

DECLARATION
OF
BLUE MESA TOWNHOMES
a planned community

This Declaration is executed this 18th day of August, 2006 at Gunnison, Gunnison County, Colorado by Ruby Construction, Inc., a Colorado corporation.

1. CREATION OF BLUE MESA TOWNHOMES.

1.1 **Authority.** This Declaration is executed to submit the real property as described in paragraph 2.18 as a planned community in accordance with the provisions of the Colorado Common Interest Ownership Act.

1.2 **Ownership.** Declarant is the owner of the real property as described as follows:

Lots 9, 10, 11 and 12, Block 38, City of Gunnison, according to the AMENDED Plat of the TOWN OF WEST GUNNISON, City of Gunnison, County of Gunnison, State of Colorado,

and submits such Real Property to all of the terms, conditions, rights, duties, obligations, covenants, easements, restrictions and interests as set forth in this Declaration.

1.3 **Declaration.** The Declarant, for itself and its grantees, successors, heirs, personal representatives, assigns and any person acquiring and holding an interest in the Project shall be bound by all of the provisions of this Declaration.

1.4 **Small and Limited Expense Common Interest Community.** Pursuant to C.R.S. §38-33.3-116(3), Declarant further declares the Property to be subject only to C.R.S. §38-33.3-105 through 107 of the Colorado Common Interest Ownership Act as it is a planned community as that term is defined by C.R.S. § 38-33.3-103(22), and the annual average common expense liability of each Unit, exclusive of optional user fees and any insurance paid by the Association will not exceed four hundred dollars, as adjusted by C.R.S. §38-33.3-116(3).

2. **DEFINITIONS.** The following definitions shall apply in this Declaration and the exhibits attached hereto unless the context shall expressly provide otherwise.

2.1 **"Act"** - means the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, Colorado Revised States, as now in force and as may be amended from time to time.

2.2 **"Allocated Interests"** - means the interest allocated to each Unit in the Association, the common expense liability and votes in the Association.

The Allocated Interests are divided equally between the ten Unit Owners.

2.3 **"Association"** - means Blue Mesa Townhomes Association, a Colorado nonprofit corporation.

2.4 **"Board"** - means the Board of Directors of Blue Mesa Townhomes Association, which is designated to act on behalf of the Association.

2.5 **"Building"** - means a building or buildings within the Project.

2.6 **"Common Elements"** - means all of the Project except the Units, and those portions of the Project designated as Limited Common Elements.

2.7 **"Common Expenses"** - means expenditures made or liabilities incurred by or on behalf of the

Association, together with any allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance carried under Section 31; and (v) all expenses lawfully determined to be common expenses by the Executive Board. The Common Expenses may include, but shall not be limited to, snow removal, common wall maintenance and repairs, roof maintenance or repairs, or common utilities and common facilities, driveway/parking area maintenance and plowing, liability insurance, fire and extended coverage insurance, landscaping and care of grounds, common lighting, exterior decoration, painting, repairs and renovations, refuse collection water and sewer charges, wages, legal and accounting fees, management fees and all Association dues and expenses and liabilities incurred under or by reason of this Declaration. The Association shall pay all water and sewer charges levied on the individual units and any Common Elements, in accordance with the ordinances, rules and regulations of the City of Gunnison.

2.8 **"Common Interest Community"** - means the "Project" as hereafter defined.

2.9 **"Map" or "Plat"** - means the Map for Blue Mesa Townhomes, a planned community, filed August 25, 2006, and bearing Reception No. 568402 of the records of Gunnison County, Colorado and any Supplemental Map filed in the records of Gunnison County, Colorado.

2.10 **"Declarant"** - means Ruby Construction, Inc., a Colorado corporation, its successors and assigns.

2.11 **"Declaration"** - means this Declaration, and any and all duly executed amendments, supplements or additions to this Declaration.

2.12 **"Eligible Mortgage"** - means the holder of a First security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a First Security Interest in a Unit. The notice must include the address of the Unit on which it has a security interest.

2.13 **"First Security Interest"** - means a Security Interest on a Unit which has priority over all other Security Interests in the Unit.

2.14 **"Good Standing"** - means that an Owner is no more than thirty (30) days late in the payment of any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

2.15 **"Home Occupation"** - means any commercial use carried on within a dwelling which is:

2.15.1 Customarily conducted entirely within a dwelling unit or an accessory building by the occupants of the dwelling unit;

2.15.2 Incidental and secondary to the use of the subject parcel for residential purposes;

2.15.3 Conducted in such a fashion as not to change the manner or character of use of the dwelling;

2.15.4 Conducted in such a fashion that the commercial noises and activities do not interfere with the quiet and dignity of the neighborhood; and



2.15.5 Conducted without the employment of individuals other than the occupants of the dwelling unit.

2.16 "Limited Common Elements" - means a portion of the Common Elements allocated by this Declaration or the Map for the exclusive use of one or more Units but fewer than all of the Units.

