by the Act.

Section 16.10. Interference with Expansion or Development Rights. Neither the Association nor any Owner may take any action or adopt any Rule or regulation that will interfere with or in any manner limit or diminish any expansion or development right reserved by this **Article 16** without the prior written consent of the Declarant. In the event of any controversy, dispute or litigation involving exercise of the reserved expansion or development rights by Declarant, this Declaration shall be interpreted so as to give the Declarant the broadest, most flexible expansion or development rights allowed by the Act.

Section 16.11. Transfer of Expansion or Development Rights. Any expansion or development rights created or reserved under this **Article 16** for the benefit of the Declarant may be transferred to any person by an instrument describing the rights so transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the intended transferee.

ARTICLE 17. INSURANCE

Section 17.1. Coverage. Commencing not later than the first conveyance of a Condominium Unit to a Purchaser and to the extent reasonably available, the Association shall obtain and maintain the following insurance coverages:

(a) Property Insurance. The Association shall maintain property insurance on the Common Elements for special form covered causes of loss in amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies. Such insurance shall cover all insurable improvements located on or constituting part of the Property (including, without limitation, the Units together with, unless the Association directs otherwise, the fixtures initially installed in the Units and replacements thereof up to the value of those initially installed by Declarant, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by Owners), together with all heating equipment and other service machinery contained therein and covering the interest of the Owners and their mortgagees, as their interest may appear.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all persons acting as agents. Owners shall be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association may maintain fidelity insurance in an amount not less than two (2) months current Assessments plus reserves as calculated from the current budget of the Association on all persons who control or disburse funds of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent, must obtain and maintain fidelity insurance in like amount for the benefit of the Association unless the Association names such person as an insured employee in the policy of fidelity insurance specified above.

(d) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Owners.

If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners and Eligible First Mortgagees at their respective last known addresses.

Section 17.2. Required Provisions. All insurance policies carried pursuant to the requirements of this Article must provide that:

- (a) each Owner is an insured person under the policy with respect to liability arising out of such owner's interest in the Common Elements or membership in the Association;
- (b) the insurer waives its rights to subrogation under the policy against any Owner or member of his household, except in the case of gross negligence by such Owner or member;
- (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
- (d) if, at the time of a loss under the policy, there is other insurance in the name of an owner covering the risks covered by the policy, the Association's policy provides primary insurance;

- (e) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest; and
- (f) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and any Owner(s) to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 17.3. Adjustment of Claims. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro-rata share of any deductible paid by the Association.

Section 17.4. Owners' Policies. Each Owner shall obtain additional insurance at his own cost for his own benefit so long as all such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be effected or diminished by reason of any such insurance carried by any Owner.

ARTICLE 18. RESTORATION UPON DAMAGE OR DESTRUCTION

Section 18.1. Duty to Restore. Any portion of the Project for which insurance is required under the Act or for which insurance carried by the Association is in effect that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Project is terminated;
- (b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;
- (c) eighty percent (80%) of the Owners, including every Owner of a Condominium Unit or appurtenant Limited Common Element that will not be rebuilt, vote not to rebuild; or
- (d) prior to the conveyance of any Condominium Unit to a Purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by Subparagraphs (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of Projects.

Section 18.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 18.3. Plans. The Property must be repaired and restored in accordance with either the original plans and

specifications or other plans and specifications which have been approved by the Board of Directors and a majority of Owners.

Section 18.4. Replacement of Less Than Entire Property. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project and, except to the extent that other persons will be distributees:

- (a) the insurance proceeds attributable to a Condominium Unit and Limited Common Elements that are not rebuilt must be distributed to the Owner of the Condominium Unit and the Owner of the Condominium Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;
- (b) the remainder of the proceeds must be distributed to each Owner or holders of Security Interests, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Condominium Units; and
- (c) if the Owners vote not to rebuild a Unit, the Allocated Interests of the Condominium Unit are reallocated upon the vote as if the Condominium Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 18.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and holders of Security Interests as their interest may appear. Subject to the provisions of **Sections 18.1 and 18.4** above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Owners, and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Project is terminated, in which event the surplus proceeds will be distributed as provided in **Section 18.4** above.

Section 18.6. Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

- (a) whether or not damaged or destroyed Property is to be repaired or restored; and
- (b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 18.7. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or holders of Security Interests, the Board of Directors and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording

of this Declaration stating the names of the Owners and the holders of Security Interest.

ARTICLE 19. CONDEMNATION

If all or part of the Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE 20. FIRST MORTGAGEE PROTECTIONS

Section 20.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 20.2. Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of First Mortgagees is required, it shall mean the approval or consent of fifty-one percent (51%) of First Mortgagees. Each First Mortgagee shall be entitled to one vote for each Security Interest held by such First Mortgagee.

Section 20.3. Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Condominium Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;
- (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 First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

Section 20.4. Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of fifty-one percent (51%) of the First Mortgagees:

- (a) conveyance or encumbrance of the Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other purposes provided for in this Declaration will not be deemed a transfer within the meaning of this clause);

- (b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;
- (d) merger of the Project with any other common interest community; or
- (e) any action not to repair or replace the Common Elements except as permitted in this Declaration.

Section 20.5. Notice of Objection. Unless a First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 20.6. First Mortgagees' Rights. First Mortgagees shall have the right, but not the obligation:

- (a) jointly or singly, to pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements, and after making such payments, shall be owed immediate reimbursement from the Association.
- (b) to cure any delinquency of the Owner, whose Condominium Unit is encumbered by a First Mortgage, in the payment of Assessments, in which event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 20.7. Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate:

- (a) to deny or delegate control over the general administrative affairs of the Association by the Owners or the Board of Directors;
- (b) to prevent the Association or Board of Directors from commencing, intervening in, and/or settling any legal proceeding; or
- (c) to prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article entitled "Restoration Upon Damage or Destruction".

Section 20.8. Special Declarant Rights. No provision or requirement of this Article entitled "Mortgagee Protections" shall apply to any Special Declarant Rights reserved to Declarant in this Declaration, including the reserved expansion and development rights.

ARTICLE 21. DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 21.1. Term. This Declaration and any amendments or supplements to it shall run with the land and be binding and in full force and effect in perpetuity, subject to the termination provisions hereof and of the Act.

Section 21.2. Amendment of Declaration. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration (including the Map) may be amended only by a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 21.3. Execution of Amendments; Expenses. Any amendment shall be prepared, executed, and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; and (c) in all other cases by the Association as a Common Expense.

