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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ELEMENTS AT EDGEMONT HIGHLANDS TOWNHOMES**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ELEMENTS AT EDMONT HIGHLANDS TOWNHOMES**

This Declaration of Covenants, Conditions and Restrictions for Elements At Edgemont Highlands Townhomes (hereafter the "Declaration") is made as of \_\_\_\_\_, 2014, by Elements Durango, LLC, a Colorado limited liability company ("Declarant").

1. RECITALS AND DECLARATION.

1.1 Declarant is the owner of the real property situated in the County of La Plata, State of Colorado, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

1.2 Declarant desires to create a residential townhome common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101 *et seq.* ("CCIOA") on the Property, the name of which is Elements At Edgemont Highlands Townhomes.

1.3 The planned community will consist of no more than 32 total residential lots at full build-out with townhome improvements constructed thereon, and general and limited common elements for the benefit of the community. The planned community may be completed in phases.

1.4 Declarant incorporates all of the terms, conditions and Plat notes of Elements At Edgemont Highlands Townhomes Plat, as hereinafter defined. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of CCIOA.

2. DEFINITIONS.

2.1 Annual Assessments shall mean the charges levied and assessed each year against a Lot.

2.2 Articles shall mean Articles of Incorporation and any amendments thereto for the Elements At Edgemont Highlands Townhome Association, Inc., a Colorado nonprofit corporation.

2.3 Assessments shall mean the Annual, Special and Default Assessments levied pursuant to Article 6 below.

2.4 Association shall mean Elements At Edgemont Highlands Townhomes Association, Inc., a Colorado nonprofit association, and its successors and assigns.

2.5 Association Documents shall mean this Declaration, the Articles, the Bylaws, the Plat and any procedures, rules, regulations or policies adopted under such documents by the Association and as may be amended from time to time.

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

2.7 Clerk And Recorder shall mean the office of the Clerk and Recorder in the County of La Plata, Colorado.

2.8 CCIOA shall mean the Colorado Common Interest Ownership Act, §§ 38-33.3-101, *et seq.*

2.9 Community Association shall mean the Edgemont Highlands Community Association, Inc. described in the Declaration of Covenants, Conditions and Restrictions of Edgemont Highlands recorded May 11, 2004 as Reception No. 884350, and as subsequently amended and restated by documents recorded at Reception Nos. 893236, 894237, 896541, 906547, 925868, 925870, 943223, 993084, 950576, 1020189, 1059149, 1060591 and 1060592 in the La Plata County Clerk and Recorder's office.

2.10 Common Expenses shall mean (i) all expenses as expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the General Common Elements, Limited Common Elements and landscaping; (iii) insurance premiums for the insurance carried under Article 8; and (iv) all expenses lawfully determined to be common expenses by the Executive Board, including any allocations to reserves, which expenses shall be assessed based upon the Allocated Interests defined herein. "Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot as set forth on the attached Exhibit B, which interests are allocated as follows:

(a) Seventy-five percent of the Common Expenses liability shall be split equally between all Lot Owners. The remaining twenty-five percent shall be calculated on the basis of a fraction, the numerator of which is the square footage of such Lot as set forth on the Plat and the denominator of which is the total square footage of all Lots in the Project as of the date of the calculation. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share of the remaining twenty-five percent.

(b) One (1) vote in the Association is allocated to each Lot in the Project as of the date of the calculation.



(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant, once improvements have been constructed to completion thereon.

2.11 County shall mean La Plata County, Colorado.

2.12 Declaration shall mean this Declaration and the Plat, and amendments and supplements to the foregoing.

2.13 District shall mean the Edgemont Ranch Metropolitan District, formed under the Colorado Special Improvement Act, Title 32, on the 13<sup>th</sup> day of July, 1983, and filed in the La Plata County Clerk and Recorder's Office under Reception No. 485901.

2.14 Easement(s) shall mean the rights reserved for the benefit of adjacent properties as well as those granted to the Association or Lot Owners by Declarant to use a portion of the air and ground space over the Property which Easements are set forth on the Plat.

2.15 Elements At Edgemont Highlands Townhomes shall mean all the real property described on Exhibit A attached hereto, together with any other future real property that may become part of the Project.

2.16 Executive Board shall mean the governing body of the Association.

2.17 First Lienor shall mean any person named as a mortgagee or beneficiary in any first mortgage, or any successor to the interest of any such person under such first mortgage.

2.18 General Common Element(s) shall mean all real and personal property of the Project excluding Lots, and shall have the same meaning as set forth in CCIOA.

2.19 Limited Common Element(s) shall mean the portion of the General Common Elements assigned for the exclusive use and enjoyment for some, but not all Lots, and shall have the same meaning as set forth in CCIOA.

2.20 Lot shall mean the subdivided parcels of land designated by number on the Plat and designated for separate ownership or occupancy. "Lot" shall further have the same meaning as "Unit" under CCIOA.

2.21 Manager shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.22 Master Declarations shall mean the Declaration of Covenants, Conditions

and Restrictions of Edgemont Highlands recorded May 11, 2004 as Reception No. 884350, as subsequently amended and restated by documents recorded at Reception Nos. 893236, 894237, 896541, 906547, 925868, 925870, 943223, 993084, 950576, 1020189, 1059149, 1060591 and 1060592, in the La Plata County Clerk and Recorder's office.

2.23 Owner shall mean the person or persons or legal entity holding record fee simple title to a Lot. Declarant shall be entitled to treat the record titleholder of a Lot as the Owner thereof for all purposes.

2.24 Pedestrian Easement shall mean the right of pedestrians for ingress to and egress from the Property.

2.25 Plat shall mean the final plat of Elements At Edgemont Highlands recorded with the La Plata County Clerk and Recorder, on February 21, 2014, under Reception No. 1077958, and any amendments or supplements thereto. Plat shall also mean the final Plat of Elements At Edgemont Highlands, Phase II at such time as that Plat receives final approval and is recorded.

2.26 Project And Elements At Edgemont Highlands Project shall mean the Phase I common interest community created by this Declaration and as shown on the Plat, consisting of the Property, as subdivided, together with all General Common Elements and Limited Common Elements and Phase II as shown on the Conceptual Development Plan.

2.27 Property shall mean the real property subject to this Declaration and which is described in Exhibit A.

2.28 Roads shall mean the common access road easements described on the Plat, including such improvements as underlying utilities, culvert, guardrails and the like, as shown on the Plat, and which provide general access to Elements At Edgemont Highlands Project. Roads also include any right granted to the Community Association by Declarant to use a portion of the Project Roads.

2.29 Rules And Regulations shall mean those rules and regulations adopted by a majority vote of the Executive Board, as may be amended from time to time, all as set forth more fully in Section 4.3 below.

2.30 Townhome shall mean an attached dwelling located on a Lot and designed to be occupied as a single-family residence and not having more than one indoor kitchen facility.

2.31 Utilities shall mean those underground utilities that are constructed and installed under roads, other utility easements or General Common Elements, which service the Property and Elements At Edgemont Highlands Project.

### 3. RESTRICTIONS ON USE.

The following general uses and restrictions are applicable to the Elements At Edgemont Highlands Project.