2.17 "Person" - means a natural person, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or any combination thereof.

2.18 "Project" - means Blue Mesa Townhomes, a planned community, including all of the real property, buildings, improvements, and structures pertaining thereto, together with all rights, easements, and appurtenances belonging thereto, declared to be a part of Blue Mesa Townhomes, a planned community, by this Declaration and which may be subsequently declared to be a part of Blue Mesa Townhomes, a planned community, under the terms of any supplemental Declaration.

2.19 "Real Property" - means the Real Property described as Lots 9, 10, 11, and 12, Block 38, City of Gunnison, according to the AMENDED Plat of the TOWN OF WEST GUNNISON, City of Gunnison, County of Gunnison, State of Colorado.

2.20 "Security Interest" - means an interest in a Unit created by contract or conveyance which secures the payment or performance or an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association and any other consensual lien or title retention contract intended as security for an obligation.

2.21 "Successor Declarant" - means any Person to whom Declarant assigns any or all of its rights, obligations or interest as Declarant as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the office of the Clerk and Recorder in the County of Gunnison, State of Colorado.

2.22 "Supplemental Declaration" - means an instrument which amends this Declaration.

2.23 "Supplemental Map" - means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

2.24 "Unit" - means a physical portion of the Project which is designated for separate ownership and the boundaries of which are described in the Declaration and Map.

Any porch, balcony, patio, steps, exterior doors, exterior windows, shutters, awnings, or other fixtures or improvements designed or designated to serve a single Unit, but located outside the boundaries of the Unit, and any fenced portion of yard as permitted by the Association, are Limited Common Elements allocated exclusively to the Unit.

2.25 "Unit Owner" - means the Declarant or Person who owns a Unit but does not include a Person having a Security Interest in a Unit.

3. CREATION OF BLUE MESA TOWNHOMES. Blue Mesa Townhomes is hereby created and declared to consist of Units as follows:

3.1 Number of Units. The Project shall consist of eight (8) Units together with the Allocated Interest in the

Association as set forth on the attached Exhibit A and a non exclusive right to use the Common Elements and an exclusive use of the Limited Common Elements allocated to a Unit.

3.2 Use and Enjoyment. The Unit Owner shall have the non-exclusive right to use and enjoy all of the Common Elements and the exclusive use of any Limited Common Elements allocated to the Unit or the exclusive use in common of Limited Common Elements allocated to more than one Unit, subject to the limitations contained in this Declaration.

3.3 Owners' Easement. Every Owner shall have a nonexclusive right and easement for the purpose of access to their Unit and for use for all other purposes allowed by this Declaration, in and to the Common Elements, and such easement shall be appurtenant to and pass with the title to every Unit.

4. INSEPARABILITY OF A UNIT. Each Unit and the Allocated Interest in the Association, and the Limited Common Elements allocated to the Unit, if any, and any easements appurtenant thereto shall together comprise one Unit which shall be inseparable and may be conveyed, devised or encumbered only as a Unit.

5. MAP.

5.1 Map. The Map shall be filed for record in the records of Gunnison County, Colorado prior to the first conveyance of a Unit by the Declarant. The Map shall contain all of the required information pertaining to the Project as required by this Act.

5.2 Amendments. Declarant reserves the right to amend the Map from time to time, to conform the same according to the actual location of any of the improvements and to establish, relocate and vacate easements, access roads and parking areas. Declarant's right under this paragraph shall terminate upon the conveyance of all of the Units as set forth on the Map or within one year of the date of filing the Map, whichever event shall first occur.

5.3 Interpretation. In interpreting the Map or any part thereof, the existing physical boundaries of the Units shall be conclusively presumed to be its boundaries.

6. DESCRIPTION OF UNIT.

6.1 Legal Description. Every instrument affecting the title to a Unit shall be describe the Unit as follows:

Unit _____, Blue Mesa Townhomes, according to the Map thereof recorded bearing Reception No. 568402 and the Declaration pertaining thereto, recorded bearing Reception No. 568403 of the records of Gunnison County, Colorado, County of Gunnison, State of Colorado.

6.2 Amendments. The reference to the Map and the Declaration as set forth in paragraph 6.1 above, shall be deemed to include any supplements or amendments to the same whether or not specific reference is made thereto.

6.3 Sufficiency. Such legal description shall be sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect the Unit and the Allocated Interest in the Association appurtenant to the Unit, including any Limited Common Elements, and all other appurtenant property and property rights of the Unit and to incorporate all of the rights, duties, limitations and burdens incident to the ownership of a Unit as described in this Declaration.

7. TITLE. A Unit may be held and owned by more than one Unit Owner as joint tenants or as tenants in common, or in any real property tenancy or estate recognized under the laws of the State of Colorado.