Section 21.4. When Modifications Permitted. Notwithstanding the provisions of the Section above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 21.5. Recording of Amendments. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Owners, if any, and required consents of First Mortgagees and/or Eligible First Mortgagees, as applicable, were obtained and are on file in the office of the Association. The amendment must be indexed in the Grantee's Index in the name of the Project and the Association and in the Grantor's Index in the name of each person or entity executing the amendment.

Section 21.6. Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified actions of the Owners or the Association as a condition to the effectiveness of those actions as provided in the Article entitled "Mortgagee Protections".

Section 21.7. Termination of the Project. The Project may only be terminated as provided in the Act.

ARTICLE 22. MISCELLANEOUS

Section 22.1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Project Documents shall be through any proceedings at law or in equity brought by any aggrieved Owner, the Association, or Declarant against the Association or any Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted

violation, or an action for damages, or any of them, without the necessity of making an election. Venue for any such action shall be in Summit County, Colorado.

Section 22.2. Nonwaiver. Failure by Declarant, the Association, or any Owner, Occupant or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Project Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.3. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.4. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.5. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 22.6. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation of the Association or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation of the Association and the Bylaws, the Articles of Incorporation of the Association shall control.

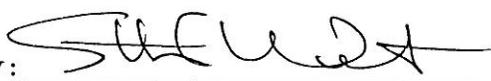
Section 22.7. Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 22.8. Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado.

Executed as of the 15th day of December, 2000.

DECLARANT:

PEAK 8 PROPERTIES, LLC,
a Colorado limited liability company

By: 

Stephen C. West, Attorney-in-Fact

EXHIBIT A
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Legal Description of Property

TRACT A, SHOCK HILL SUBDIVISION, ACCORDING TO THE PLAT
THEREOF FILED JUNE 17, 1999 AT RECEPTION NO. 598532

EXHIBIT B
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Table of Allocated Interests

<u>Unit</u>	<u>Floor Area (Sq. Ft.)</u>	<u>Allocated Interest</u>
Townhome Unit 3	2618	55.06%
Townhome Unit 4	2137	44.94%

EXHIBIT C
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Voting Interests

<u>Unit</u>	<u>Votes</u>
Townhome Unit 1	1
Townhome Unit 2	1

EXHIBIT D
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Easements and Licenses of Record

1. Right of Way for ditches and canals constructed by the authority of the United States Patent recorded May 31, 1998 under Reception No. 354410 and recorded September 16, 1994 under Reception No. 476175.

2. Dedications and easements set forth on the Plat of Master Plan for Shock Hill Subdivision filed December 21, 1998 under Reception No. 584377.

3. Easements set forth on the Plat of Shock Hill Subdivision filed June 17, 1999 at Reception No. 598532.

EXHIBIT E
TO
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

Expansion Property

TRACTS B AND C, SHOCK HILL SUBDIVISION, ACCORDING TO THE
PLAT THEREOF FILED JUNE 17, 1999 AT RECEPTION NO. 598532

be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Condominium Unit, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Condominium Unit for Assessments due and owing prior to the time such Purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the Purchaser of a Condominium Unit from liability for, or the Condominium Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.12. Statement of Status of Assessments. Upon ten (10) days' written notice to the Managing Agent or Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors, any Owner, holder of a Security Interest, prospective Purchaser of a Condominium Unit or their designees shall be furnished a statement of the Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Condominium Unit;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- (c) the date(s) for payment of any installments of any special Assessments outstanding against the Condominium Unit; and
- (d) any other information deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 10.13. Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law, and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Owner in the Common Elements except a Security Interest in the Common Elements granted by the Association pursuant to the requirements of the Act.

ARTICLE 11. MAINTENANCE RESPONSIBILITY

Section 11.1. Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial Purchasers of the Condominium Units, each Owner shall have the exclusive right and duty to paint,

tile, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows, and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries.

Section 11.2. Responsibility of the Owner. The Owner, at the Owner's expense, shall maintain and keep in good repair the interior of his Unit: All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in good repair by the Owner of that Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Subject to the Association's responsibility for maintenance of the Limited Common Elements as provided for in Section 9.1, each Owner shall be responsible for keeping any deck, balcony, patio or porch constituting a Limited Common Element appurtenant to his Condominium Unit in good, clean, attractive and sanitary condition, including cleaning and snow removal to the extent not undertaken by the Association. In addition, each Owner shall be responsible for routine maintenance and care of any other Limited Common Elements appurtenant only to the Owner's Unit, including, but not limited to, the interior of each garage designated as a Limited Common Element, and for keeping the same in a good, clean, sanitary, and attractive condition, to the extent such maintenance and care is not required to be undertaken by the Association. An Owner shall not be responsible for repairs occasioned by casualty unless such casualty is due to the act or negligence of the Owner or an Occupant of the Unit.

Section 11.3. Owner's Failure to Maintain or Repair. In the event that a Unit, the fixtures, equipment or utilities therein or Limited Common Elements appurtenant thereto are not properly maintained and repaired by the Owner as required pursuant to this **Article 11**, or in the event that the fixtures, equipment or utilities in the Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue repair and reconstruction to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit, fixtures, equipment or utilities therein or Limited Common Elements appurtenant thereto to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for unpaid Assessments.

Section 11.4. Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a default Assessment

determined and levied against such Condominium Unit, enforceable by the Association in accordance with this Declaration.

Section 11.5. Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Project not required in this Declaration to be maintained and kept in good repair by an Owner or by Declarant.

ARTICLE 12. MECHANICS' LIENS

Section 12.1. Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners, the Association, and the Declarant from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Unit, against the Condominium Unit of another Owner or against the Common Elements, or any part thereof.

Section 12.2. Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper); the Association shall enforce the indemnity provided by the provisions of this Article by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. If the Owner of the Condominium Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Condominium Unit, and enforceable by the Association pursuant to this Declaration.

ARTICLE 13. PERMITTED USES AND USE RESTRICTIONS

Section 13.1. Permitted Uses of Units. Except for uses reserved to Declarant in Article 15, all Townhome Units and the Apartment Unit shall be used for dwelling and lodging purposes only and the Garage Units shall be used for parking of motor vehicles and such storage as may be available without impeding the parking for the number of motor vehicles for which such Garage Unit was designed. Owners may rent or lease the Townhome and Apartment Units to others for the permitted purposes, and also may use them for home occupations which do not cause unreasonable disturbance to other Owners and which are permitted by applicable zoning or land use codes.