3.1 Residential Use. All Lots and Townhomes shall be used only for residential purposes, and such accessory or incidental uses thereto as may be permitted by the Plat and this Declaration and approved by the Community Association. Owners of Townhomes may rent or lease such Townhomes to others for these purposes. The Townhomes' exterior design, floor plan, colors, architectural and aesthetic treatment may not be modified without the express written consent of the Declarant (during the Declarant Control Period) and the Association and the Community Association obtained in accordance with the procedures set forth in Article 5.

3.2 Development Activity. All development within the Elements At Edgemont Highlands Project shall be undertaken consistent with this Declaration, the Plat, the design review guidelines and applicable Rules and Regulations as defined in Section 4.3 below.

3.3 Approval Of Design. No Townhome improvements or modifications shall be constructed on any Lot without the prior written approval of Declarant (during the Declarant Control Period) and thereafter the Association and the Community Association.

3.4 Further Subdivision. Lots shall not be further subdivided. Any amendment to this Declaration modifying this prohibition to further subdivision can only be amended with unanimous consent of all Owners of Lots in the Elements At Edgemont Highlands Project and the Community Association.

3.5 Utilities. All utilities, including but not necessarily limited to, water, sewer, gas, electrical, telephone and cable T.V., shall be underground and shall be constructed and installed consistent with this Declaration. All utilities shall be provided to the Elements At Edgemont Highlands Project by third party providers.

3.6 Parking. All parking for any vehicles must be on designated driveways within Lots, on the Limited Common Elements, or in provided parking spaces. No parking shall be allowed that blocks access to another Lot or Limited Common Element assigned to another Lot. No parking shall be permitted on roads. Owners shall undertake good faith efforts to prevent vehicles that are owned by, under the control of, or invited by a Lot Owner to be loaded, unloaded, or parked on the roads. The Association shall have the right to remove or tow away any vehicle that is parked within or on the roads. The cost for any removal or towing shall be charged to the responsible Owner. No unlicensed or unregistered or inoperable car shall be parked upon any Lot or Common Elements for a period longer than five (5) days, except in a garage or other enclosed structure.

3.7 Recreational Vehicles. Boats, motor homes, travel or tent trailers, utility trailers, snowmobiles, jet skis and other recreational vehicles or watercraft of whatever type and description shall not be parked upon any Common Area or Lot except in an enclosed garage.

3.8 Commercial Vehicles. No commercial vehicles or construction or other equipment shall be kept within the Project except temporarily during periods of construction.

3.9 Fences. No fences shall be constructed on any Lot, except as approved in writing by the Association and the Community Association, and in compliance with the Master Declarations.

3.10 Play Equipment. No play equipment shall be installed or allowed on any Lot, except as approved in writing by the Association and the Community Association, and in compliance with the Master Declarations.

3.11 Dog Runs. No dog runs shall be installed or allowed on any Lot, except as approved in writing by the Association and the Community Association, and in compliance with the Master Declarations.

3.12 Signs. No signs, billboard or advertising structures of any kind shall be erected or maintained on any Lot other than small "for sale" signs, which shall be subject to size limits determined by the Executive Board.

3.13 Garbage And Trash. Trash removal shall be the responsibility of each Owner. All trash shall be stored in accordance with the Rules and Regulations promulgated by the Association, if any.

3.14 Household Pets (Including Dogs And Cats). No animals shall be allowed within the Project except commonly recognized household pets. Except when indoors, dogs shall be kept on a leash except when under the personal control of Owner. There shall be no more than two (2) dogs or two (2) cats and no combination of dogs and cats exceeding three (3) animals in each Unit. No pets shall be kept, maintained or bred for any commercial purposes. No pit bulls, Rottweilers, wolf-hybrids or dogs with known vicious propensities shall be allowed within the Project. All pets shall be strictly maintained at all times so that they are not a nuisance to other residents of the Property. Each pet Owner agrees to find a new home for his or her pet if the Association determines the pet to be a nuisance. Dogs shall not be allowed to bark so as to annoy other Owners or adversely affect migrating wildlife and shall be kept inside between the hours of 10:00 p.m. and 6:00 a.m. Any violation of this provision shall constitute a nuisance. In no event shall any dog or other household pet be allowed to run loose upon any location on the Property. Each Owner shall be responsible and liable for any damage to persons or property caused by the pets of such Owner, the Owner's lessee or Owner's guest. Outside storage of pet foods or wild bird feeders in wildlife accessible locations on each Lot is prohibited.

3.15 Livestock And Wild Game Animals. The keeping of any livestock or wild game animals is strictly prohibited. No resident shall feed or otherwise try to attract, hinder, harm or capture any wild game animals on the Property.

3.16 Window Coverings, Satellite Dishes And Antennae And Air Conditioners. All window coverings, shades, blinds, curtains and drapes shall have a neutral color tone or be white to the extent visible from the exterior. No flags, banners, posters, signs, decorative string lights or other material shall be displayed or affixed to the exterior of any improvements except as determined by the Association. No window air conditioners or other types of window mounted cooling devices shall be permitted. No antennae, satellite dishes, lights or decorations shall be placed on the exterior of any Unit, except such small satellite dishes as are approved by the Association.

3.17 Patios, Decks And Balconies. Patios, decks and balconies shall not be used for storage of any kind, including, but not limited to, bicycles, kayaks, rafts or firewood. No use of charcoal grills shall be permitted on patios, decks or balconies; only gas or propane grills shall be permitted. No laundry, flags, banners, antennae or satellite dishes shall be located on patios, decks or balconies. Furniture and planters located on patios, decks or balconies shall be maintained in good repair and in a neat and orderly arrangement.

3.18 Lighting. Other than Declarant constructed improvements, all exterior lighting must be approved in writing in advance by the Executive Board. Use of floodlights, mercury or sodium vapor lights or equivalent high-intensity lighting or lighting which can be directed across Lot lines is prohibited. All exterior lighting shall be shielded and indirect. Lighting which is triggered by an alarm or security system is not subject to these prohibitions. Exterior holiday lighting on Units may be allowed between December 1<sup>st</sup> and the next January 15<sup>th</sup> of each year, subject to rules and regulations adopted by the Executive Board.

3.19 Fireplaces And Open Fires. Only gas burning fireplaces shall be permitted in each Unit. No open fires or fire pits shall be permitted on the Property.

3.20 No Tree Removal. Except with the consent of the Association, no trees or timber shall be cut from any Lot.

3.21 Drainage Alterations. No Owner shall obstruct, interfere with, or allow the obstruction or interference with natural draining of irrigation water or rain water. Any drainage alterations must be approved by the Executive Board.

3.22 Landscaping. All landscaping and landscaping improvements shall be constructed and installed within the Elements At Edgemont Highlands Project pursuant to a landscaping plan adopted by Declarant. Landscaping shall be installed within the General Common

Elements and the Limited Common Elements, as applicable. In addition, to assure consistency and uniform installation and maintenance, any areas of a Lot not physically occupied by the Townhome shall be subject to the landscaping plan adopted by Declarant. After the initial plan has been fully implemented, all landscaping maintenance and repair shall be undertaken by the Association.