8. **TERM OF OWNERSHIP.** The separate estate of a Unit Owner created by this Declaration shall continue until revoked in the manner contained in this Declaration or by operation of law.

9. **NON-PARTITIONABILITY AND TRANSFER OF COMMON ELEMENTS.** The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment, each Unit Owner specifically waives its rights to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Unit Owner specifically covenants and agrees not to institute nor maintain any action to partition or otherwise divide the Common Elements, except only as may be provided by this Declaration.

10. **USE.**

10.1 Units shall be used and occupied solely for residential purposes as authorized by the then existing zoning or other applicable regulations of City of Gunnison, County of Gunnison, State of Colorado, and any covenants or agreements entered into with the City of Gunnison, as to such use and occupancy. However, nothing in this Declaration shall prohibit Unit Owners from utilizing a Unit for a Home Occupation as that term is defined in paragraph 2.15 herein.

10.2 **Party Wall.** The common wall separating each Unit, the footings underlying, and the portion of roof under said walls are collectively referred to as the "Party Wall."

10.2.1 To the extent not inconsistent with this agreement, the general rules of law regarding party walls and liability for damage due to negligence, willful acts, and omissions shall apply to the Party Wall.

10.2.2 The Owners of each Unit shall have a perpetual easement in and to that part of the other Unit on which the Party Wall is located, for party wall purposes, including mutual support, maintenance, repair, and inspection. In the event of damage to or destruction of the Party Wall from any cause, then the Owners shall at their joint expense, repair or rebuild the Party Wall, and each Owner shall have the right to the full use of the Party Wall so repaired and rebuilt. Notwithstanding anything contained above to the contrary, if the negligence, willful act, or omissions of any Owner, his family, agent, or invitee, shall cause damage to or destruction of the Party Wall, such Owner shall bear the entire cost of its repair or reconstruction, and an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the full cost of furnishing the necessary protection against such elements.

11. **EASEMENTS.**

11.1 **Easement For Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement for the encroachment and the maintenance of the same exists so long as the Building is in existence or the encroachments exists.

11.2 **Recorded Easements.** The Property shall be subject to all easements as shown on any Map or plat of record.

12. **ALTERATION OF UNITS.** A Unit Owner:

12.1 May not make any structural improvements or alterations to the Unit that affect the appearance of the Unit from the street without the prior written consent of the Association.

12.2 May not change the appearance of the Common Elements without the prior written consent of the Association.

13. **RESERVATION FOR ACCESS - MAINTENANCE, REPAIR AND EMERGENCIES.**

13.1 **Right of Access.** The Association shall have the irrevocable right to have access to each Unit and all Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements or utilities therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or to another Unit.

13.2 **Damages.** Damage to a Unit, except for Unit Owner installed or constructed improvements, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit shall be an expense of the Association; provided, however, that if such maintenance, repair or replacement is caused by the negligence of the Unit Owner, his agents, employees, invitees or tenants then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof shall be the Unit Owner's obligation and shall be immediately paid to the Association upon demand therefor.

13.3 **Restoration.** Any damages to a Unit or the Common Elements that may be occasioned by the Association exercising its rights under this paragraph shall be immediately restored, to the extent reasonably practical, to the same condition in which the same existed prior to such damage.

13.4 **Common Expense.** All maintenance, repairs and replacement of the Common Elements, whether located inside or outside of any Unit (unless caused by the negligence, misuse or deliberate act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be an expense of the Association.

13.5 **Trash.** No trash, ashes, garbage, weeds or other refuse shall be allowed to accumulate or be placed on any Unit or area within the Project. There shall be no burning or other disposal of weeds or refuse out of doors. Each Unit Owner shall dispose of trash in the dumpster located on the Property.

13.6 **Noise.** No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of persons and Improvements in any Unit, shall be placed or used on any Unit. No animals shall be kept or maintained on any Unit that creates a nuisance by noise, including without limitation, barking dogs.

13.7 **Nuisance.** No obnoxious or offensive activity shall be carried on within the Project, nor shall anything be done or permitted that shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Project or its Owners or occupants; provided, however, that this Section shall not apply to any noise or other activity approved by the Board as to the construction or reconstruction of any Improvements.

13.8 **Hazardous Activities.** No activities shall be allowed or conducted on the Property that are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are not limited to, fireworks, firearms, bow and arrows, explosives, air or pellet guns or any similar type devices except only in approved areas in accordance with rules and regulations adopted by the Board. No outside open fires shall be permitted in any Unit unless contained within a cooking or barbecue type unit or grill.