Section 13.2. Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association, provided that garages designated as Limited Common Elements may be used for such storage as may be available without impeding the parking of the number of motor vehicles for which such garage was designed without the need for written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

Section 13.3. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Project. No damage to or waste of the Common Elements shall be committed by any Owner or Purchaser, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, an Occupant of his Unit, or a Purchaser. Failure to so indemnify shall be a default by such Owner under this Section. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment levied against such Condominium Unit.

Section 13.4. Structural Alterations and Exterior Appearance. Without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, of the Association: no structural alterations to any Unit, including the construction of any additional skylight, window, door, or other alteration visible from the exterior of the Unit or to any Common Element shall be made or caused to be made by any Owner; no hot tub or spa may be placed upon any Limited Common Element, including, but not limited to, any patio or exterior deck; no window coverings, except as may be provided for in rules and regulations or other improvements, alterations, or decorations visible from outside a Unit shall be added by any Owner; and no alteration or subdivision of Units or relocation of boundaries between adjoining Units shall be made by any Owner. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section. Such Rules and Regulations shall include, but shall not be limited to, requirements that the applicant submit plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association or Declarant to review them, and pay any processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. The Rules and Regulations shall specifically consider the impact of the alteration on the harmony of external design and the location of the alteration in relation to surrounding structures and topography.

Section 13.5. Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others. No animals, birds, insects, or livestock of any kind shall be raised, bred, or kept on or in the Project, except Owners may keep no more than two (2) domesticated dogs, cats, or other household pets which do not unreasonably interfere with the use and enjoyment of the Project by others; provided, however, the Board of Directors may include in the Rules and Regulations restrictions, limitations, rules and regulations concerning the keeping and behavior of such pets on or in the Project, which may include the right to prohibit any such pets unreasonably interfering with the use and enjoyment of the Project by others.

Section 13.6. Limit on Timesharing. No Owner shall offer or sell any interest in such unit under a "timesharing" or "interval ownership" plan or any similar plan.

Section 13.7. Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by the Declarant during the Period of Declarant Control, and, thereafter, by the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Project only with the prior written approval of the Declarant during the Period of Declarant Control, and, thereafter, of the Association, which approval shall be given only if such signs are of attractive design and as small a size as reasonably possible, and shall be placed or located as directed or approved by the Declarant or the Association. Notwithstanding the foregoing, no signs advertising Condominium Units for sale or for rent may be displayed in windows of Units or on balconies or patios or in any other location in the Unit that is visible from the Common Elements or adjacent property.

Section 13.8. Restriction on Exterior Lighting. Any exterior light fixture or fixtures located in front of any Unit and connected to a photocell or timer at the time of the initial construction of the Project shall be under the control of the Association, without regard to the fact that the electric service for such light fixture may be provided through the meter for each such Unit, and no removal, replacement or alteration of any such light fixtures or the photocells, timing devices or other means of turning such fixtures on or off shall be made by or on behalf of any Owner.

ARTICLE 14. EASEMENTS

Section 14.1. Easement of Enjoyment. Every Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article and the easements and restrictions set forth in the Article entitled "Owners' Property Rights in Common Elements".

Section 14.2. Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, the Owner's right of enjoyment in the Common Elements to an Occupant of the Owner's Unit.

Section 14.3. Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, and as shown on the recorded Map and as reserved or granted under this Declaration. The recording data for recorded easements and licenses appurtenant to or included in the Property or to which any part of the Property may become subject is set forth on the attached Exhibit D.

Section 14.4. Easements for Encroachments. The Project, and all portions of it, are subject to easements hereby created for encroachments between Units and the Common Elements as follows:

- (a) in favor of all Owners so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;
- (b) in favor of each Owner so that the Owner shall have no legal liability when any part of his Unit encroaches upon the Common Elements or upon another Unit; and
- (c) in favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of a Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at the Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a default Assessment to the Owner.

Section 14.5. Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after

completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant or the Board of Directors shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

Section 14.7. Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.8. Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Condominium Units and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of an Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Owners shall be a Common Expense.

Section 14.9. Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

ARTICLE 15. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 15.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete the improvements constituting the Project and indicated on the Map filed with this Declaration, including the right to store materials and place construction trailers and a

temporary construction office on the Property and to make such other use of the Property as may be reasonably necessary to complete construction of the Project.

- (b) Sales Management and Marketing. The right to maintain a sales office and model, or combined sales office and model, and the right to maintain signs advertising the Project within the Common Elements until Declarant has conveyed all of its Condominium Units. The sales office and model, or combined sales office and model, may be in any one of the Units, which may or may not be specified on the Map. Declarant shall have the right to relocate the sales office, model or combined sales office and model from one Unit to another.
- (c) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Project.
- (d) Control of Association and Board of Directors. The right to appoint or remove any officer of the Association or any member of the Board of Directors, to the extent permitted under the Act and provided for in the Bylaws.
- (e) Signs. The right to maintain signs on the Common Elements advertising the Project.

Section 15.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 15.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

- (a) Dedications. The right from time to time to establish, by dedication or otherwise, and to vacate, utility and other easements for purposes including but not limited to streets, paths, trails, walkways, drainage, recreation, parking, driveways, ducts, shafts, flues, conduit, pipe and wiring, and to create other reservations, exceptions, and exclusions for the benefit of and to serve the Owners within the Project.
- (b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Owners and/or the Association.
- (c) Easement Rights. The rights to an easement over, across and through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations arising under this Declaration or the Act.
- (d) Other Rights. The right to exercise any Additional Reserved Rights created by any other provision of this Declaration.

Section 15.3. Limitations on Special Declarant Rights and Additional Reserved Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Rights or Additional Reserved Rights may be

exercised by the Declarant anywhere on the Property or within the Improvements so long as the Declarant (a) owns any Unit; (b) holds a Security Interest in any Unit(s); or (c) for seven (7) years after the date of recording this Declaration, whichever eventuality grants to Declarant the longest possible period for exercise of Special Declarant Rights and Additional Reserved Rights.

Section 15.4. Interference with Special Declarant Rights. Neither the Association nor any Owners may take any action or adopt any Rule and/or Regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of the Declarant. In the event any controversy, dispute, or litigation involving exercise of the reserved Special Declarant Rights by Declarant, this Declaration shall be interpreted so as to give the Declarant the broadest, most flexible Special Declarant Rights allowed by the Act.