3.23 Association Responsibility. All General Common Elements, including roads and underground utilities up to the meter, shall be owned, controlled and maintained, including snow removal, by and at the expense of the Association.

3.24 Maintenance Of Townhome Lots. All Lots, together with Townhome improvements constructed thereon, shall be kept at all times in a sanitary, healthful, safe and attractive condition and the Owner or occupants shall in no way use any Lot for storage of materials and equipment except for normal residential requirements or incidental to the construction improvements thereon as herein permitted.

3.25 Compliance With Law. No Lot shall be used, occupied, altered, changed, improved or repaired except in compliance with (i) this Declaration, (ii) the Plat, and (iii) all present and future laws, ordinances, regulations and the like of the United States of America, State of Colorado and County of La Plata, or other governmental or lawful authority whatsoever effecting the Lot or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

3.26 Variances. The Executive Board at its discretion is hereby permitted to approve variances from this Declaration where, in its judgment, such variances will result in a more common beneficial use. Such approvals must be granted in writing by the Executive Board and when given, will become part of this Declaration; however, any such variances are subject to the approval of the Declarant during the Declarant Control Period. Notwithstanding the foregoing, all variances must be approved by the Community Association.

3.27 Party Walls.

(a) For purposes of this Section 3.27, "Party Wall" shall mean and refer to any wall, foundation and footings which are part of a Townhome and located between two (2) or more Townhomes and are placed on or immediately adjacent to a Townhome Lot line and which separates two Townhomes.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Townhome Lots which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Townhome Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) To the extent not inconsistent with the provisions of this Section 3.18, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(d) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Townhomes sharing the Party Wall. If the Owner of one Townhome sharing the Party Wall refuses to pay his/her proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against the Townhome Lot, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a deed of trust or a mortgage on real property.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Townhomes sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his/her proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(f) Notwithstanding any other provision of this Section 3.18, an Owner who by his/her negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(g) The right of any Owner to contribution from any other Owner under this Section 3.18 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(h) If a dispute arises concerning a Party Wall under the provisions of this Section 3.27 and is not resolved, the parties to the dispute shall submit the matter to the mandatory dispute resolution procedures set forth in Article 15 below.

(i) Notwithstanding any other provision of this Section 3.27, the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Townhome

Lots containing Townhomes benefitted by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one Owner in which case the Owner causing the damage shall pay for all costs of repairs.

(j) In no event shall a Party Wall be penetrated, breached, drilled or in any way compromised in any fashion by any Owner or by the Association.

#### 4. ASSOCIATION FORMATION AND MEMBERSHIP.

4.1 Formation Of Association. The Association shall be a nonprofit Colorado corporation charged with the duties and invested with the powers prescribed by law and as set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Executive Board And Officers. The affairs of the Association shall be conducted by the Executive Board and such officers as the Executive Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. The Association, by and through the Executive Board: (i) shall govern and manage the Elements At Edgemont Highlands Project, including the Property described in Exhibit A hereof and any property owned by the Association; (ii) shall enforce the provisions of this Declaration; and (iii) shall comply with the requirements for management of a common interest community set forth in CCIOA. The initial Executive Board shall be composed of three (3) Members, to be expanded to five (5) Members after the conveyance of fifty percent (50%) of the total number of Lots that may be created on the Property. The Executive Board may also appoint various committees. Declarant, during the Declarant Control Period, shall have the right to appoint and remove Members and officers. The Declarant Control Period commences on the date on which Declarant forms the Association and terminates on the earliest to occur of:

(a) sixty (60) days after conveyance to purchasers of seventy-five percent (75%) of the total number of Lots that may be created by Declarant on the Property, including all development phases, pursuant to the Declaration; or

(b) two (2) years after the last conveyance of a Lot by Declarant or a Successor Declarant to a purchaser in the ordinary course of business.

Declarant may voluntarily surrender the right to appoint and remove Members of the Executive Board and officers before termination of the Declarant Control Period. In that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.



Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the total number of Lots that may be created on the Property to purchasers, at least one (1) Member and not less than twenty-five percent (25%) of the Members of the Executive Board shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the total number of Lots that may be created to purchasers, not less than thirty-three and one-third percent (33 1/3%) of the Members of the Executive Board shall be elected by Owners other than the Declarant.

4.3 Rules and Regulations. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal rules and regulations to be known as the Elements At Edgemont Highlands Project “Rules and Regulations”. The purpose of the Rules and Regulations shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Rules and Regulations must be consistent with this Declaration, and with the Master Declarations, as amended from time to time.

4.4 Liability. Consistent with the provisions of Section 303 of CCIOA, if appointed by the Declarant, in the performance of their duties, the officers and Members of the Executive Board are required to exercise the care required of a fiduciary of the Owners. If the officers and Members of the Executive Board are not appointed by the Declarant, then no Member of the Executive Board and no officer shall be liable for actions taken or omissions made in performance of such Member’s duties, except for wanton and willful acts or omissions. Actions taken by officers or Members of the Executive Board upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and to have met the care required under CCIOA.

4.5 Membership. The Association shall be a membership association without certificates or shares of stock. The Members of the Association shall be those persons or entities, including Declarant, who are the Owners, from time to time, of Lots within the Elements At Edgemont Highlands Project. Membership in the Association shall automatically terminate when a Member ceases to be an Owner of a Lot. There shall be one class of membership that is a voting membership by Owners of Lots.

4.6 Voting. A member shall have one (1) vote for each Lot owned. Except as otherwise provided herein and in the Master Declarations, the affirmative vote of a majority of the Owners of Lots entitled to vote on any matter shall constitute approval of such matter. Where there are multiple Owners of a Lot, there shall remain only one (1) vote for each Lot. If only one (1) of the multiple Owners of a Lot are present at a meeting of the Association, such Owner shall be entitled to cast the vote allocated to such Lot. If more than one (1) of the multiple Owners are present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the Owners of such Lot. The provisions of Section 310 of CCIOA regarding voting shall apply to Lots with multiple Owners.

For the election of Executive Board Members, those candidates receiving the highest number of votes shall be deemed elected. Lessees of Lots shall have no voting rights.

4.7 Enforcement. The Association shall have the right and power to bring suit in its name for legal or equitable relief for the failure to comply with any provision of this Declaration or rules promulgated by the Executive Board. In addition, the Association shall have the right to impose on any Owner monetary fines for any lack of compliance with provisions of this Declaration or rules promulgated by the Executive Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, in connection therewith.

4.8 Power Of Association. Each Owner agrees that the Association has all the powers granted to it by the Colorado Revised Nonprofit Corporation Act and CCIOA, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and this Declaration, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be limited in accordance with Section 4.12 below), the adoption of Rules and Regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for Association purposes, the right to pledge future income in order to secure such borrowings and the establishment of a reasonable transfer fee to be assessed upon the transfer of a Lot. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to any lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by this Declaration, the Articles and Bylaws of the Association, or by law.