14. ANIMALS.

14.1 Dogs and Cats. As determined by the Board, a Unit Owner may keep and maintain a reasonable number of pets, excluding birds and fish, within the Unit subject to the following conditions:

14.1.1 All dogs and cats shall be kept within the Unit, and if taken outside the Unit, leashed or otherwise controlled.

14.1.2 The Unit Owner shall at all times be personally liable and responsible for all actions of any dog or cat and any damage caused by the dog or cat.

14.1.3 No dog or cat shall create a nuisance or noise problem within Blue Mesa Townhomes.

14.1.4 The Unit Owner and the owner of any dog or cat shall be personally responsible and liable for the cleanup of any excrement left by such dog or cat within Blue Mesa Townhomes.

14.2 Other Animals and Pets. No other animals or pets may be kept or maintained by any Unit Owner, excluding birds and fish, except upon the prior written permission of the Board.

14.3 Impoundment of Animals. The Association is specifically empowered to impound any animal running at large within the Project. Upon impoundment, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility that accepts impounded animals. It is the duty of the owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the facility, any Unit Owner or the Association.

15. ASSESSMENTS AND TAXATION. Each Unit shall be separately assessed for all taxes and assessments of the State of Colorado, the City of Gunnison, County of Gunnison, and any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the Common Elements shall be allocated to the Association.

16. ASSOCIATION AS ATTORNEY-IN-FACT. The Declarant, for itself and its heirs, successors and assigns and any person acquiring and holding an interest in the Project, their grantees, successors, heirs, personal representatives or assigns do hereby irrevocably appoint the Association as attorney-in-fact for the Unit Owner within the Project with respect to the Project upon its damage, destruction, obsolescence or condemnation and any amendment to the Declaration or the termination of the Project as provided by the Act then in effect.

17. AMENDMENT OF DECLARATION.

17.1 Amendment. Except only as otherwise provided in the Act, the Declaration, including the Map, may be amended only by a vote or agreement of the Unit Owners to which 67% of the votes in the Association are allocated. Provided, however, that no amendment can change the requirements of paragraphs 23.5 or 38.2.

17.2 Recording. Any Amendment to the Declaration, including the Map, shall be effective upon recording in the same in the records of Gunnison County, Colorado.

17.3 Execution of Amendment. Any Amendment to the Declaration, or the Map, shall be prepared and executed by the Association and signed by the President of the Association or any other officer of the Association designated for such purpose. The Association shall certify that the Amendment was adopted and approved in accordance with the provisions of this paragraph 17 and

such certification shall be conclusive proof that the Amendment was duly adopted in proper form.

17.4 Reservation by Declarant. Notwithstanding any other provision of this Declaration, Declarant reserves and is granted a special Declarant right until such time as all of the Units within the Project have been conveyed to third person purchasers, to amend this Declaration, and the Map, for the following purposes:

17.4.1 To correct a technical or typographical error and/or to clarify any existing provision.

17.4.2 To comply with applicable laws, ordinances or regulations of any governmental entities having jurisdiction over the Project.

17.4.3 To comply with the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other lenders or insurers in the secondary mortgage market, or to include or change any provision so as to cause any such agency or entity to make, purchase, sell, insure or guarantee First Security Interests.

17.4.4 To comply with any requirements of the Act or amendments thereto.

The Declarant shall certify that such Amendment to the Declaration and the Map was amended by the Declarant in accordance with this paragraph 17.4 and shall be effective upon recording the Amendment in the records of Gunnison County, Colorado. Provided, however, no Amendment by the Declarant under this paragraph 17.4 shall in any manner effect or impair the lien of a First Security Interest upon a Unit or to modify, change, or amend the terms and conditions of such First Security Interest, or change the requirements of paragraphs 23.5 or 38.2.

18. TERMINATION OF THE PROJECT.

18.1 Termination. Except only in the case of taking of the entire Project, and all of the Units, by eminent domain, the Project may only be terminated by a unanimous vote or agreement of the Unit Owners and by all of the holders of any recorded First Security Interests unless otherwise specifically provided by the Act.

18.2 Agreement. The termination of the Project shall be evidenced by a Termination Agreement executed by all of the Unit Owners and by all of the holders of any recorded First Security Interests in the same manner as is required for a Deed. The Termination Agreement shall specify a date after which the termination agreement shall be void unless the same is recorded in the records of Gunnison County, Colorado on or before such date.

18.3 Termination Agreement. The Termination Agreement must contain provisions setting forth terms and conditions:

18.3.1 That all of the Common Elements and Units of Blue Mesa Townhomes must be sold following termination and to include the terms and conditions of such sale, or

18.3.2 For the sale of the Common Elements, but not the Units, and the terms and conditions of such sale, or

18.3.3 That if the Common Elements or Units are not to be sold, then title thereto vests in the Unit Owners, as tenants in common, in the same proportion that a Unit Owner had in the Allocated Interests in the Association.

18.4 Powers of Association. Following the termination of the Blue Mesa Townhomes, the Association shall continue to exercise all of the powers, rights, duties and obligations as specified in the Act.