Section 15.5. Rights Transferable. Any Special Declarant Rights or Additional Reserved Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 16. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS

Section 16.1. Expansion Rights. Declarant expressly reserves the right to subject all or any part of the property designated on Exhibit E (the "Expansion Property") to the provisions of this Declaration upon the substantial completion of the Improvements on the Expansion Property. The consent of the existing Owners, First Mortgagees or other holders of Security Interests shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

Section 16.2. Development and Withdrawal Rights. Declarant expressly reserves the right to create Units, Common Elements and Limited Common Elements (the "Additional Improvements"), to combine Units, to subdivide Units, to convert Units into Common Elements and to allocate Real Estate as Limited Common Elements on all or any portion of the Expansion Property reserved for future development in this Declaration or on the Map. Declarant may exercise any or all of the expansion and development rights reserved in this Declaration at any time with respect to any part or all of the Expansion Property. No assurances are made with respect to the boundaries of any parcel that may be developed or the order in which any parcel may be developed. Exercise of any expansion and development right with respect to any one parcel does not require the exercise of any such rights on any other parcel of the Expansion Property. No assurances are made, however, that any further development will occur. If all or any part of the Expansion Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Expansion Property that is reserved for future development in this Declaration or on the Map from the Project by recording a document signed by the Declarant and evidencing such withdrawal in the Records; provided, however, that no portion of such property may be withdrawn after a Unit in that portion of the property that has been added has been conveyed to a Purchaser. The Declarant alone is liable for all expenses in

connection with Expansion Property, except for expenses for maintenance and preservation of any easements or other property rights thereon created for the benefit of, and added by grant or otherwise to, the Project, which expenses shall be a Common Expense.

Section 16.3. Amendment of this Declaration. If Declarant elects to submit the Expansion Property, or any part thereof, or any Additional Improvements, to this Declaration, or to subdivide or to convert Units at such time as construction of the Improvements on the Expansion Property or the Additional Improvements are substantially complete, Declarant shall record an Amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The Allocated Interests appurtenant to each Unit in the Project, as expanded, shall be based on the formula set forth in Section 4.2. The Votes appurtenant to each Unit in the Project, as expanded, shall be based on the formula of one vote per townhome type unit and one-half vote per apartment type unit, which shall include any Unit restricted for use as an employee type unit by a covenant in favor of the Town. The Amendment so made to this Declaration shall contain a legally sufficient description of the Expansion Property, or the part thereof so added, or a description of the property on which the Additional Improvements being subjected to this Declaration are located, a schedule of the Allocated Interests appurtenant to the Condominium Units in the Project as expanded and a schedule of the Voting Interests appurtenant to the Condominium Units and the Project as expanded. The Amendment to this Declaration may contain such other provisions, restrictions and requirements relating to the Expansion Property or Additional Improvements as Declarant deems necessary or desirable.

Section 16.4. Supplement to the Map. Declarant shall, contemporaneously with the filing of the Amendment of this Declaration, file a Supplement to the Map showing the location of the Additional Improvements constructed on the Expansion Property or the construction, combination, subdivision, conversion or allocation of Units or Common Elements allowed by this Article 16. The Supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 16.5. Interpretation. Recording Amendments to this Declaration and any Supplements to the map in the Records shall automatically:

- (a) vest in each existing Owner the reallocated Allocated Interest appurtenant to his Unit; and
- (b) vest in each existing holder of a Security Interest a perfected (to the extent previously perfected) Security Interest in the reallocated Allocated Interest appurtenant to the encumbered Condominium Unit.

Upon the recording of an Amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Project as expanded. The Expansion Property, or any part thereof, or the Additional Improvements, shall be added to and become a part of the Property

a member of the Association and shall remain a member for the period of the Owner's ownership of a Condominium Unit. No Owner, whether one or more persons or entities, shall have more than one membership per Condominium Unit owned, but all of the persons or entities owning a Condominium Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Condominium Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit. If title to a Condominium Unit is held by more than one individual, by a firm, corporation, partnership, association, or other legal entity, or any combination thereof, such individuals or entities shall by written instrument executed by all such parties and delivered to the Association appoint and authorize one person or alternate persons to represent the Owners of the Condominium Unit. Such representative shall be a natural person who is an Owner, or a designated board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a manager of a limited liability company Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Owners as a member of the Association, and serve on the Board of Directors if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if the Association has not received the written instrument required above and if only one of the multiple Owners of a Condominium Unit is present at a meeting of the Association, such Owner is entitled to cast the entire weighted vote allocated to that Condominium Unit. If the Association has not received the written instrument required above and if more than one of the multiple Owners are present, the Association may assume that any Owner who casts the vote allocated to that Condominium Unit is entitled to do so unless one or more of the other Owners of the Condominium Unit promptly protest to the person presiding over the meeting. If such protest is made, the vote allocated to the Condominium Unit may only be cast by written instrument executed by all of the Owners of the Condominium Unit who are present at the meeting.

Section 8.2. Voting Rights and Meetings. Each Condominium Unit in the Project shall have a single weighted vote as set forth on Exhibit C, which votes have been determined by providing one vote for each Townhome Unit, one-half vote for each Apartment Unit and no votes for any of the Garage Units, provided, however, no vote allocated to a Condominium Unit owned by the Association may be cast. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Owners having twenty percent (20%), or any lower percentage specified in the Bylaws, of the total votes in the Association. Not less than fourteen (14) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States Mail to the mailing address of each Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association at which persons entitled to cast forty percent (40%) of the total votes which may be cast for election of the Board of Directors are present, in person or by proxy at the beginning of the meeting.

Section 8.3. Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures, and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the proposed budget adopted by the Board of Directors shall be mailed to the Owners within thirty (30) days after its adoption, along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Owners. Unless at the meeting a majority of the weighted votes of all Owners, rather than a majority of those weighted votes represented and being voted in person or by proxy, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners shall continue to be in effect until such time as the Owners ratify a subsequent budget proposed by the Board of Directors as provided above.

