

SECOND AMENDMENT TO THE DECLARATION OF EASEMENTS,
RESTRICTIONS AND COVENANTS
THE BASBERG TOWNHOUSES
BASALT, EAGLE COUNTY, COLORADO

THIS SECOND AMENDMENT TO THE DECLARATION, is made and entered into this 31st day of July 2014, by The Basberg Townhouses Association, hereinafter referred to as “Declarant”, WITNESSETH:

WHEREAS, The Basberg Townhouse Association and its members are the Owners of that real property situated in the Town of Basalt, Eagle County, Colorado, known as the Basberg Townhouses and described on Exhibit “A” attached hereto and incorporated herein by this reference.

NOW, THEREFORE, The Association hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on all parties having any right, title, or interest in the above-described Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. “Association” shall mean and refer to The Basberg Townhouse Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record owner of a Unit, whether one or more persons or entities, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Common Elements” means any real estate within the Basberg Townhomes owned or leased by the Association other than the Units.

Section 5. “Declaration” means the Declaration of Easements, Restrictions and Covenants of the Basberg Townhomes.

Section 6. “Unit” means a physical portion of the Basberg Townhomes which is designated for separate ownership and occupancy and the boundaries of which are described in or determined from the Declaration.

Section 7. “Limited Common Elements” means a portion of the Common Elements allocated herein or by operation of law for the exclusive use of one or more Units. “Limited Common Elements” shall also include entry doors, garage doors, windows, sliding and fixed doors, ground level and upper level decks and skylights. The application of this definition is further detailed at Article VIII- Maintenance Responsibility.

Section 8. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 9. “Architectural Control Committee” shall mean the committee appointed by the Board of Directors of The Basberg Townhouse Association.

Section 10. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Eagle, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the original seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the County of Eagle, Colorado, show the said Administrator as having the record title to the Lot.

ARTICLE II

PROPERTY RIGHTS

Section 1. Unit Boundaries; Subdivision.

- (a) With respect to all interior surfaces of such walls, floors, or ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other finished walls, floors, or ceilings are a part of each Unit.
- (b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
- (c) Subject to the above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.
- (d) Any entry doors, garage doors, exterior doors and windows, ground level decks and skylights or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
- (e) The boundaries between adjoining Units may not be relocated.
- (f) A Unit may not be subdivided into two or more Units.
- (g) A Limited Common Element may be reallocated between or among Units if the owners of those Units, as the applicants, submit an application for approval of the proposed reallocation to the Board, which application shall be executed by those Unit Owners and shall include:
 - (1) The proposed form or an amendment to the Declaration as may be necessary to show the reallocation of Limited Common Elements between or among Units;
 - (2) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and
 - (3) Such other information as may be reasonably requested by the Board. No reallocation shall be effective without the approval of the Board. The reallocation shall be effectuated by an amendment signed by the Association and by those Unit Owners between or among whose Units the reallocation is made, which amendment shall be recorded. All costs and attorney fees incurred by the Association as a result of the application shall be the sole obligation of the applicants.

Section 2. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 3. Parking Rights. Ownership of each Unit shall entitle the Owner, or tenants of the Owner thereof, to use the parking areas designated upon the Properties (whether by specific assignment to each Unit, or otherwise), together with the right of ingress or egress to such parking areas.

Section 4. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and, with written consent of the Members entitled to vote two-thirds (2/3) of the votes.
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and
- (c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with; and
- (d) The right of the Association as provided in its Articles and Bylaws, to suspend the voting rights and the right to use recreational facilities, if any, of a Member for any period during which any assessment against his Unit remains unpaid and, for any infraction of its published rules and regulations; and
- (e) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such a dedication or transfer signed by two-thirds (2/3) of Members and by 100 percent of all First Mortgagees of Lots (based upon one vote for each First Mortgage owned) has been recorded, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken, and unless such dedication or transfer is approved by the Town of Basalt, Colorado, or any successor governmental entity having jurisdiction over the Properties, if required by resolutions or ordinances thereof, and provided further that the granting of permits, licenses and easements for public utilities, roads and/or for other public purposes consistent with the intended use of the Common Elements and reasonably necessary or useful for the proper maintenance of operation of the Properties of the Association shall not be deemed a transfer within the meaning of this Subsection (e).
- (f) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.
- (g) The right of the Association to charge reasonable admission and other fees for use of any recreational facility situated upon the Common Elements.
- (h) The easement into and onto each Unit for access to utility facilities (for service, repair and maintenance) at all times necessary for such service.