19. BLUE MESA TOWNHOMES ASSOCIATION.

19.1 On or before the date that the first Unit in Blue Mesa Townhomes is conveyed to a third person purchaser, Blue Mesa Townhomes Association shall be organized and incorporated as a Colorado nonprofit corporation.

19.2 The membership of the Association shall at all times consist exclusively of all Unit Owners in the Project or, in the event of the termination, of the former Unit Owners in the Project.

20. POWERS AND DUTIES OF ASSOCIATION. The Association shall have the following powers and duties:

20.1 Adopt and amend Bylaws and Rules and Regulations, restrictions and policies.

20.2 Adopt and amend budgets for revenues, expenditures, and reserves and collect and determine assessments for Common Expenses from the Unit Owners.

20.3 Hire and terminate managing agents and other employees, agents and independent contractors.

20.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself and one or more of the Unit Owners on matters affecting Blue Mesa Townhomes.

20.5 Make contracts and incur liabilities.

20.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements.

20.7 Cause additional improvements to be made as a part of the Common Elements.

20.8 Acquire, hold, encumber and convey in its own name any right, title, or interest or real or personal property; provided, however, that the Association may not convey or subject to a security interest all or any portion of the Common Elements except upon the affirmative vote of all of the Unit Owners.

20.9 Grant easements, leases, licenses and concessions through or over the Common Elements.

20.10 Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements.

20.11 Impose charges (including without limitation, late charges and default interest) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other action to enforce the power of the Association, regardless of whether or not suit was initiated, and, after the notice and opportunity to be heard, levy reasonable fines for violations of the Declaration, the Bylaws and rules and regulations adopted by the Association, or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay assessments within 30 days after they become due).

20.12 Impose reasonable charges for the preparation and recordation of Amendments to the Declaration and the Map or statement of unpaid assessments.

20.13 Provide for the indemnification of its officers and the Board of the Association.

20.14 To maintain directors' and officers' liability insurance.

20.15 Exercise all of the powers conferred upon the Association by this Declaration and the Articles and Bylaws of the Association.

20.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.

20.17 Obtain and maintain all required insurance as provided by this Declaration.

20.18 Act as attorney-in-fact for the Unit Owners as provided by this Declaration.

20.19 Exercise any other powers necessary and proper for the governance and operation of the Association.

21. ADMINISTRATION AND MANAGEMENT BY THE ASSOCIATION.

21.1 Association as Attorney-in-Fact. The title to every Unit is hereby declared and expressly made subject to the terms and conditions of the Declaration, and acceptance by grantee of a deed from the Declarant or any prior Unit Owner shall constitute the appointment of the Association as the Unit Owner's attorney-in-fact for the purpose expressly set forth in this Declaration.

21.2 Unit Owner's Compliance. Each Unit Owner shall comply strictly with the provisions of this Declaration, any supplement or amendment hereto, and all decisions, resolutions, rules and regulations of the Association adopted in accordance with this Declaration. Failure to comply with any of the same shall be grounds for an action to recover any amounts due, for damages or injunctive relief or both, together with reasonable attorney fees and costs, incurred in connection therewith, brought by the Association on behalf of the Unit Owners, or, in a proper case, by any aggrieved Unit Owner.

21.3 Construction and Validity. The administration and management of Blue Mesa Townhomes shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of the Association. In the event of any conflict between or among the provisions of the Declaration (including all supplements thereto), the Articles of Incorporation or Bylaws of the Association, the following shall control:

21.3.1 All provisions of this Declaration, the Articles of Incorporation and Bylaws are severable.

21.3.2 The rule against perpetuities does not apply to defeat any provision of this Declaration, the Articles of Incorporation and Bylaws of the Associations or rules and regulations adopted by the Association.

21.3.3 In the event of a conflict between the provision of this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall prevail.

21.4 Membership. The Unit Owner, upon becoming such Unit Owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of ownership of the Unit.

21.5 Appurtenant Right. There shall be one membership in the Association for each Unit. Such membership shall be appurtenant to the Unit and shall be transferred automatically by a conveyance of the Unit to a new Unit Owner.

21.6 Voting. Each membership shall be entitled to the allocated votes for that Unit as set forth in attached Exhibit A, and in the event the membership is held by more than one Unit Owner, the vote must be cast only as a single vote. Split or divided votes or membership shall not be allowed.

21.7 Transfer. No person other than a Unit Owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the Unit; provided however, that such membership may be assigned to the holder of a



Security Interest as further security for the loan secured by the lien of such holder upon the Unit.