Section 8.4. Owners' and Association's Addresses for Notices. All Owners of each Unit Condominium shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Condominium Unit shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Condominium Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Condominium Unit or by such persons as are authorized to represent the interests of all Owners of the Condominium Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section. If the address of the Unit is the registered address of the Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the following address or such other address as the Board of Directors may designate from time to time by notice to the Owner(s):

Board of Directors
Cucumber Patch at Shock Hill Association
P.O. Box 187
Breckenridge, Colorado 80424

Notices given in accordance with this Section may be delivered or sent: by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one (1) day after deposit with the courier service; or by regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

Section 8.5. Transfer Information. All Purchasers of Condominium Unit(s) shall provide to the Association written notice of the Purchaser's name, address, Condominium Unit owned, date of transfer, and name of the former Owner within ten (10) days of the date of transfer. The Purchaser shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is

reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Units. The Association or Managing Agent shall have the right to charge the Purchaser a reasonable administrative fee for processing the transfer in the records of the Association.

Section 8.6. Declarant Control of the Association. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Board of Directors and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice recorded in the Records, but, in such event, Declarant may at its option require that specified actions of the Association or the Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

ARTICLE 9. ASSOCIATION POWERS AND DUTIES

Section 9.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for: the administration and operation of the Project; the exclusive management, control, maintenance, repair, replacement, and improvement of the General Common Elements, including keeping the same in good, clean, attractive, and sanitary condition, order, and repair; the management, control, maintenance, repair, replacement and improvement of the Limited Common Elements, including keeping Limited Common Elements in good, clean, attractive and sanitary condition, order and repair, except as otherwise provided herein. The Association shall not have any responsibility for the maintenance, repair, replacement or improvement of the interior of garages designated as Limited Common Elements. Further, the Association shall not have any responsibility for the cleanliness or sanitary condition of or snow removal from decks, balconies, patios or porches designated as Limited Common Elements appurtenant only to one Condominium Unit, except for such cleaning or snow removal as the Association may determine is necessary or appropriate. The expenses, costs, and fees of such management, control, operation, maintenance, repair, replacement and improvement by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired, or replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

Section 9.2. Association Powers. The Association shall have, subject to the limitations contained in this Declaration and the Act, the powers necessary for the administration of the affairs of the Association and the upkeep of the Project which shall include, but not be limited to, the power to:

- (a) adopt and amend Bylaws and Rules and Regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments for Common Expenses from Owners;
- (d) hire and terminate Managing Agents and other employees, agents, and independent contractors;
- (e) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Owners on matters affecting the Project;
- (f) make contracts and incur liabilities;
- (g) regulate the use, maintenance, repair, replacement and modification of the Common Elements, including, but not by way of limitation, the right to designate, reserve or otherwise restrict the use of Common Elements, such as outdoor parking spaces, in such a manner that they predominately, or exclusively, benefit fewer than all of the Units;
- (h) cause additional improvements to be made as part of the Common Elements;
- (i) acquire, hold, encumber, lease and convey in the Association's name any right, title, or interest to real property or personal property, provided, however, that Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act, and, provided further, that the Association is not entitled, by act or omission, to seek to abandon, encumber, sell or transfer the Common Elements unless two-thirds (2/3) of the Owners give their prior written consent;
- (j) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;
- (k) impose and receive any payments, fees, or charge for the use, rental, or operation of the Common Elements, other than Limited Common Elements, and for services provided to Owners;
- (l) impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessment, and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and an opportunity to be heard, levy reasonable fines for

violations of this Declaration, Bylaws and Rules and Regulations of the Association;

- (m) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (n) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;
- (o) assign the Association's right to future income, including the right to receive Assessments, but only to the extent this Declaration expressly provides;
- (p) exercise any other powers conferred by the Act, this Declaration, or the Bylaws;
- (q) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- (r) exercise any other powers necessary and proper for the governance and operation of the Association.

Section 9.3. Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Directors may act in all instances on behalf of the Association; provided, however, the Board of Directors may not act on behalf of the Association to amend this Declaration, to terminate the Project, or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of members of the Board of Directors, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

Section 9.4. Board of Directors Meetings. All meetings of the Board of Directors at which action is to be taken by vote will be open to the Owners, except that meetings of the Board of Directors may be held in executive session(s), without giving notice and without the requirement that they be open to Owners, in the following situations:

- (a) no action is taken at the executive sessions requiring the affirmative vote of the members of the Board of Directors; or
- (b) the action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual Owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board of Directors.

Section 9.5 Right to Notice and Hearing. Whenever the Project Documents require that an action be taken after "notice and an opportunity to be heard", the following procedure shall be observed:

- (a) the party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Managing Agent) shall give notice of the proposed action to all Owners whose interests the proposing party reasonably

determines would be significantly affected by the proposed action;

- (b) the notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken; and
- (c) the notice shall include a general statement of the proposed action and the date, time and place of the hearing.

At the hearing, the affected person shall have the right personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and to be heard shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 9.6. Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from Purchasers at the time of the initial sale of each Condominium Unit by Declarant an amount equal to three (3) months annual Assessments based on the Association's budget in effect at the time of the sale. Such payments to this fund shall not be considered advance payments of annual Assessments. At the time of any subsequent sale of each Condominium Unit, each Purchaser shall be responsible for reimbursing the prior Owner for an amount equal to the amount of the three (3) months annual Assessments on deposit with the Association for the Condominium Unit being purchased.

ARTICLE 10. ASSESSMENTS

Section 10.1. Commencement of Annual Assessments. Assessments for Common Expenses shall begin when this Declaration and the Map have been filed and a certificate of occupancy has been issued for at least one Unit and shall be payable by the Owner(s), including Declarant, of each Unit having received a certificate of occupancy. After the first Assessment has been made by the Association, Assessments shall be made no less frequently than annually.

Section 10.2. Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Project including maintenance, repair, and replacement of the Common Elements as required by the Act and the Project Documents. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, at the discretion of the Association, shall be added to reserves, credited to the Owners in proportion to their Common Expense

Liability, credited to them to reduce their future Assessments for Common Expenses, or any combination of the foregoing.

Section 10.3. Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Condominium Units in proportion to their Allocated Interests in the Common Elements, as determined by application of the formula set forth in Section 4.2 and shown in Exhibit B, subject to:

- (a) Common Expenses which are separately metered or assessed to the Units by third parties, except that the Association shall pay all the charges for water, including water separately metered to each Unit because water for sprinkler or irrigation systems or other exterior uses of the Association in maintaining the Common Elements will be provided through the water service for some or all of the Units;
- (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Elements which may be assigned, equally or on such other equitable basis as the Board of Directors shall determine, to the Condominium Units to which the specific Limited Common Elements are appurtenant;
- (c) Common Expenses or portions thereof predominately or exclusively benefitting fewer than all of the Units which shall be assessed against the Condominium Units benefitted;
- (d) any increased cost of insurance based upon risk which shall be assessed to the Condominium Units in proportion to the risk;
- (e) any Common Expense caused by the misconduct of any Owner(s), which may be assessed equally or on such other equitable basis as the Board of Directors shall determine against such Owner(s); and
- (f) any expenses which are charged equally to the Units.