4.9 Other Association Functions. Subject to the pre-existing rights of the Community Association, the Association shall undertake those functions and provide those services to the Elements At Edgemont Highlands Project as described in this section or otherwise set forth in this Declaration. Further, the Association may undertake, to the extent the Executive Board in its sole discretion so elects, to provide the Elements At Edgemont Highlands Project certain other functions or services for the benefit of its Members on such basis as the Executive Board may reasonably determine. Such functions may be provided by the Association's employees or an independent contractor retained by the Association. With respect to any of the Elements At

Edgemont Highlands Project functions or services, the Executive Board shall have the authority to make common expense Assessments consistent with the provisions of Section 315 of CCIOA.

Subject to the pre-existing rights of the Community Association, the Association may provide, but shall not be limited to providing, the following functions or services: (i) the maintenance, and repair of roads; (ii) maintenance, repair, and operation of all utilities up to Lot entrances; (iii) snow removal on roads; (iv) the installation, maintenance, repair and replacement of all improvements and landscaping on the General Common Elements; and (v) all powers and functions permitted by CCIOA.

4.10 Notice To Maintain. An Owner shall immediately report to the Association, in writing, the need for any maintenance, repair or replacement that is the Association's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the Association to provide the said maintenance, repair or replacement, the good faith decision of the Executive Board shall be final.

4.11 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and discretion by the Executive Board.

4.12 Special Provisions Regarding Association Property.

4.12.1 General Common Elements. All General Common Elements shall be owned by the Association and shall, at all times, be owned, managed, operated and maintained by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of all or some of the Owners of Lots, together with their family members, permitted guests and permitted invitees. Conveyancing or encumbrance of Association Property can only occur consistent with the provisions of Section 312 of CCIOA.

4.12.2 Limited Common Elements. The Limited Common Elements described on the Plat, which are areas for driveways and for parking of vehicles benefiting each of the Lots, shall be owned by the Association consistent with the provisions of this Declaration and in trust for the use, benefit and enjoyment of the benefited Owners, together with their family members, permitted guests and permitted invitees, and permitted licensees. Parking in these areas must be done so as not to block access to any Lot or other Limited Common Element. All costs associated with maintaining of a Limited Common Element used exclusively by one Owner, including but not limited to ice and snow removal, shall be paid for by that Owner. All costs associated with maintaining a Limited Common Element used by more than one Owner, including but not limited to ice and snow removal, shall be split equitably by those Owners using the Limited Common Element, according to their pro rata use. Notwithstanding other provisions herein to the contrary, to the extent that there is a difference between the Limited Common Elements as shown

on the Plat and as they exist on the ground after construction, the physical location of the Limited Common Elements on the ground shall control.

5. ARCHITECTURAL CONTROLS.

5.1 Design Review. Design review of the construction of the infrastructure improvements for the Project and the construction, reconstruction or remodel of Townhomes on Lots shall be submitted to and approved in writing by the Association and the Community Association, consistent with any design guidelines that may be adopted from time to time. Following the initial construction of Townhome improvements on a Lot, no exterior addition to or change or alteration to a Townhome shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association and the Community Association.

5.2 Authority. After receiving the approval of the Association and the Community Association as required by Section 5.1 above, the Owner required to obtain such approvals shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body have jurisdiction over the Elements At Edgemont Highlands Project.

6. ASSESSMENTS.

6.1 Purpose Of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner by acceptance of a deed to a Lot, including public trustee or sheriff's deed, is deemed to covenant and agree, to pay the Association Annual Assessments, Special Assessments and Default Assessments, all such Assessments and charges to be established and collected as hereinafter provided. Annual Assessments, Special Assessments and Default Assessments, together with interest, costs and reasonable attorney's fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate in favor of the Association, which shall be a continuing servitude and lien upon the Lot against which each such Assessment or charge is made. The Assessment Lien, including, but not limited to, its enforcement and priorities, shall be consistent with, and shall contain, all of the provisions set forth in Section 316 of CCIOA. The Assessment Lien shall be the personal obligation of the Owner of a Lot. Where there is more than one (1) Owner, each shall be jointly and severally liable for all assessments. Declarant and the Association shall be entitled to purchase a Lot at any Assessment Lien foreclosure sale.

6.2 Annual Assessments.

(a) Prior to the first levy of an Assessment, and thereafter on or before a date of each fiscal year set by the Executive Board, the Executive Board shall adopt a proposed annual budget for the Association for the following fiscal year that sets forth:

(i) the Executive Board's estimates of Common Expenses for the next fiscal year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Assessments;

(iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments; and

(iv) the amount of reserves necessary, in addition to the initial contribution by each Owner at the time of purchase in the amount of Five Hundred Dollars (\$500.00), as determined by a reserve study commissioned not more than once every three (3) years by the Executive Board, to reasonably pay for future maintenance and capital improvements.

(b) Within thirty (30) days after adopting a proposed budget, the Executive Board shall deliver a summary of the proposed budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 6.2, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

6.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment period, as defined in Section 6.6 hereafter, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses, provided that any Special Assessment in excess of Five Thousand Dollars (\$5,000.00) shall (except in the event of an emergency where there shall be no such limit) require a majority approval of those voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present pursuant to the Bylaws of the Association. If any Common Expense is caused by the misconduct of any Lot Owner, the Association, at its discretion, may assess that expense exclusively

against such Owner's Lot.

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

6.5 Rate Of Assessment. Annual Assessments, Special Assessments and Default Assessments shall be fixed in accordance with the Allocated Interests Assessments shall be collected on a quarterly basis.

6.6 Establishment Of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be from January 1 of each year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on the next December 31 date. The Executive Board in its sole discretion from time to time may change the Assessment Period. The Executive Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Owner. Failure of the Association timely to fix the Annual Assessment or to send a bill to any Owner shall not relieve the Owner of liability for payment of any Assessment or charge. The due dates for payment of any Assessments shall be established by the Executive Board.

6.7 Effect Of Nonpayment. Any Assessment, Assessment charge or installment thereof, not paid when due, shall be deemed delinquent. Fees, charges, late charges, attorney's fees, fines and interest shall be applicable to such delinquent Assessment pursuant to the provisions of Section 316 of CCIOA. The Executive Board may, but shall not be required to, record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent. Such notice shall be executed by an officer of the Executive Board, shall set forth the amount of the unpaid Assessment, the name of the delinquent Owner(s), and a description of the Lot. The Association may bring an action at law against the Owner(s) obligated to pay the delinquent Assessment and/or may foreclose the Assessment Lien in conformance with the provisions of Section 316 of CCIOA.

6.8 Priority Of Lien. The priority of an Assessment Lien shall be consistent with the provisions of Section 316 of CCIOA.

6.9 Statement From Association. Upon written request and payment of such reasonable fee as may be set by the Association, the Association shall issue a written statement to any grantee or First Lienor verifying the status of all Assessments or charges affecting the Lot. Any

statement as to the existence or amount of any delinquencies shall, absent manifest error, conclusively bind the Association.

6.10 Assessments For Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

6.11 Declarant Responsibility. Until a Common Expense Assessment or budget has been duly adopted by the Association, Declarant shall pay all Association Common Expenses related to the Elements At Edgemont Highlands Project.

6.12 Community Association Assessments. The Assessments called for in this Article 6 of the Declaration shall be supplemental and additional to the Assessment and Assessment rights afforded the Community Association within the Master Declarations. In its discretion, the Community Association may elect to collect its Assessments directly from the Association, which charges may then be passed on to individual owners.