Section 5. Public Easements. The Properties shall be subject to and the Association shall grant and convey as necessary, easements and rights of way to the Town of Basalt or the Basalt Sanitation District, as the case may be, over and across the Properties for the benefit of other users of the utilities systems of said Town or District, and an easement and right of way for Pinon Drive, including the extension of Pinon Drive over and across the project, the location of which easement and right of way shall be determined by the Town of Basalt, provided that it shall not exceed fifty (50) feet in width, and provided further that no easement or right of way granted pursuant hereto for utility or road purposes shall be located in a manner which will unreasonably interfere with access to or use of the seventeen (17) residential Units constructed on the Properties. The location of the above referenced easement and right of way for Pinon Drive shall be deemed reasonable so long as the residential Units located on the Properties remain in conformity with the set-back regulations as then generally applicable in the zone district in which the project is located. The requirements of this paragraph are more fully set forth in that certain Agreement Re: Annexation and Extension of Services dated February 15, 1982, as Reception No. 249882 in Book 353 at Page 546 of the

records of the Clerk and Recorder of Eagle County, Colorado, between the Town of Basalt and the Declarant.

Section 6. Payment of Taxes or Insurance by First Mortgagees. First Mortgagees of Units shall have the right, jointly or individually, to pay taxes or other charges or assessments which are in default and which may become a lien against the Units and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any First Mortgagees making any such payment shall be owed immediate reimbursement therefor from the Association or the Unit Owners.

ARTICLE III
RIGHTS, POWERS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed by the owners of all Units, as attorney-in-fact for the owners, their heirs, successors and assigns and each of them to manage, control and deal with the interest of such owner in Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; to deal with the Project upon its destruction or obsolescence as hereinafter provided; and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards in accordance with the provisions of this Declaration. The acceptance by any Person or entity of any interest in any Unit shall constitute an appointment by that Person or entity of the Association as attorney-in-fact as above provided.

Section 2. Powers of Association. The Association may:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;
- (c) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) Acquire and hold in its own name any right, title, or interest to real or personal property;
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements.
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than Limited Common Elements;
- (k) Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations of the Association;
- (l) Impose reasonable charges for the preparation and recondition of amendments to the Declaration or statements of unpaid assessments;

- (m) Provide for the indemnification of its officers and the Board and maintain director's and officers' liability insurance;
- (n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the Declaration expressly so provides;
- (o) Exercise any other powers conferred by the Declaration or Bylaws;
- (p) Exercise all other powers that may be exercised in Colorado by legal entities of the same type; and,
- (q) Exercise any other powers necessary and proper for the government and operation of the Association

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Unit which is subject to assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

Section 2. Voting Rights and Limitations.

- (a) Suspension of Voting Rights. If any Owner, his family or any licensee or invitee violates the Declaration or Association's rules, once adopted by the Board after Notice and hearing, the Board may suspend the right of such person to vote his membership interest, under such conditions as the Board may specify.
- (b) Annexation, Merger, Consolidation, Dissolution. Upon the written consent of two-thirds (2/3) of Members, the Association and its Properties may be annexed by a municipality, merged or consolidated with another or similar organization, or enlarged, or be dissolved entirely.
- (c) Limitation of Amendment. The provisions of this Article III shall not be amended without the approval of sixty-seven percent (67%) of the Members.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, including utilities service charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien may be enforced by foreclosure commenced by action of the Board of Directors on the defaulting Owner's Units by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees. The Board of Directors may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the president or vice president of the Board of Directors and may be recorded in the office of the Clerk and Recorder of the County of Eagle, Colorado. The lien for each unpaid assessment, including utilities service charges, attaches to the property at the beginning of each assessment period and shall continue to be lien against the property until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for which it is filed and collected as part and parcel thereof. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The Owner further agrees by his acceptance of title to a Unit that the Association shall

be vested with the right and power in its own name to take and prosecute all suits which may, in the opinion of the Association, be necessary or advisable for the collection of such delinquent assessments.

Section 2. Homestead Exemption. The lien of the Association for assessments, including utilities service charges, if any, shall be superior to any homestead exemption as now or may hereafter be provided by Colorado law. The acceptance of a deed to any Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Units, and for the improvements, operation and maintenance of the Common Elements and of the Units and residences situated thereon. The periodic assessment payments may include, as fees In addition to the annual maintenance fee, assessments for payment of utilities service charges.