21.8 Rights of Declarant. Notwithstanding any other provision of this Declaration or the Articles of Incorporation of the Association, Declarant, its successors and assigns, shall have the right to appoint the members of the Board of Directors (who need not be members of the Association or Unit Owners) during the period of Declarant control, which is the earlier of (i) 10 years after the date of the recording of this Declaration, (ii) sixty days after the Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (iii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (iv) two (2) years after the right to add new Units was last exercised (if such right is reserved by Declarant in this Declaration). Declarant may voluntarily relinquish such power evidenced by a notice executed by the Declarant and recorded with the Clerk and Recorder of the County of Gunnison in the State of Colorado. Further, not later than 60 days after the conveyance of 25% of the Units that may be created to Owners other than Declarant, at least 25% of the members of the Board of Directors shall be elected by the Unit Owners other than Declarant, and not later than 60 days after the conveyance of 50% of the Units that may be created to Owners other than Declarant, not less than 33 1/3% of the members of the Board of Directors must be elected by Unit Owners other than Declarant.

22. ASSESSMENT FOR COMMON EXPENSES BY THE ASSOCIATION.

22.1 Payment of Assessments. Declarant, for each Unit owned by it, and each Unit Owner by the acceptance of a deed therefor shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

22.2 Apportionment. Assessments for Common Expenses shall be apportioned among all of the Unit Owners in accordance with their Allocated Interest in the Association.

22.3 Special Apportionment of Certain Assessments and Expenses. The following expenses shall be assessed and allocated as follows:

22.3.1 Any Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit(s) to which that Limited Common Element is assigned.

22.3.2 Any Common Expenses or portion thereof benefitting fewer than all of the Units shall be assessed exclusively against the Unit(s) so benefitted.

22.3.3 Insurance premiums and costs shall be assessed in proportion to the risk.

22.3.4 If any Common Expenses are caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such Unit Owner.

23. AMOUNT OF ASSESSMENTS FOR COMMON EXPENSES.

23.1 Determination of Assessments. The annual assessments made for the Common Expenses shall be based upon the budget adopted by the Association.

23.2 Budget. The Board shall prepare a proposed budget for the Association. Within 30 days after the date of adoption of the proposed budget by the Board, the Association shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all of the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the ratification of the budget not less

than 14 nor more than 60 days after the mailing or other delivery of the summary of the budget. Unless at the meeting of the Unit Owners, a vote by a majority of the Allocated Interests in the Association reject the budget, the budget is ratified, whether or not a quorum is present. 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 of Directors.

23.3 Liability for Assessments. Each Unit Owner is liable for the assessments made against the Unit of that Unit Owner during the period of ownership of such Unit. No Unit Owners 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.

23.4 No Waiver. The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay the same.

23.5 Payment of Utilities. Each Unit Owner shall be obligated to pay all charges for any separately metered utilities servicing his Unit. In the event that any utility is master metered to the Association, then such utility service shall be a part of the Common Expenses as above provided. In the event of the failure of any Unit Owner to pay all water and sewer and rubbish removal charges and any common element charges, the same shall be the obligation of and paid by the Association. Upon such payment, the Association shall then have the same rights of collection thereof from such Unit Owner as is provided for herein for the collection of unpaid assessments.

23.6 Special Assessments. In addition to assessments for Common Expenses as above set forth, the Association may at any time and from time to time determine, levy and assess any special assessment for the purpose of paying, in whole or in part, the costs, fees or expenses of any construction, reconstruction, restoration or repair, replacement or maintenance of the Common Elements, or any other lawful purpose contemplated by this Declaration, or the Articles of Incorporation or Bylaws of the Association, or permitted by law. Such special assessment shall be assessed to each Unit Owner in accordance with his Allocated Interests in the Association as set forth in attached Exhibit A and shall be due and payable in the manner set forth in the notice of such special assessment. Notice in writing of the amount of such special assessment and time for payment of the special assessment shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

24. TIME OF PAYMENTS OR ASSESSMENTS FOR COMMON EXPENSES.

24.1 Fiscal Year. The assessments of the Association shall be computed and determined on a fiscal year basis.

24.2 Payable Monthly. Unless the Board of Directors of the Association otherwise determines, assessments shall be payable monthly in advance on or before the tenth day of each month by the Unit Owners. delinquent assessments shall bear interest as provided in this Declaration.

24.3 Written Notice. The Association shall give written notice to the Unit Owners of the annual assessment thirty (30) days prior to the institution and/or increase of same, and shall deliver to each Unit Owner itemized statements.

24.4 Late Charges and Interest. The Association may establish the rate of interest to be charged as to any past due assessment, not to exceed 21% per year. Until otherwise established by the Association, if any assessment is not paid within 10 days after the date that it becomes due and payable, a late charge of \$20.00 to cover the extra costs and expenses involved in handling such delinquent payment shall be imposed and any past due



assessment shall bear interest at the rate of 1.5% per month from the date the assessment was due until the date that such assessment is paid.