## 7. EDGEMONT HIGHLANDS COMMUNITY ASSOCIATION MATTERS.

Each Owner, by accepting a deed to a Lot, recognizes that (a) the Elements At Edgemont Highlands Project is subject to the Master Declarations, (b) by virtue of his/her ownership, he/she has become a Member of the Community Association, (c) such Owner is subject to any rules and regulations of the Community Association, and is entitled to all the benefits and is subject to all the burdens of such membership. Each Owner, by accepting a deed to a Lot, acknowledges that he has received a copy of the Master Declarations, Bylaws and Comprehensive Amended and Restated Architectural and Landscaping Guidelines for Edgemont Highlands (the "Guidelines") of the Community Association. Owner agrees to perform all of his obligations as a Member of the Community Association as they may from time to time exist, including, but not limited to, the obligation to pay regular and special assessments levied by the Community Association. All responsibility and control for the purpose of effectuating the Master Declarations, Bylaws, rules and regulations and Guidelines as such may be amended from time to time (the "Edgemont Highlands Restrictions") is hereby delegated to the Community Association and the Property shall be subject to the Edgemont Highlands Restrictions notwithstanding any provisions of this Declaration to the contrary. The liens of the Association shall at all times be subordinate to the liens of the Community Association. In the event of any inconsistency between the terms of this Declaration and the Edgemont Highlands Restrictions, the more restrictive terms and provisions shall control. No later than the expiration of the period of Declarant Control, the Executive Board of the Association may participate in the election (and cast such votes on behalf of all Owners) of a member of the Community Association's Board pursuant to applicable provisions of CCIOA.

## 8. INSURANCE.

8.1 Townhome Insurance. The Association shall, on behalf of itself and all the Owners: (i) provide and keep in force for the protection of the Association, its Directors and Officers, and all of the Owners and First Lienors, comprehensive property, fire, flood, weather and other hazards and casualty insurance covering all structures, improvements, and all personal property owned by the Association, in amounts of not less than the full replacement value; (ii) provide and keep in force, for the protection of the Association, its Directors and Officers, and all the Owners and First Lienors, general public liability and property damage insurance against claims for bodily injury or death or property damage occurring upon the roads, easements, open space or in the General Common Elements and Limited Common Elements, in amounts of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any one person and not less than Five Million Dollars (\$5,000,000.00) for bodily injury or death to any number of persons arising out of one accident or disaster, and in limits of not less than Five Hundred Thousand Dollars (\$500,000.00) for damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; (iii) provide and keep in force Directors and Officers liability insurance covering all Directors and Officers of the Association in such limits as the Executive Board may determine; (iv) carry such insurance required by CCIOA; (v) carry such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the General Common Elements and Limited Common Elements, if any; and (vi) assure that all such insurance shall conform with the applicable requirements set forth in CCIOA.

8.2 Common Expenses. Premiums for insurance acquired by the Association and other expenses connected with acquiring such insurance are Common Expenses. All insurance provided for under section 8.1, 8.4 and 8.5 shall be carried in favor of the Association, the Owners and all First Lienors, as their respective interests may appear.

8.3 Owner Insurance. Each Owner shall be responsible for providing and keeping in full force and effect comprehensive property, fire, flood, weather and other hazards and casualty insurance covering the interior, exterior and roof of that Owner's townhome. Each Owner shall also be responsible for providing and keeping in full force all insurance covering loss or damage to the contents of their individual Townhomes. Finally, each Owner shall be responsible for all insurance covering liability for injury, death or damage occurring within their Townhome and on or adjacent to their Lot, including any Limited Common Elements assigned in whole or in part to their Lot. All such policies shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished.

8.4 Fidelity Insurance. Fidelity insurance or fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors and employees and on the part of all others including any Manager hired by



the Association, who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager, and its officers, employees and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

8.5 Workmen's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

9. MAINTENANCE.

9.1 Maintenance By Owners. Each Owner shall maintain and keep in repair the interior, exterior and roof of his/her Townhome, including without limitation, all fixtures, windows, doors, garage doors, decks and patios, to the extent current repairs shall be necessary. In performing such maintenance or repairs, or in improving or altering his/her Townhome, no Owner shall do any act or work which impairs the structural soundness or integrity of any Party Wall, or which is inconsistent with color schemes and finishes approved by the Executive Board. Each Owner shall also maintain and keep in repair any Limited Common Elements assigned in whole or in part to that Owner's Lot, in accordance with Section 4.12.2 above.

9.2 Owner's Failure To Maintain Or Repair. In the event that a Townhome is not properly maintained and repaired, or in the event the Townhome is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Townhome, then the Association, after notice to Owner and with the approval of the Executive Board shall have the right to enter upon the Townhome to perform such work as is reasonably required to restore the Townhome to a condition of good order and repair. All costs incurred by the Association in connection with such maintenance, repair or restoration shall, upon demand, be reimbursed by the Owner of the Townhome to the Association. All unreimbursed costs shall be a lien upon the Townhome until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 6 of this Declaration.

9.3 Maintenance By Association. Except as specifically set forth herein, the Association shall be responsible for the maintenance and repair of all General and Limited Common Elements, unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's agent, and such maintenance and repairs shall be the Common Expense of all Owners. The maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all roads, utilities up to the utility meters, easements, landscaping, irrigation systems, drainage systems, ponds, walls, fences (if any), gates, signage, irrigation systems, detention ponds, sidewalks and improvements, if any, which shall include

without limitation snow removal services unless performed by another private or public organization formed for such purposes, located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant, or an Owner or Owners, shall have the right, but not the obligation, to do so at the expense of the Association. Maintenance of all areas within any Lot not occupied by the Townhomes, including all landscaping, shall be the responsibility of the Association. Replacement of glass shall be the responsibility of the individual Owner of the Townhome.

9.4 Easement For Maintenance. The Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to any areas of the Property from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements or Limited Common Elements therein or accessible therefrom, or at any hour, for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the General Common Elements, Limited Common Elements or another Townhome. In the event insurance proceeds under Article 8 are payable to an Owner, but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

9.5 Damage To Common Elements. Each Owner shall be liable for any damage caused by Owner, his family, guests or invitees, to General Common Elements, Limited Common Elements, roads or any other facility, access or improvement maintained by the Association.

9.6 Limited Common Elements Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's agents, the then Owners of the Lots to which the Limited Common Elements is attributable shall bear equally the expense to repair or rebuild the Limited Common Elements to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's agent's negligence.

9.7 Weed Control. Control of Canadian thistle, leafy spurge and other noxious weeds shall be a joint responsibility of the Lot Owners and the Association. Owners shall keep their Lots free of such weeds. The Association shall keep Common Elements free of weeds. The Association may spray for weeds or use other weed control measures on Lots and Common Elements as an Association expense.