All such allocations of Common Expenses to Units on a basis other than the Allocated Interests in the Common Elements shall be made at the sole discretion of the Board of Directors. Unless specifically allocated on a basis other than the Allocated Interests in the Common Elements, a presumption shall exist that costs and expenses are Common Expenses subject to allocation in accordance with the Units' Allocated Interests in the Common Elements. Any billing for an installment of Assessments may indicate items that are specially allocated as set forth above or items that are included in the Assessment and allocated based on the Units' Allocated Interests in the Common Elements but would commonly be the separate expense of the Owner, e.g., utility charges.

Section 10.4. Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may, at any time and from time to time, determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any

construction, reconstruction, repair, demolition, replacement, renovation, or maintenance of the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Condominium Units pursuant to the provisions in **Section 10.3**. Any special Assessment shall be subject to the same requirement for review and approval by the Owners as is the annual budget.

Section 10.5. Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the annual Assessments and any special Assessments which are to be paid in installments shall be paid no more frequently than monthly in advance and shall be due and payable to the Association at its office, or as the Board of Directors may otherwise direct, without notice (except for the initial notice of any special Assessment), on the first day of each month or other applicable payment period. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board of Directors may assess a late charge, default interest charge, fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. Until established or changed by the Board of Directors, the default interest charge shall be made at the rate of eighteen percent (18%) per annum. An Owner's Assessment shall be prorated if the ownership of a Condominium Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period.

Section 10.6. Default Assessments. All Costs of Enforcement assessed against an Owner pursuant to the Project Documents, or any expense of the Association which is the obligation of an Owner pursuant to the Project Documents shall become a default Assessment assessed against the Owner's Unit. Notice of the amount and demand for payment of such default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 10.7. Covenant of Personal Obligation for Assessments. Declarant, by creating the Condominium Units pursuant to this Declaration, and all other Owners, by acceptance of the deed or other instrument of transfer of his Condominium Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Condominium Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Condominium Unit.

Section 10.8. Lien for Assessments; Assignment of Rents. The Assessments (including installments of the Assessments) arising under the provisions of the Project Documents shall be burdens running with, and a perpetual lien in favor of the Association, upon the specific Condominium Unit to which such Assessments apply. To further evidence such lien upon a specific Condominium Unit, the Association shall prepare a written lien notice setting forth the description of the Condominium Unit, the amount of Assessments on the Condominium Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Owner or Owners of the Condominium Unit, and any and

all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Condominium Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied. Upon any default in the payment of annual, special, or default Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Condominium Unit payable to the Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Owner, by ownership of a Condominium Unit, agrees to the assignment of such rents, profits, and income to the Association effective immediately upon any default in the payment of annual, special, or default Assessments.

Section 10.9. Remedies for Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen:

- (a) interest shall accrue at the default rate set by this Declaration or the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment;
- (b) the Association may accelerate and declare immediately due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred;
- (c) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same; and
- (d) the Association may proceed to foreclose its lien against the particular Condominium Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Condominium Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Condominium Unit acquired in such proceedings.

Section 10.10. Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments on the Condominium Unit, and notwithstanding the Association's perpetual lien upon a Condominium Unit for such Assessments, all Purchasers shall be jointly and severally liable

with the prior Owner(s) for any and all unpaid Assessments against such Condominium Unit, without prejudice to any such Purchaser's right to recover from any prior Owner any amounts paid thereon by such Purchaser. A Purchaser's obligation to pay Assessments shall commence upon the date the Purchaser becomes the Owner of a Condominium Unit. For Assessment purposes, the date a Purchaser becomes the Owner shall be determined as follows:

- (a) in the event of a conveyance or transfer by foreclosure, the date a Purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods;
- (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a Purchaser shall be deemed to become the Owner of a Condominium Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Condominium Unit, irrespective of the date the deed is recorded; and
- (c) in the event of conveyance or transfer by deed, a Purchaser shall be deemed to become the Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Condominium Unit, irrespective of the date the deed is recorded.

However, such Purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named Purchaser pursuant to the provisions set forth below in this Declaration.

Section 10.11. Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Condominium Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Condominium Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (b) the lien of any First Mortgagee except to the extent the Act grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Condominium Unit by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any Purchaser at a foreclosure sale of the First Mortgage, will take the Condominium Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Condominium Unit which accrue prior to the time such First Mortgagee acquires title to the Condominium Unit, except to the extent the amount of the extinguished lien may be reallocated and assessed to all Condominium Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Condominium Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall



Cheri Brunvand-Summit County Recorder 12/15/2000 14:38 DF:

CONDOMINIUM DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

250.00

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for
DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

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DECLARATION
OF
CUCUMBER PATCH
AT
SHOCK HILL

THIS DECLARATION OF CUCUMBER PATCH AT SHOCK HILL ("Declaration") shall be effective upon recordation and is made by PEAK 8 PROPERTIES, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Summit County, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Property"). Declarant hereby makes the following grants, submissions and declarations:

ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1. Purpose. The purpose of this Declaration is to create a Project known as Cucumber Patch at Shock Hill ("Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time ("Act").

Section 1.2. Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, sale, and condominium ownership of the Project, to create a harmonious and attractive development, and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Project.

Section 1.3. Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.

Section 1.4. Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1. "Act" means the Colorado Common Interest Ownership Act as defined in **Section 1.1** hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2. "Allocated Interest" means the undivided interest in the Common Elements and the Common Expense Liability allocated to each of the Units in the Project. The formula used to establish each Allocated Interest is described in **Article 4**. The Allocated Interest for each Unit is set forth on Exhibit B.

Section 2.3. "Apartment Unit" means a Unit depicted on the Map and identified on Exhibit B as an Apartment Unit with a separate number or letter.

Section 2.4. "Assessments" means the annual, special and default Assessments levied pursuant to this Declaration.

Section 2.5. "Association" means Cucumber Patch at Shock Hill Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.6. "Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association and in the Act.

Section 2.7. "Building" means any building (including all fixtures and improvements contained therein) located on the Property in which Units are located.

Section 2.8. "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto.