25. LIEN FOR NONPAYMENT OF ASSESSMENTS.

25.1 Lien for Assessment. The Association shall have a statutory lien on any Unit for any assessment levied against that Unit or fines imposed against that Unit Owner. All fees, charges, late charges, attorney fees, fines and interest as provided by this Declaration are enforceable as assessments.

25.2 Priority of Lien. The lien for assessments by the Association is prior to all other liens and encumbrances on a Unit except:

25.2.1 Liens and encumbrances of record prior to the date of the recording of this Declaration.

25.2.2 A First Security Interest on the Unit that was recorded before the date on which the assessment sought to be enforced by the lien became delinquent. Provided, however, a lien for assessments of Common Expenses based on the duly adopted budget of the Association that would have been due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or non-judicial foreclosure to enforce or extinguish the lien for Common Expenses shall have priority over the lien of the First Security Interest, or any greater priority for a lien for Common Expenses as may hereafter be provided by the Act.

25.2.3 Liens for real estate taxes and assessments or charges of any governmental entity against the Unit.

25.3 Notice of Lien. The recording of this Declaration constitutes record notice and perfection of any lien for assessments by the Association and no further recordation of any claim of lien for assessments is required. Provided, however, the Association may further record a lien for assessments in the records of Gunnison County, Colorado.

25.4 Enforcement of Lien. The lien for assessments of the Association may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the Unit Owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorney fees. The Unit Owner shall also be required to pay to the Association the assessments for the Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to acquire the Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to any Unit subject to the Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

25.5 Payment by Holder of Security Interest. Any holder of a Security Interest on a Unit may pay, but shall not be required to pay the amount secured by such lien, and upon such payment the holder of such Security Interest shall have a lien on such Unit for the amounts paid of the same rank as the lien of its Security Interest.

26. UNIT OWNER'S OBLIGATIONS FOR PAYMENT OF ASSESSMENTS. The amount of any unpaid assessments against a Unit shall be the personal and individual debt of the Unit Owner. The Association shall

have the right to maintain judicial proceedings to recover a money judgment for all unpaid assessments without foreclosing or waiving the lien for such assessments. In any legal action for a money judgment, the Association may recover all late charges and interest to the date of payment, all costs of collection and reasonable attorney fees.

27. STATEMENT OF ASSESSMENTS.

27.1 Written Statement of Assessments. The Association shall furnish to the Unit Owner, such Unit Owner's designee, or to the holder of a Security Interest in the Unit or its designee upon written request delivered personally or by certified mail to the Association or the registered agent of the Association, a written statement setting forth the amount of unpaid assessments currently levied against that Unit. The statement of assessment shall be furnished within 14 calendar days after receipt of the request and shall be binding upon the Association. If no statement of assessments is furnished to the Unit Owner or the holder of a Security Interest in the Unit or their designee either by personal delivery or certified mail return receipt requested, then the Association shall have no right to assert a lien on the Unit for unpaid assessments that were due as of the date of the request.

27.2 Joint Liability. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments due and owing by the grantor for the Common Expenses up to the time of the grant or conveyance of the Unit, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore, subject only to the limitations set forth in paragraph 27.1. The term "Grantee" as used in this section shall not apply to the holder of a First Security Interest on a Unit which First Security Interest was recorded prior to the date upon which any assessment against the Unit became a lien as provided in this Declaration.

28. DEFAULT ASSESSMENTS. All monetary fines and other enforcement costs assessed against an Owner pursuant to the Association documents, or any expense of the Association which is the obligation of any Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association documents, including without limitation attorney fees incurred by the Association, shall be a default assessment and shall become a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least five (5) days prior to the due date.

29. EFFECT OF NONPAYMENT: ASSESSMENT LIEN. Any assessment installment, whether pertaining to any Annual, Special or default assessment, that is not paid when due shall be delinquent. If any assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

29.1 If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;

29.2 If the delinquency continues for a period of thirty (30) days, assess an interest charge, in arrears, from the due date at the yearly rate of 18% per year;

29.3 Suspend the voting rights of the Owner during any period of delinquency;

29.4 Accelerate all remaining assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

29.5 Bring an action at law against any Owner personally obligated to pay the delinquent assessments;

29.6 Proceed with foreclosure as set forth in more detail below; and



29.7 Suspend any of the Owner's membership privileges during any period of delinquency and for up to sixty (60) days thereafter.

29.8 Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the lien of all taxes, bonds, assessments and other levies that by law should be superior and (ii) the lien or charge of any Security Interest having priority over all other security interests in the Unit made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent assessments will be prior to a Security Interest having priority over all other Security Interests in the Unit to the extent of an amount equal to the assessments that would have come due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses of filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

30. LIMITATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION.

30.1 **No Lien on Common Elements.** Subsequent to the completion of the improvements described on the Map, or any supplement thereto, no labor performed or materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, or his agent, shall be the basis of a lien against any other Unit unless such other Unit Owner expressly consented to or requested the same, or against the Common Elements.