9.8 Common Elements Landscaping. The Association shall maintain and replace all Common Elements landscaping and landscaping on a Lot within five (5) feet of any Lot line boundary bordering the Common Elements as a Common Expense so as to facilitate its growth and maturity. Any dead or dying vegetation within the Common Elements which is part of the original landscaping plan for buffer areas shall be replaced by the Association. Individual

Lot Owners shall be responsible for maintaining and replacing any buffer landscaping originally installed on a Lot as part of the landscaping plan (that is not located within five (5) feet of any Lot line boundary bordering the Common Elements) and shall be responsible for any damage to Common Elements landscaping. Landscaping not replaced by Lot Owners with thirty (30) days after notification by the Association shall be replaced by the Association at the Owner's expense.

9.9 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptibility from another Townhome, the General Common Elements or Limited Common Elements. No Owner shall make any addition or other alteration to any portion of the General Common Elements or Limited Common Elements without the express written consent of the Executive Board.

## 10. EASEMENTS.

10.1 Recorded Easements. The Property shall be subject to and is benefitted by all Easements as shown on the Plat, those of record, those provided in CCIOA (including Easements for encroachments set forth in Section 214 of CCIOA and an Easement for maintenance of any such encroachment) and otherwise as set forth in this Article.

### 10.2 Created Easements.

10.2.1 Utility Easements. There is hereby created an Easement upon, across, over, in and under all General Common Elements and Limited Common Elements for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, propane tanks, telephone, cable T.V. and electricity. Said Easement includes future utility services not presently available to the Lots that may be reasonably required in the future. By virtue of this Easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Lots or General Common Elements and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Community Association and this Association as to locations. All installations, reconstruction and maintenance to the utility Easement shall be subject to the specific requirements that it be completed in a good and workmanlike manner and that all areas disturbed be re-graded, re-vegetated and reclaimed to the condition that existed prior to the commencement of the work being performed.

10.2.2 Trail Easement. There is hereby reserved and created a trail Easement in the location as set forth on the Plat.

10.2.3 Road Easement. There is hereby created a general access Easement over and across the road named Mountain Stream Court, the precise scope and location of which

Easement is set forth on the Plat.

10.2.4 Other Easements. Other Easements for access and Utilities to adjacent properties are set forth on the Plat.

10.3 Reservation Of Easements, Exceptions And Exclusions. The Association is hereby granted the right to establish from time to time, by Declaration or otherwise, Utility, Road or other Easements, permits or licenses over the General Common Elements for the best interest of all Owners, Members and future Members of the Declarant and this Association.

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

10.5 Ownership Of Easements. All General Common Elements, including all Easements described herein and on the Plat, are intended to be owned by the Association, and, with the exception of Limited Common Elements, are for the benefit of all Lots and the Owners thereof. No amendment to this Declaration may preclude a Lot from having an access Road and Utility Easement necessary to permit the use of such Lot for the purposes set forth in this Declaration.

## 11. DAMAGE OR DESTRUCTION.

11.1 The Role Of The Executive Board. In the event of damage or destruction to all or any part of any General Common Elements, Limited Common Elements and any improvements existing thereon, or other Property covered by insurance written in the name of the Association (the "Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged Property unless any of the provisions of Section 313(9)(a) of CCIOA are met.

11.2 Estimate Of Damages Or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

11.3 Repair And Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate

action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

11.4 Funds For Repair And Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and First Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

11.5 Disbursement Of Funds For Repair And Reconstruction. The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special Assessments, the remainder to be divided among the Lots, first to the First Lienors, and then to the Owners, as their interests appear.

## 12. CONDEMNATION.

12.1 Rights Of Owners. When all or any part of the General Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the General Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

12.2 Partial Condemnation; Distribution Of Award; Reconstruction. The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:

(a) if the taking involves a portion of the General Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such General Common Elements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Design Review Board and the Association. If such General Common Elements are to be repaired or restored, the provisions in Articles 8 and 11 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply; and

(b) if the taking does not involve any General Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Lots, first to the First Lienor and then to the Owners, as their interests appear.

12.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of fifty-one percent (51%) of all First Lienors of Lots (which percentage is measured by votes allocated to such Lots), and the portion of the condemnation award attributable to the General Common Elements shall be distributed as provided in Section 12.2 above.

### 13. ASSOCIATION AS ATTORNEY-IN-FACT.

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 8 including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 8 upon their damage or destruction as provided in Article 11 or a complete or partial taking as provided in Article 12. The Association, through its Executive Board, shall also be the attorney-in-fact for all voting matters and dealings with the Community Association. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authority, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

### 14. RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS.

Any reserved development and special Declarant rights are subject to compliance with the Master Declarations and approval of the Community Association, where applicable.

14.1 Reservation Of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw Property from the provisions of this Declaration, including General and Limited Common Elements, provided however that none of the Property may be withdrawn after any Lot has been conveyed by Declarant to an Owner.

14.2 Reservation Of Development Rights. Declarant reserves the following Development Rights:

(a) the right to develop the Property and improvements thereon in phases;

(b) the right to cross the Property or to use roadways, Easements or General Common Elements for construction of any future phases;

(c) the right by amendment to allocate Limited Common Elements and to assign them to particular Lots;

(d) the right to construct underground Utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Property for the purpose of furnishing Utility and other services to buildings and improvements to be constructed on the Property;

(e) the right to withdraw and grant Easements and licenses to public utility companies and to convey improvements within those Easements anywhere in the Project not occupied by buildings, for the purposes mentioned above; and

(f) the right to maintain a sales office and signage on the Property and to hold events for sales, promotion and marketing purposes.

No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.

14.3 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to:

(a) maintain and relocate sales offices, management offices, signs advertising the project, of any size, on one or more Lots or Townhome improvements and within

the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Lot or the period of Declarant control has not terminated;

(b) construct fences throughout the Property during any time of the development and improvement of the Project;

(c) dedicate any access roads and utility easements, including Roads and Utilities within the Project, to public use and Community Association use as allowed by the Master Declarations; and

(d) establish Easements, reservations, exceptions and exclusions consistent with the ownership of this Project and for the best interest of Owners, the Association and Community Association, including Road and Utility Easements and Pedestrian Easements.

14.4 Termination Of Rights. As to all Declarant rights reserved in this Declaration, Declarant offers no assurances regarding the manner or order in which it may exercise such reserved Development Rights enumerated. The time limits within which each of these rights must be exercised are the later in time of: (i) the time limit set forth in the applicable section of this Declaration; or (ii) January 1, 2050.

14.5 Transfer Of Records. Within sixty (60) days after the Owners, other than Declarant, elect a majority of the Members of the Executive Board, the Declarant shall deliver to the Association all Property of the Owners and of the Association held by or controlled by the Declarant, including the following:

- (a) a copy of this recorded Declaration;
- (b) an accounting for Association funds and financial statements for the period the Association received funds and ending on the date the period of Declarant control ended;
- (c) the Association funds or control thereof;
- (d) a copy of any plans and specifications used in the construction of any Common Elements;
- (e) all insurance policies in force;
- (f) all permits issued by governmental bodies applicable to the Project and which are currently in force;
- (g) written warranties of any contractors, subcontractors, suppliers and manufacturers that are still effective;



(h) a roster of Owners and First Lienors and their addresses and telephone numbers, if known, as shown in the Declarant's records;

(i) employment contracts in which the Association is a contracting party; and

(j) any service contract in which the Association is a contracting party or in which the Association or Owner have an obligation to pay a fee to the persons performing the service.