Section 4. Budget and Determination of Amount of Common Expense Assessments.

The total amount to be raised by assessments shall be determined for each fiscal period of the Association by the Board of the Association. The amount to be raised by assessments for any fiscal period shall be that amount necessary to cover the costs and expenses of fulfilling the functions and obligations of the Association in that fiscal period plus an amount to provide a reasonable carry-over reserve for the next fiscal period, including amounts necessary to cover obligations made in connection with, or contemplated under, any previous budget. To assure that the Association will have the funds to meet unforeseen expenditures or to purchase additional equipment or services, the budget may include a working capital fund at least equal to one-half (1/2) month of estimated assessments for each Unit. In addition, the budget shall include a sinking fund or capital reserve for deferred maintenance for the Common Elements, including without limitation, a sinking fund for roof repair and/or replacement and for parking area maintenance and repair. This fund shall not be refundable to a Unit Owner upon transfer of his Unit to a new purchaser, as it is intended to represent a reserve against depreciation and deferred maintenance during such owner's term of ownership of his Unit.

To determine the total amount required to be raised by assessments, the Board shall cause to be prepared a budget for the fiscal period showing, in reasonable detail, the estimated costs and expenses which will be payable in that fiscal period and for a reasonable carry-over reserve and the estimated income and other funds which will be available in that fiscal period.

From and after January 1 of each year, the maximum annual assessment may be increased, without a vote of the membership, in conformance with the rise, if any, in the Consumer Price Index (CPI-U) (1967=100) for Denver, Colorado, published by the U.S. Bureau of Labor Statistics, for the preceding year based on the most recent report available as of January 1, or not more than five percent (5%) above the maximum annual assessment for the previous year, whichever is greater.

Within thirty (30) days after adoption of any proposed budget, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at a meeting at which a quorum is present a majority of all Unit Owners ratify the budget, the budget is rejected. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

Section 5. Special Assessments for Capital Improvements. In addition to the assessments described above, the Association may levy special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, to the extent the amounts in any capital reserve fund are insufficient therefor, the cost of any construction or reconstruction, repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this

Declaration, provided that any assessment shall have the assent of a majority (51%) of Unit owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Time for Payments. The amount of any assessment, charge, fine, penalty or other amount payable with respect to any Unit Owner, shall become due and payable as specified by the Board of the Association and, in any event, thirty (30) days after any notice of the amount due for such assessment, charge, fine, penalty or other amount shall have been given by the Association to such Unit Owner, and any such amount shall bear interest at the rate of eighteen percent (18%) per annum (or such other rate as the Board may fix from time to time by resolution) from the date due and payable until paid.

Section 7. Assessments for Limited Common Elements: Expenses Benefiting Less than all Units: Reallocation: No Waiver.

(a) Any common expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Units to which that Limited Common Element is assigned, in the same proportion as the Points assigned to each such Unit

(b) Any common expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited and in the same proportion as the Points assigned to each such Unit.

(c) To the extent reasonably ascertainable by the Association, the costs of utilities billed to the Association for the benefit of Unit Owners shall be assessed in proportion to usage by such Unit Owners.

(d) If any common expense is caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such owner's Unit.

(e) No Unit Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 8. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60) percent of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Uniform Rate of Assessment. Notwithstanding any provision to the contrary in this Article, both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis; provided that fees paid with the annual maintenance assessment for utility's service charges will be assessed on a pro rata basis to each Owner being served from a meter shared with other Owners, instead of at a uniform rate.

Section 10. Date of Commencement of Annual Assessments: Due Dates. All annual assessments provided for herein shall be made due and payable in twelve (12) monthly installments per annum on such dates as determined by the Board. If the initial assessment installment is not due on January 1 of any year, then the first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Any Owner purchasing a Unit between installment due dates shall pay a pro-rata share of the last installment due. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment, or assessed fee, whether an annual or special assessment or for utility service, not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of 18% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same. In addition to such action, or as an alternative thereto, the Association may file with the Clerk and Recorder of Eagle County, a Statement of Lien, setting forth the name of the Owner, the legal description of the Unit, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the president or vice president of the Association, and which shall be served upon the Owner of the Unit by mail to the address of the Unit or at such other address as the Association may have in its records for the Owner of the Unit. Thirty days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. (Such Statement shall be in favor of the Association and shall be for the benefit of all other Owners.) In either a personal or foreclosure action, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or abandonment of his Unit.