Section 2.9. "Common Elements" means all of the Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

- (a) the Property;
- (b) the Improvements, except for the Units;
- (c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, gardens, outdoor parking areas, detention ponds or other drainage structures and related facilities upon the Property;
- (d) utility services to the Improvements consisting of the equipment and materials providing services such as electricity, gas, water, sewer, cable television and telephone, which exist for use by one or more of the Owners, including the pipes, lines, conduits, wires and other similar utility installations used in connection therewith; and
- (e) in general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the separate Condominium Units, each Owner of a Condominium Unit having an undivided interest in the Common Elements as allocated in Exhibit B. The Association and each Owner shall have an undivided non-exclusive right of use and enjoyment as provided for in this Declaration.

Section 2.10. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.11. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

- (a) expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;
- (b) expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws;
- (c) all sums lawfully assessed against the Units by the Board of Directors;
- (d) expenses agreed upon as Common Expenses by the members of the Association; and
- (e) expenses provided to be paid pursuant to any Management Agreement.

Section 2.12. "Condominium Map" or "Map" means that part of this Declaration which meets the requirements of a land survey plat as set forth in C.R.S. 38-51-106, depicts all or any portion of the Project in three dimensions, is executed by the Declarant, and is recorded in the Records, and any supplement or amendment thereto.

Section 2.13. "Condominium Unit" means the fee simple interest in and to a Unit, together with the undivided interest in the Common Elements appurtenant to the Unit, as allocated in Exhibit B.

Section 2.14. "Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorney fees and disbursements, including legal assistant fees, incurred by the Association in connection with the collection of annual, special, and default Assessments or in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

Section 2.15. "Declarant" means Peak 8 Properties, LLC, a Colorado limited liability company and its successors and assigns.

Section 2.16. "Declaration" means this Declaration, and any supplement or amendment to this Declaration. The term Declaration includes the Map recorded with this Declaration without specific reference thereto, and any supplement or amendment thereto.

Section 2.17. "Eligible First Mortgagee" means a First Mortgagee which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for in the Article entitled "Mortgagee Protections".

Section 2.18. "First Mortgagee" means a holder of a Security Interest on a Condominium Unit which has priority over all other Security Interests on the Condominium Unit.

Section 2.19. "Garage Unit" means a Unit depicted on the Map and identified on Exhibit B as a Garage Unit with a separate number or letter.

Section 2.20. "General Common Elements" means the Common Elements, except for the Limited Common Elements.

Section 2.21. "Improvements" means the building(s) (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, flues, roofs, patios, decks, balconies and exterior stairways, but not including any hot tub or similar fixture placed by or at the request of an Owner outside of any Unit) located on the Property in which Units or Common Elements are located.

Section 2.22. "Limited Common Elements" means those parts of the Common Elements which are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include: any balcony, deck, patio, or porch appurtenant to or accessible only from a Unit; any doorstep, stoop, porch or entry area designated to serve a single Unit; and any garage not attached to and included as a part of a Unit or any parking space outside of a Unit, and designated as a Limited Common Element in this Declaration or on the Map. If any chase, flue, duct, cable, wire, conduit, water or sewer line, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving that Unit is a Limited Common Element allocated solely to that Unit and any portion thereof serving more than one Unit or any portion of the General Common Elements is a part of the General Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or designated on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Owners, except by invitation. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.23. "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.24. "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.25. "Occupant" means any member of an Owner's family, or an Owner's guests, invitees, servants, tenants, employees, or licensees, who occupies a Unit or is on the Common Elements for any period of time.

Section 2.26. "Owner" means the Declarant or any other person or entity who owns record title to a Condominium Unit (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Unit unless such person

has acquired record title to the Condominium Unit pursuant to foreclosure or any proceedings in lieu of foreclosure.

Section 2.27. "Period of Declarant Control" means the maximum period of time defined and limited by the Act during which the Declarant may, at its option, control the Association.

Section 2.28. "Project" means the term as defined in **Section 1.1** hereof.

Section 2.29. "Project Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation of the Association, the Bylaws, the Map, and any procedures, Rules and Regulations, or policies relating to the Project adopted under such documents by the Association or the Board of Directors.

Section 2.30. "Property" means the real property described in the attached Exhibit A.

Section 2.31. "Purchaser" means a person or entity, other than a Declarant, who by means of a transfer acquires a legal or equitable title in a Condominium Unit, other than a leasehold estate in a Condominium Unit of less than forty (40) years or a Security Interest.

Section 2.32. "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with the conveyance of land, though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

Section 2.33. "Records" means the office of the Clerk and Recorder of Summit County, Colorado.

Section 2.34. "Rules and Regulations" means the rules and regulations promulgated by the Board for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Project Documents, as amended and supplemented from time to time.

Section 2.35. "Security Interest" means 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, trust deed, 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 title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.36. "Special Declarant Rights" means those rights reserved by Declarant in **Article 16** of this Declaration.

Section 2.37. "Town" means the Town of Breckenridge, a Colorado municipal corporation.

Section 2.38. "Townhome Unit" means a Unit depicted on the Map and identified on Exhibit B as a Townhome Unit and by a separate number or letter.

Section 2.39. "Unit" means a single unit depicted on the Map and identified on Exhibit B by a separate number, letter, address or other symbol and shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling or floor covering, windows, window frames, doorsteps, doors and door frames. A Unit shall also include any fireplace or firebox. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. A Unit shall include any heating and cooling elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, gas, telephone, cable television or other utility services to or for the Unit and located within the unfinished walls, ceilings, and floors; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but serving more than one Unit.

Section 2.40 "Voting Interest" means the votes in the Association allocated to each of the Units in the Project as set forth on Exhibit C.

ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1. Division Into Condominium Units. The Property is hereby divided into two Condominium Units including two (2) Townhome Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Condominium Units. The total of the undivided interests in the Common Elements set forth in Exhibit B, rounded to the nearest one-hundredth percent (.01%), shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

Section 3.2. Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated on the Map and each Unit is identified by a number, letter or combination thereof, and those numbers, letters or combinations are set forth in Exhibit B.

Section 3.3. Inseparability of Condominium Unit. Except as provided in **Section 3.5** below, no part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration. Each Condominium Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Condominium Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Condominium Unit or any part thereof shall be presumed to be a disposition of the entire Condominium Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association.

Section 3.4. Nonpartitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any

action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Condominium Unit, each Owner of the Condominium Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5. Alterations and Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Except as provided for in Section 3.6, no Owner shall have the right to subdivide his Unit, relocate boundaries between his Unit and an adjoining Unit, or reallocate Common Elements between or among Condominium Units.