15. MANDATORY DISPUTE RESOLUTION.

15.1 Statement Of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and wish to proceed further through the assertion of a "Claim" as defined below, that the mandatory dispute resolution provisions contained in this Article are activated.

15.2 Alternative Method For Resolving Disputes. Declarant; the Association, the Executive Board; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any other person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Party"), agree to encourage the amicable resolution of disputes involving the Association and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article 15 and not to a court of law.

15.3 Claims. Except as specifically excluded in this Section 15.3, all claims, disputes and other controversies arising out of or relating to the:

- (a) Contract for Sale and Purchase between Declarant and Owner;
- (b) Property as defined herein;
- (c) purchase of any Lot, together with improvements;
- (d) interpretation, application or enforcement of this Declaration;
- (e) land development, design and/or construction of the improvements within the Association and/or any alleged defect therein;

and/or (f) rights, obligations and duties of any Party under this Declaration;

(g) breach thereof,

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by mandatory binding arbitration all in accordance with Article 15 of this Declaration and not in a court of law.

15.4 Claims Subject To Approval. Unless Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article 15:

(a) any suit by the Association against any Owner to enforce the provisions of Section 6 (Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article 3 (Restrictions On Use);

(c) any suit by an Owner to challenge the actions of Declarant, the Association, the Executive Board or any other committee with respect to the enactment and enforcement of Rules and Regulations or the approval or disapproval of plans pursuant to the provisions of Article 5 (Architectural Controls);

(d) any suit between or among Owners, which does not include Declarant or the Association as a party; and/or

(e) any suit in which any indispensable party is not a Party.

15.5 Notice Of Claim. Any Party having a Claim ("Claimant") against any other Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) the legal or contractual basis of the Claim (i.e. the specific authority out of which the Claim arises); and

(c) the specific relief and/or proposed remedy sought.

15.6 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

15.7 Right To Be Heard. Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this Article 15, Declarant shall have the right to be heard by the Claimant, affected Owners and Association in an effort to resolve the Claim.

15.8 Right To Inspect. If the Claim is based on the land development, design and/or construction of the improvements within the Association, then, subject to Owner's prior written approval which shall not be unreasonably withheld, Declarant shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

- (a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected;
- (b) minimize any disruption or inconvenience to any person who occupies that property;
- (c) remove daily all debris caused by the inspection and located on such property; and/or
- (d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from such property and repair and replace all damage, and restore the property to the condition of the property as of the date of the inspection, unless the property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Property that were damaged, removed or destroyed by Inspecting Party. In the event the Inspecting Party wishes to make appropriate and necessary repairs to resolve the subject matter of the Claim, the same shall be made upon terms and conditions acceptable to all affected parties.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Property. The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from any breach of this Section by the Inspecting Party.

15.9 Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any Party may appoint a representative to assist such Party in negotiations.

15.10 Mediation. If the Parties do not resolve the Claim through negotiations within thirty (30) days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediation service acceptable to all parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

(a) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(b) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(c) Within ten (10) days after issuance of a Termination of Mediation, the Claimant shall make a final written settlement demand to the respondent(s) and the Respondent(s) shall make a final written settlement offer to the Claimant. If the Claimant fails to make a settlement demand, Claimant's original Claim shall constitute the settlement demand. If the Respondent(s) fail to make a settlement offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" settlement offer.

(d) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(e) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article 15 and any Party thereafter fails to abide by the terms of such agreement, then any other Affected Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this

Article 15. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorney's fees and court costs.

15.11 Consensus For Association Arbitration Or Litigation. Except as provided in this Article 15, the Association shall not commence any arbitration or a judicial or administrative proceeding unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceedings.

This Section 15.11 shall not apply, however, to:

- (a) actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens);
- (b) the imposition and collection of Assessments, fines, costs and attorney fees or other specific amounts due under the Declaration; or
- (c) counterclaims brought by the Association in proceedings instituted against it.

15.12 Arbitration. If the Parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the Colorado Uniform Arbitration Act (§13-22-201 *et seq.* C.R.S.) and deliver an Arbitration Notice to all Respondent(s).

(a) The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties including any third parties agree that the third parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one time in one forum rather than in multiple proceedings.

(b) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim(s) shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claim(s).

(c) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. The Party seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award.

(d) The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing Party such Party's costs and expenses, including reasonable attorney's fees.

(e) The Association or the Owner shall notify the Declarant prior to retaining any person or entity as an expert witness for purposes of any arbitration or authorized litigation.

15.13 Binding Effect. This Article 15 and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

15.14 Amendment. This Article 15 shall not be amended unless such amendment is approved by Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated.

15.15 Conflict With CCIOA. In the event that any provisions of this section conflict with CCIOA, as amended from time to time, then the provisions of CCIOA shall prevail.

16. TERM, AMENDMENT AND TERMINATION OF COVENANTS.

16.1 Term. The term of this Declaration shall be perpetual.

16.2 Amendments. This Declaration may, except as limited by Section 16.4, be amended with the approval of a requisite number of the votes entitled to be cast by Members of the Association; provided that such amendment shall not adversely affect marketable title to any Lot. During the period of Declarant control, any amendment to this Declaration must also receive the approval of Declarant. Consent of First Lienors shall not be required; provided, however, that no such amendment may substantively and adversely affect such First Lienor's security interest. The Declaration shall be amended at a meeting called for that purpose, and within three (3) months of such meeting there shall be recorded in the real estate records of the County an instrument evidencing such amendment. Any instrument amending this Declaration shall be duly executed by the Declarant or president and secretary of the Association, as the case may be. Notwithstanding the preceding, no amendment shall be permitted that is inconsistent with any of the rights granted, retained or reserved to Declarant hereunder or which attempts to enlarge or expand any obligation of Declarant hereunder unless such amendment is consented to in writing by Declarant. All amendments shall be consistent with the provisions of Section 217 of CCIOA, as amended, which currently requires sixty-seven percent (67%) of the votes of the Members in specified instances. This Declaration may not be amended in any manner which is inconsistent with the terms of the Master Declarations, as amended from time to time.

16.3 Termination. This Declaration, and the Common Interests of the Owners in Association-owned Property, may be terminated only if all Owners and First Lienors agree to such termination by an executed, acknowledged instrument duly recorded in the real estate records of the County; however, any such voluntary termination must be approved by the Community Association. This Declaration shall also terminate in the event of a taking of all of the Elements At Edgemont Highlands Project by condemnation, eminent domain or termination as otherwise (except for voting) provided by Section 218 of CCIOA.

16.4 Disbursement Of Proceeds. Upon the termination of this Declaration, all Property owned by the Association shall be disposed of, with the proceeds generated being disbursed, as provided by Section 218 of CCIOA.

17. GENERAL PROVISIONS.

17.1 Sales Activity. Declarant may conduct, on the Elements At Edgemont Highlands Project, sales activities, including, the showing of Lots by Declarant and their designated sales agents, maintaining sales and management offices, promoting or marketing events and maintaining signs advertising the Elements At Edgemont Highlands Project.

17.2 Conflict With Plats. In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat, including the Plat notes thereon, the provisions of the Plat and Plat notes, as the case may be, shall govern and control and this Declaration shall be automatically amended, but only to the extent reasonably necessary to conform the conflicting provisions hereof with the provisions of said Plat, including any Plat notes.