Section 12. Exempt Property. The Common Elements shall be exempt from the lien for assessments created herein.

ARTICLE VI INSURANCE

Section 1. Insurance Requirements Generally.

- (a) The Association shall obtain and maintain in full force and effect at all times certain property, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Unit Owners.
- (b) The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit by a Unit Owner or other insurance obtained at the request of and specifically benefiting any particular Unit Owner, shall be a Common Expense to be covered by assessments as elsewhere provided in this Declaration.

Section 2. Property Insurance.

- (a) The Association shall obtain and maintain property insurance insuring the Common Elements and the Units, but not the finished interior of the Units from the walls in, against loss or damage by fire and such other hazards as are covered under standard extended coverage policies, vandalism and malicious mischief and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the Project, including each Unit.
- (b) The total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. The insurance need not include improvements and betterments installed by Unit Owners, but if they are covered, any increased charge shall be assessed by the Association to those Unit Owners.

Section 3. Commercial General Liability Insurance. The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements in the amount of not less than \$1,000,000.00 for each occurrence including bodily injury and/or property damage, insuring the Executive Board, the Association, the managing agent, and their respective employees, agents, and all Persons acting as agents. The Executive

Board may increase these limits at any time, in its discretion. The Unit Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

Section 4. Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to a Unit Owner, each Unit Owner shall be responsible for obtaining insurance he deems desirable for their Unit. Such Unit insurance will be primary in covering the interior of the unit from the “walls in” including but not limited to paint, flooring, baseboards, fixtures, cabinetry, sinks/toilets, fixed/attached appliances, etc., as well as personal property and personal liability coverage.

Section 5. Unavailability of Insurance - Notice. If the insurance described in Sections 2 and 3 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

Section 6. Required Provisions. Insurance policies carried pursuant to Sections 2 and 3 must provide that:

- (a) Each Unit Owner is an insured Person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;
- (b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;
- (c) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (d) The insurance policy shall identify the interest of each Unit Owner, including the Unit Owner's name, Unit number and undivided interest in the Common Elements and shall include a standard, non-contributory mortgagee clause in favor of each first mortgagee. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 7. Application of Proceeds. Any loss covered by the property insurance policy described in Section 2 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Section 2, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Project is terminated. In the event of a surplus, proceeds shall go to the Unit Owners in proportion to their interests in the Common Elements.

Section 8. Other Insurance by Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

Section 9. Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Unit, or of any Unit Owner installed improvements to any Unit, the premiums of any policy of insurance

purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be assessed to the Unit Owner of such Unit.

Section 10. Policies and Procedures. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to Real Property, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 11. Certificate of Insurance - Renewal. An insurer that has issued an insurance policy for the insurance described in Sections 2 and 3 shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, and each Unit Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Section 12. Destruction or Damage to Property.

- (a) Any portion of the property for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or Persons having at least seventy-five percent of the votes in the Association, including every Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.
- (b) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear in proportion to the Common Element interests of all the Units.

ARTICLE VII **ARCHITECTURAL CONTROL COMMITTEE**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall 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 Board of Directors of the Association, and by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. Unit owner will submit specific plans and specifications as noted above to the Architectural Committee. The Committee will make its recommendation to the Board of Directors and in turn the Board will notify the affected Unit Owner of its decision. Both the Committee and Board will endeavor to provide a timely decision.

ARTICLE VIII **MAINTENANCE RESPONSIBILITY**

Section 1. By the Owner- Each Owner shall have the obligation to maintain and keep in good repair in a condition acceptable to the Association, all portions of his or her Unit and all improvements made by the

Owner to the Limited Common Elements assigned to the Unit, except any portion of a Unit which is expressly made the maintenance obligation of the Association as detailed further below at Section 2. This maintenance responsibility shall include, but not be limited to the following:

- (a) the materials making up the finished surfaces of the walls, floors and ceilings, including, but not limited to plaster, dry wall, paneling, wall paper, paint, wall and floor tile, carpet and flooring, etc.
- (b) all glass surfaces (including exterior cleaning)
- (c) windows, window frames, skylights (except for periodic painting, staining and/or cleaning of the exterior window frames), casings and locks (including caulking of windows) and screens;
- (d) all doors, doorways, door frames, and hardware that are within the Unit (except for periodic painting, staining, and/or cleaning of the exterior surface of entry doors and door frames, and periodic replacement of such entry door as detailed in Section 2);
- (e) all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit from the point where such lines enter the Unit (including all electricity, water, or sewer pipes, lines, ducts, conduits, or other apparatus serving only the Unit);
- (f) any fireplace or woodstove (including the chimney, flue and firebox) that serves only the Unit;
- (g) all communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Unit, whether located within or outside the boundaries of the Unit;
- (h) garages, garage doors (except painting the exterior surface of garage doors and replacement due to normal wear and tear as detailed below at Section 2) and garage door openers;
- (i) any light fixtures and light bulbs in the front or rear areas; and
- (j) any portion of the heating and air conditioning systems including the air conditioning compressor and fan coil or swamp coolers and related equipment serving the Unit, whether located within or outside the boundaries of the Unit;
- (k) any ground level deck connected to the Unit.

In addition, each Unit Owner shall have the responsibility:

- (a) to keep in a neat and sanitary condition any Limited Common Elements serving his or her Unit, including keeping ground level decks or other entry ways appurtenant to the Unit free and clear of snow, ice and any accumulation of water or other debris;
- (b) to perform his or her responsibility in such a manner so as not to unreasonably disturb other persons in other Units;
- (c) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible;
- (d) to pay for the cost of repairing, replacing or cleaning up any component of the Town Homes (including another Owner's Unit as well as the Common Elements) which is the responsibility of the Unit Owner, but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any component of the of the willful or negligent act of the Unit Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Section 2. By the Association- The Association shall maintain and keep in good repair as a common expense all Common Elements, including any Limited Common Elements specified herein, but excluding any improvements made to such Limited Common Elements. Maintenance of such Common Elements shall include streets, walkways, curbs and gutters, storm drains, swimming pool (its related equipment), tennis court, and other exterior improvements. In addition to maintenance upon the Common Elements, the Association shall provide exterior maintenance upon the Unit as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces and other exterior

improvements. The Association shall bear full replacement costs due to normal wear and tear for Limited Common Elements of balcony level decks and cost share replacement costs of garage doors and exterior front doors. Every Unit Owner will receive the exact same subsidy or percentage of cost sharing during a cycle of replacement for garage door or main entry door. The cost to repair or replace the following Limited Common Elements as per longstanding practice will be borne by the Unit Owner and includes windows, sliding or fixed glass doors and ground level decks connected to the Unit, if it has one.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair, or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed by the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense.

If the Board determines that the need for maintenance or repair of the Common Elements is caused through the willful or negligent act of any Owner, or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Unit, and such cost shall become the personal obligation of the Owner, a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

Section 3. Utilities. To the extent not assumed by the municipal or quasi-municipal entity providing utility services, the maintenance and repair of the water and sewer systems in the project from the main lines to the boundary of each Unit shall be the duty and responsibility of the Association. The Association shall bill the Owner or Owners benefited by such repairs or maintenance for the expenses thereof. If such water or sewer lines serve more than one Unit, then the Association shall assess each Unit connected to the line for which the expense was incurred equally for the cost of such maintenance or repair.

Section 4. Snow Removal. The Association shall, when necessary, have the authority and responsibility to arrange for removal of snow from the Common Elements, including streets, walkways, driveways and parking areas. The expenses therefor shall be billed equally to all of the Owners as part of the Maintenance Assessment.

Section 5. Access Easement. Each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance as provided in this Article VIII during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time, provided that the Owners or occupants of affected Units shall be warned of impending emergency entry as early as is reasonably possible.

Section 6. Measures Related to Insurance Coverage:

- (a) Fire Prevention- the Board upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Townhomes which are the maintenance responsibility of the Unit Owner, which will, in Board's sole discretion, decrease the possibility of fire or any other damage to the Units, reduce the insurance premium paid by the

Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage.