Section 3.6. Combination and Resubdivision of Combined Units. Declarant or the Owner(s) of two or more adjoining Units in a single Building shall have the right to physically combine such Units. In order to accomplish such combination, the Owner(s) may knock down existing, or create additional, interior walls subject to the terms of this Section and any other applicable provisions of this Declaration. Upon the combination of any Units, the Unit resulting from such combination shall be allocated the undivided interests of the predecessor Units in and to the General Common Elements and the Limited Common Elements. The Owner(s) must first obtain the consent of the Association and all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights hereunder. The cost and expense incurred for legal, architectural and/or engineering fees and all costs and expenses incurred by the Association shall be borne by the Owner(s) requesting such a combination of Units.

In order to combine any Units as provided above, the Owner(s) of such Units shall submit an application to the Association, which application shall be executed by such Owner(s) and shall include: (a) evidence that the proposed combination of Units complies with all building codes, fire codes and other applicable ordinances or resolutions adopted and enforced by the governmental authorities having jurisdiction over the Project; (b) the proposed reallocations; (c) the proposed form of amendments to this Declaration, including the Map, as may be necessary to show the Unit which is created by the combination of Units and its dimensions and identifying numbers; if requested by the Owner(s) or the Association; (d) a deposit against legal, architectural and/or engineering fees and all costs and expenses which the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Association; (e) evidence satisfactory to the Association that the Owner(s) have obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action; (f) indemnification of the Association by the Owner(s) for any and all matters relating to the proposed action; and (g) such other information as may be reasonably requested by the Association. Any amendment effectuating the combination of Units shall be signed by all Owners and First Mortgagees of the Units to be combined and on behalf of the Association and recorded, but shall not be required to be signed by other Owners or First Mortgagees.

Any combination of Units created in accordance with this Section 3.6 may be resubdivided by the Owner(s) into the Units as they existed prior to the combination, provided that the procedures required for combination as set forth in this Section, including, but not limited to the application procedure set forth in the preceding paragraph, are complied with by the Owner(s). If an amendment to this Declaration effectuating the combination of Units were signed and recorded, then an amendment effectuating the resubdivision shall be submitted, signed and recorded in the same manner as provided above for an amendment effectuating a combination.

ARTICLE 4. ALLOCATED INTERESTS

Section 4.1. Allocation of Interests. The Allocated Interest determined by Declarant and assigned to each Unit is set forth on Exhibit B. Each Allocated Interest has been determined in accordance with the formula set out in **Section 4.2** below.

Section 4.2. Formula for the Allocation of Interests. The undivided interest in the Common Elements and the Common Expense Liability allocated to each Unit are based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Project and have been calculated in accordance with the following formula: divide the floor area for each Unit by the total floor area of all Units in the entire Project and multiply the quotient derived thereby by one hundred and express such resultant product as a percentage. The floor area of each of the Units shall be determined by the Declarant for purposes of this **Section 4.2** and is set forth on Exhibit B.

Any specified percentage, portion, or fraction unless otherwise stated in the Project Documents, means the specified percentage, portion, or fraction of all of the Allocated Interests. The determination of the floor area for each Unit by Declarant shall be final and conclusively presumed to be accurate for purposes of determining the Allocated Interests pursuant to this **Article 4**.

ARTICLE 5. CONDOMINIUM MAP

Section 5.1. Condominium Map. The Map shall be filed in the Records. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a Purchaser. The Map shall include a Plat which shows the following:

- (a) the name and a general schematic map of the entire Project;
- (b) the location and dimensions of all Real Estate not subject to Development Rights, or subject only to the Development Right to withdraw, and the location and dimensions of all existing improvements within that Real Estate;
- (c) the extent of any existing encroachments across any Project boundary;

- (d) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Project; and
- (e) the distance between any noncontiguous parcels of Real Estate comprising the Project.

The Map shall also show the following:

- (f) the location and dimensions of the vertical boundaries of each Unit and that Unit's identifying number;
- (g) horizontal Unit boundaries, if any, with reference to all established data;
- (h) the approximate location and dimensions of all General Common Elements; and
- (i) the approximate location and dimensions of all Limited Common Elements, and, if not accessible only from one Unit, the designation of the Condominium Unit to which the Limited Common Element is appurtenant.

The Map shall contain such other information, certificates and depictions as may be required by the Act and a certificate of a registered and licensed land surveyor certifying that the Map was prepared subsequent to the substantial completion of the improvements and contains all information required by this Declaration and the Act. Each supplement or amendment to the Map shall contain like information and a like certificate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

ARTICLE 6. LEGAL DESCRIPTION, CONVEYANCE AND TAXATION OF UNITS

Section 6.1. Contracts to Convey Entered into Prior to Recording of Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this Article and may indicate that this Declaration and Map are to be recorded.

Section 6.2. Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of this Declaration and Map, contracts to convey, instruments of conveyance of Condominium Units, and every other instrument affecting title to a Condominium Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

_____ Unit _____, Cucumber Patch at Shock Hill, according to the Declaration of Cucumber Patch at Shock Hill recorded _____, under Reception No. _____ and the Condominium Map recorded _____, under Reception No. _____ in the office of the Clerk and Recorder of Summit County, Colorado.

Section 6.3. Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Condominium Unit which legally describes a Unit substantially in the manner set forth above shall be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it, and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.4. Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, each of the Condominium Units shall be separately valued and assessed for property tax purposes. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or any other governmental charge shall divest or in any way affect the title to any other Condominium Unit.

ARTICLE 7. OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 7.1. General Common Elements. Every Owner and Occupant shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of access to and from the Units and Limited Common Elements from the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to each Condominium Unit; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;
- (b) the right of the Association to adopt, from time to time any and all rules and regulations concerning vehicular traffic and travel upon, in, under and across the Project, including, but not by way of limitation, the right of the Association to adopt rules restricting or reserving the use of outdoor parking spaces; and
- (c) the right of the Association to adopt, from time to time, any and all rules and regulations concerning the Project as the Association may determine is necessary or prudent for the management, preservation, safety, control and orderly operation of the Project for the benefit of all Owners and Occupants, and for facilitating the greatest and most convenient availability and use of the Units and Common Elements by Owners and Occupants.

Section 7.2. Limited Common Elements. Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Condominium Unit.

ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATIONS

Section 8.1. Association Membership. The Association's Articles of Incorporation have been filed. Every Owner shall be