17.3 Rights Of First Lienors. First Lienors shall be entitled to:

(a) upon request, inspect the books and records of the Association during normal business hours;

(b) receive written notice of meetings of the Association where the consent of any First Lienor is required;

(c) upon request, obtain copies of Association financial statements; and

(d) where the Owner of any Lot shall be deemed delinquent in the payment of any Assessment, any First Lienor of said Lot shall be given written notice of such delinquency.

17.4 Provisions Incorporated In Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such

deed or other instrument. Upon the recording of this Declaration in the office of the Clerk and Recorder, every contract, deed, lease, mortgage, trust deed or other applicable instrument may legally describe a Lot by reference to its corresponding number on the recorded Plat as follows:

Lot \_\_\_\_, Elements At Edgemont Highlands Townhomes, according to the Plat filed for record in La Plata County on \_\_\_\_\_, under Reception No. \_\_\_\_\_.

This legal description shall be considered to include, without the requirement of specific reference, any and all General or Limited Common Elements appurtenant to the Lot described and to incorporate all rights incident to ownership of a Lot and all limitations of ownership as described in the Plat, and in this Declaration.

17.5 Number And Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

17.6 No Dedication. Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Elements At Edgemont Highlands Project to the public or for any public use.

17.7 Registration By Owner Of Mailing Address And Notices. Each Owner shall register his/her physical mailing address and e-mail address with the Association. Except for periodic statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent either by registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered physical mailing address. In the alternative, at the sole discretion of the Executive Board, notices may be sent by electronic mail. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

17.8 Applicable Law, Jurisdiction And Venue. The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Colorado. All parties to this Declaration, or those parties who are benefitted by this Declaration, hereby consent to venue for any action commenced with respect to this Declaration being in the District Court in and for the County of La Plata, State of Colorado.

17.9 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.10 References To Standards. Wherever in this Declaration there is reference to



county standards, or other federal, state or local rules, laws or regulations, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such rules, laws, regulations or standards.

17.11 Run With The Land. Declarant, for itself, its successors and assigns, hereby declares that all of the Elements At Edgemont Highlands Project shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Elements At Edgemont Highlands Project.

17.12 CCIOA Provisions. In the event of any conflict between the provisions of CCIOA and the provisions of the Plat, this Declaration or the Association Documents, the provisions of CCIOA shall control.

17.13 Binding Effect. Declarant, Owners, First Lienors, lessees, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying the Elements At Edgemont Highlands Project, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Master Declarations, the Bylaws, the Articles, any deed restrictions and all rules, regulations and agreements lawfully made by the Association.

17.14 Access. Each Owner acknowledges that Roads within Elements At Edgemont Highlands Project are private, limited access Roads maintained by the Association, the District or the Community Association.

17.15 Limit On Time Sharing. No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written consent of the Community Association and the Association.

17.16 Estoppel Statement. Upon the written request of any Owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid common Assessments, if any, with respect to such Lot, the amount of the current monthly Assessment, the date on which such Assessment became or shall become due and the amount of any credit for prepaid expenses. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Unless a request for such statement shall be complied with within thirty (30) days after receipt thereof, all unpaid common Assessments which become due prior to the date of making such a request shall be subordinated to the lien or other interest of the person requesting such a statement.

18. CONSENT OF TRUST DEED BENEFICIARIES.

By their signatures below, the beneficiaries of the existing Deeds of Trust encumbering the Elements At Edgemont Highlands Project, hereby consent to this Declaration.

Beneficiary:

By:

Jaime S. Marquez  
Authorized Agent

IN WITNESS WHEREOF, Declarant has executed this Declaration Of Covenants And Restrictions For Elements At Edgemont Highlands Townhomes this 18<sup>th</sup> day of February, 2014.

ELEMENTS DURANGO, LLC, a Colorado limited liability company

By:

Jaime S. Marquez, Managing Member

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF LA PLATA    )

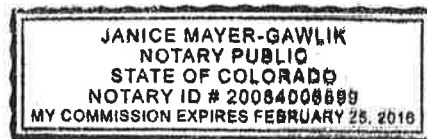
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February 2014, by Jaime Marquez, as Managing Member of Elements Durango, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 2/25/16

Janice Mayer-Gawlik  
Notary Public

Data:WP:8435:01:Declaration Covenants & Restrictions.doc



**EXHIBIT A**

**Legal Description Of Existing Property**

Elements at Edgemont Highlands Phase 1, Final Plat, Project No. 2013-093 recorded  
February 21, 2014 at Reception No. 1077958,

County of La Plata  
State of Colorado

## **EXHIBIT B**

### **Initial Allocated Interests For Phase One**

| Unit #       | Address                  | Plat        |                |             | Equal       |             | Allocated Interest |
|--------------|--------------------------|-------------|----------------|-------------|-------------|-------------|--------------------|
|              |                          | Unit Acres  | Fractional %   | x .25       | x .75       | x .75       |                    |
| 1            | 6 Mountain Stream Court  | 0.068       | 8.21%          | 0.021       | 0.071       | 0.054       | 0.074              |
| 2            | 8 Mountain Stream Court  | 0.052       | 6.28%          | 0.016       | 0.071       | 0.054       | 0.069              |
| 3            | 10 Mountain Stream Court | 0.064       | 7.73%          | 0.019       | 0.071       | 0.054       | 0.073              |
| 4            | 22 Mountain Stream Court | 0.059       | 7.13%          | 0.018       | 0.071       | 0.054       | 0.071              |
| 5            | 28 Mountain Stream Court | 0.063       | 7.61%          | 0.019       | 0.071       | 0.054       | 0.073              |
| 6            | 54 Mountain Stream Court | 0.055       | 6.64%          | 0.017       | 0.071       | 0.054       | 0.070              |
| 7            | 31 Mountain Stream Court | 0.054       | 6.52%          | 0.016       | 0.071       | 0.054       | 0.070              |
| 8            | 41 Mountain Stream Court | 0.065       | 7.85%          | 0.020       | 0.071       | 0.054       | 0.073              |
| 9            | 55 Mountain Stream Court | 0.055       | 6.64%          | 0.017       | 0.071       | 0.054       | 0.070              |
| 10           | 61 Mountain Stream Court | 0.061       | 7.37%          | 0.018       | 0.071       | 0.054       | 0.072              |
| 11           | 65 Mountain Stream Court | 0.052       | 6.28%          | 0.016       | 0.071       | 0.054       | 0.069              |
| 12           | 67 Mountain Stream Court | 0.064       | 7.73%          | 0.019       | 0.071       | 0.054       | 0.073              |
| 13           | 69 Mountain Stream Court | 0.052       | 6.28%          | 0.016       | 0.071       | 0.054       | 0.069              |
| 14           | 73 Mountain Stream Court | 0.064       | 7.73%          | 0.019       | 0.071       | 0.054       | 0.073              |
| <b>TOTAL</b> |                          | <b>0.83</b> | <b>100.00%</b> | <b>0.25</b> | <b>1.00</b> | <b>0.75</b> | <b>1.00</b>        |