- (b) Non-compliance- In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirements made by the Board pursuant to subsection 6(a) above, the Association, upon 15 days written notice (during which period the Unit Owner may perform the required work or act without further liability), may perform such required work or act at the Unit Owner's sole cost. Such cost shall be added to and become a part of the assessment to which the Owner is subject.
- (c) Mold and/or Mildew- mold and/or mildew can grow in any portion of the Townhomes that is exposed to a regular source of moisture. Therefore, the Association and the Unit Owners agree to: (1) promptly investigate to determine the source of the problem and extent of the condition upon the discovery of any water leaks; (2) repair any such leaks in their respective areas of maintenance responsibility in a good and workmanlike condition; (3) ensure that any building material which has absorbed water or moisture as a result of a water leak and has not been completely dried as part of the repair of the water or moisture damage is removed and replaced; and (4) clean any area where mold and/or mildew appears with industry-accepted product designed to inhibit the growth of mold and/or mildew.
- (d) Inspection, Maintenance, Repair and Replacement of High-Risk Components- The Board may, from time to time, after notice to all Owners and opportunity for Member's comment, determine that certain portions of the Units required to be maintained by the Owners, or certain objects or appliances within the Unit, pose a particular risk of damage to other Units and/or the Common Elements if they are not properly inspected, maintained, repaired, or replaced. By way of example, but not limitation, these portions, objects or appliances might include smoke detectors and water heaters. Those items determined by the Board to pose such a particular risk are referred to herein as "High-Risk Components".

At the same time that it designates a High-Risk Component, or at a later time, the Board may require one or more of the following with regard to High-Risk Component: (1) that it be inspected at specified intervals by a representative of the Association or by an inspector(s) designated by the Board; (2) that it be replaced or repaired at specified intervals, or with reference to manufactures' warranties, whether or not the individual component is deteriorated or defective; (3) that it be replaced or repaired when items or components meeting particular standards or specifications established by the Board; (4) that when it is repaired or replaced the installation include additional components or installments specified by the Board; and (5) that it be replaced or repaired by contractors having particular licenses, training or professional certification or by contractors approved by the Board, and (6) if the replacement or repair is completed by an Owner, that it be inspected by a person designated by the Board.

The imposition of requirements by the Board in this provision shall not relieve an Owner of his or her obligations regarding High-Risk Components, including, but not limited to, the obligation to perform and pay for all maintenance, repairs and replacement thereof. If any Owner fails or refuses to maintain, repair or replace a High-Risk Component in accordance with the requirements established by the Board hereunder, the Association may, in addition to all other rights and powers granted to it pursuant to the Governing Documents enter the Unit for the purpose of inspecting, repairing, maintaining, or replacing the High-Risk Component, as the case may be, and charge all costs of doing so back to Owner as a specific special assessment.

- (e) Failure to Maintain- If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and the Association's right to provide necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set

forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board determines that: (1) an emergency exists or (2) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

ARTICLE IX **RESTRICTIONS**

Section 1 . Use. The property shall be used for residential purposes and for the maintenance and administration of the residential Units and the common areas appurtenant thereto.

Section 2. Advertising. No advertising signs, "For Sale" signs, billboards, unsightly objects, or nuisances shall be created, placed or permitted to remain on the property nor shall the same be used in any way for any purpose which may endanger the health or unreasonably disturb the owners of any Units or any residents thereon; provided, further that one sign of not more than five (5) square feet and containing the words "For Sale" or "For Rent" may be placed on any Unit . The Association may erect such billboards or notices as it deems desirable in conjunction with the performance of its duties.

Section 3. Personal Business. No business activities of any kind whatsoever shall be conducted in any Unit or in any portion of the property. This restriction shall not be construed in such a manner as to prohibit an owner or occupant from (a) maintaining his personal or professional library therein; (b) keeping his personal business or professional records or accounts therein; (c) handling his personal business or professional telephone calls or correspondence therefrom; or conducting a home occupation therefrom. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of this paragraph.

"Home Occupation" shall mean an activity which meets the following criteria, intended to preserve the residential nature of Basberg Townhouses and to protect the rights of all residents to the quiet enjoyment of their property:

- A) Activity is conducted entirely within the home and only by a person residing in the home, using no employees other than family members residing in the home.
- B) Activity creates no noise, odor, or additional vehicle or pedestrian traffic.
- C) Activity uses no common utilities or common areas.
- D) Activity must not be visible or otherwise detectable outside of home.
- E) Activity must comply with all governmental zoning requirements, as well as all tax, license, environmental and any other legal requirements.

A Person desiring to engage in or continue a home occupation shall make an application to the Board of Directors of the Association for approval thereof, which shall be based upon the consideration of the criteria set forth above; and no person shall engage in, or shall continue, a home occupation without the prior written approval of the Board of directors. The Board may grant its approval upon and subject to such conditions, as the Board shall deem appropriate to assure compliance with the criteria set forth above. The Board shall have the right to inspect any activity for the purpose of determining ongoing compliance

with all above criteria and may withdraw approval if necessary. Any activity denied approval, or having approval withdrawn, shall be required to cease all operations within 30 days of the loss of approval. The Board may use any means necessary to enforce this

Section 4. Antennas. Without prior written approval of the Association, no exterior television, radio, or other antennas of any sort shall be placed, allowed or maintained upon any portion of the property or improvements thereon.

Section 5. Exterior Lights. All exterior lights and light standards shall be approved by the Association for harmonious development and prevention of lighting nuisances.

Section 6. Negligent Acts. In the event that the need for any maintenance or repair to the Common Elements is caused through the willful or negligent act of an owner, his family, guests, or invitees, or lessees, the cost of such maintenance or repairs shall be added to and become a part of the next assessment to which such owner is subject, and shall be subject to the lien privileges as provided herein.

Section 7. Parking. All parking spaces shall be used for the parking of automobiles and pick up trucks not exceeding 3/4 ton in size. All vehicles shall be operative and shall be currently licensed. Vehicles shall be moved at the request of the Association to facilitate snow removal and cleaning. No recreational vehicles exceeding the size limits stated above, shall be parked on the property without the express written consent of the Association.

Section 8. Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept in a Unit, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and shall be subject to the rules of the Association and any governmental ordinances or laws. Dogs shall be leashed at all times and under the owner's control when outside of the owner's unit and shall not be permitted in the pool or tennis court areas. Pets constituting a nuisance may be ordered by the Association to be kept within the unit of the pet owner or ordered expelled from the project.

Section 9. Mail Receptacles. The type and location of mail receptacles shall be determined by the Directors of the Association.

Section 10. Garbage and Refuse Disposal. No part of the property may be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and the same shall be disposed of in a prompt and sanitary manner, as may be established by the Association. All containers or other equipment for the storage or disposal of garbage and trash by any Owner shall be kept in a clean and sanitary condition and shall be kept enclosed upon the Lot of each owner, out of view from other Units and the streets and sidewalks of the project except during days designated by the Association for pickup and disposal. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled away.

Section 11. Rules and Regulations. No owner nor the family or guests of any owner, shall violate the rules and regulations for the use of his Unit or of the common elements as may from time to time be adopted by the Association. The Association is expressly empowered to adopt and promulgate such rules and regulations as it may, from time to time, deem necessary or desirable to regulate the use and activities upon the property in a manner consistent with the purposes of this Declaration.

ARTICLE X **PROTECTION OF ENCUMBRANCER**

Section 1. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any Unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Pitkin County, Colorado, prior to the time of recording in said office of an instrument describing the Unit and listing the name or names of the Unit Owner or Unit Owners of fee

simple title to the Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien or result of any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration except only that violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Construction and Maintenance Easement. If any portion of any exterior wall of a residence is situated within three feet of any adjoining Unit, a valid easement shall and does exist, three feet in width along the adjoining Unit and adjacent to the said Unit, which easement may be used for the purpose of construction, reconstruction, and maintenance of said exterior wall of a residence that is situated within three feet from the nearest point of said easement.

Section 4. Easement for Encroachments. If any portion of a residence encroaches upon the Common Elements or upon any adjoining Lot, including any future encroachments arising or resulting from the repair or reconstruction of a residence subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 5. Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control.

Section 6. Condemnation. In the event proceedings are initiated by any government or agency thereof seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, or any improvement thereon or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of \$10,000.00, the Association shall give prompt written notice thereof, including a description of the part of or interest in the Common Elements or improvements thereof sought to be so condemned, to all First Mortgagees of lots, and Members,. The Association shall have full power and authority to enter into and to defend in said proceedings after giving all First Mortgagees of Units, and Members, at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking, if such award is sufficient to repair and restore any portion of such taken Common Elements , shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore any portion of such taken Common Elements, or if the full amount of such award is not expended to repair and restore such taken Common Elements, the Association shall disburse the net proceeds of such award to the Owners, the Owners of each Unit receiving one (1) equal share, provided that the Association shall first pay out of the share of each Unit the amount of any unpaid liens or encumbrances on the Unit in the order of the priority of such liens or encumbrances on the Unit in the order of the priority of such liens or encumbrances, and further provided that such proceeds may be allocated to the Owners of each Unit in some manner other than one

(1) equal share per Unit if the Association determines that such other manner of allocation would be more equitable. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give an Owner or any other party priority over the rights of any First Mortgagee of a Unit in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements, or both.

Section 7. Termination.

(a) All provisions of this Declaration shall continue in effect until this Declaration is terminated. Except in the case of a taking of all the Units by eminent domain, the Association may be terminated only by agreement of one-hundred percent (100%) in interest of the Unit Owners.

(b) An agreement of Unit Owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in Pitkin County, Colorado and is effective only upon recordation.

(c) Subject to the provisions of a termination agreement, the Association, on behalf of the Unit Owners, may contract for the sale of Real Estate following termination, but the contract is not binding on the Unit Owners until approved pursuant to Subsection (a) and (b) of this section. If any Real Estate is to be sold following termination, title to that Real Estate, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests may appear, in accordance with Subsections (f) and (g) of this Section. Unless otherwise specified in the termination agreement, as long as the Association holds title to the Real Estate, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of the portion of the Real Estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by this Declaration.

(d) If the Real Estate constituting the common interest community is not to be sold following termination, title to the Common Elements vests in the Unit Owners upon termination as tenants in common in proportion to their respective interests and liens on the Units shift accordingly. While the tenancy in common exists, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such Unit.

(e) Following termination, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Unit Owners and holders of liens on the Units as their interests may appear.

(f) Upon termination, creditors of the Association who obtain a lien and duly record it in Pitkin County, Colorado will be treated as if they had perfected liens on the Units immediately before termination or when the lien is perfected and recorded, whichever is later.

(g) The respective interests of Unit Owners referred to above are as follows:

(i) Except as provided in Paragraph (ii) of this Subsection (g), the respective interests of Unit Owners are the fair market values of their Units, and any Limited Common Elements immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within thirty (30) days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and its Allocated Interests by the total fair market values of all the Units and their Allocated Interests. In the event Unit

AMENDMENT TO
DECLARATION OF EASEMENTS, RESTRICTIONS AND COVENANTS
THE BASBERG TOWNHOUSES
BASALT, EAGLE COUNTY, COLORADO

This Amendment is made and entered into this 6th of December, 1983 by GERMAN DITTMAR, hereinafter referred to as "Declarant," WITNESSETH:

WHEREAS, the Declaration of Easements, Restrictions and Covenants for the Basberg Townhouse was recorded September 27, 1983, as Reception No. 265417 in Book 369 at Page 97 of the records of the Clerk and Recorder of Eagle County, Colorado; and

WHEREAS, said Declaration refers to Exhibit "A" attached thereto and incorporated therein by reference, being the description of the real property the subject of said Declaration; and

WHEREAS, said Exhibit "A" was inadvertently omitted from said Declaration and Declarant has executed this Amendment to said Declaration for the purpose of providing said Exhibit "A".

NOW THEREFORE, said Declaration is hereby amended by the addition thereto of the Exhibit "A" which is attached hereto and incorporated herein by this reference and said Exhibit "A" shall be deemed to have been attached to and made a part of said Declaration as of the date of recording the same.

Except to the extent herein expressly amended, said Declaration shall otherwise remain in full force and effect in accordance with the terms thereof.

IN WITNESS WHEREOF, the undersigned Declarant has hereafter affixed his signature the day and year first above written.

STATE OF COLORADO)
) ss
 COUNTY OF EAGLE)
 PUBLIC
 The foregoing instrument was acknowledged before me this 6th day
 of December, 1983, by GERMAN DITTMAR.
 Witness my hand and official seal.
 My commission expires: 2/01/85

 Notary Public

E-88-463

EXHIBIT "A"

A parcel of land situated in Tract No. 47 of Section 8 in Township 8 South, Range 86 West of the Sixth Principal Meridian, lying Easterly of the Westerly line of said Section 8 described as follows:

Beginning at a point on the Westerly line of said Section 8 whence the Quarter Corner common to Sections 7 and 8 in said Township and Range bears S. 00°03'00" E. 470.51 feet; thence N. 00°03'00" W. 650.71 feet along the Westerly line of said Section 8; thence East 42.21 feet; thence S. 34°57'44" E. 308.29 feet; thence S. 55°56'00" E. 112.56 feet; thence S. 32°37'00" E. 122.99 feet; thence S. 20°13'56"W. 226.56 feet; thence S. 86°24'00" W. 300.08 feet to a point on the Westerly line of said Section 8, the point of

beginning.

COUNTY OF EAGLE, STATE OF COLORADO

The foregoing parcel of land is also known as the Basberg Townhouses as described on the Plat thereof recorded as Reception No. 265418 in Book 369 at Page 98 of the records of the Clerk and Recorder of Eagle County, Colorado