30.2 **Indemnification.** If because of any act or omission of any Owner, any mechanics or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days of the date of filing thereof, and further shall indemnify and hold harmless all the other Owners and the Association from and against any and all costs, claims, losses or damages including, without limitation, reasonable attorney fees resulting therefrom.

31. **SECURITY INTEREST IN UNIT.** The Unit Owner shall have the right to grant a Security Interest in a Unit. Any such Security Interest shall at all times be subject to the terms and conditions of this Declaration and the Act.

32. **INSURANCE.** The following provisions shall govern insurance on the Project:

32.1 **Required Insurance by Association.** The Association shall obtain and maintain at all times, to the extent reasonably available, insurance coverage as hereafter set forth. All such insurance shall be written and issued by insurance companies licensed to do business in the State of Colorado and with an acceptable insurance rating.

32.2 **Property Insurance.** The Association shall obtain and maintain property insurance for broad form covered causes of loss, including fire and extended coverage with standard risk endorsements including vandalism and malicious mischief. The property insurance shall insure the Common Elements and all property owned by the Association, and any interest therein, in an amount not less than the full insurable replacement cost of the insurable property, less applicable deductibles at the time such insurance is obtained. All policies shall contain a standard non-contributory mortgage clause in favor of the holder of each Security Interest of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of holders of such Security Interest as their interests may appear.

32.3 **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 an amount deemed sufficient in the judgment of the Board of Directors of the Association but in any event not less than \$1,000,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering claims for bodily injury and property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project and shall provide insurance coverage insuring the Board of Directors, the Association, the managing agent and their respective employees, agents and all persons acting as agents. Unit Owners shall be included as additional insureds but only for claims and liability arising in connection with the ownership, existence, use or management of the Common Elements. Such insurance policies shall cover claims of one or more insured parties against other insured parties.

32.4 **Workman's Compensation Insurance.** Workman's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the form now or hereafter required by law.

32.5 **Flood Insurance.** If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the Security Interests on the Units comprising the Project.

32.6 **Fidelity Insurance.** The Association may purchase adequate fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

32.7 **Additional Insurance.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance and any personal property of the Association located thereon.

32.8 **Insurance Not Available.** In the event that the insurance as described in paragraphs 32.2 and 32.3 is not reasonably available or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association shall promptly give written notice of such fact to all Unit Owners

by personal delivery or by United States mail, postage prepaid.

32.9 Special Provisions. As to the insurance coverage provided in paragraphs 32.2 and 32.3 above, all policies must provide that:

32.9.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Association and as a member of the Association.

32.9.2 The insurance company waives its right to subrogation under the policies of insurance against any Unit Owner or members of the Unit Owner's household.

32.9.3 No act of omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void any insurance policy or be a condition to recovery under such insurance policy.

32.9.4 If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by such policy, the Association's insurance policy will provide primary insurance.

32.9.5 That such insurance policy may not be cancelled or modified without at least 30 days prior written notice to the Association.

32.10 Payable to Association. All property insurance policies as provided in paragraph 32.2 above shall provide that any loss covered by such insurance shall be adjusted with the Association and the insurance proceeds for such loss shall be payable to the Association and not to the holder of a security interest. The Association shall hold the insurance proceeds in trust for the Unit Owners and holders of Security Interests as their interest may appear. Except only as hereafter provided, the proceeds of such insurance must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and the holders of Security Interests are not entitled to receive any 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.

32.11 Insurance by Unit Owners. Any insurance policy issued to the Association does not obviate the necessity for a Unit Owner to obtain insurance on their own behalf as to any and all losses not covered by the insurance of the Association. Provided, however, all policies of any such Unit Owner shall contain waivers of subrogation and provide that the liability of the insurance company issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by the Unit Owner.

32.12 Insurance Responsibility of Unit Owner. Insurance coverage on furnishings, including carpet, draperies, wallpaper, and any other items of personalty or other personal property belonging to a Unit Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Unit Owner thereof, and the Board of Directors, the Association and/or the managing agent shall have no responsibility therefor.

32.13 Certificate of Insurance. Any insurance company issuing policies of insurance as provided in paragraphs 32.2 and 32.3 above shall issue Certificate of Insurance or Memorandums of Insurance to the Association and, upon request, to any Unit Owner or to the holder of a First Security Interest.

33. DAMAGE OR DESTRUCTION TO BLUE MESA TOWNHOMES.

33.1 Mandatory Repair or Replacement. If all or any portion of the Unit, for which insurance is required to be maintained as provided in paragraphs 32, is damaged or destroyed, such damage or destruction must be promptly repaired and/or replaced by Unit Owner unless:

33.1.1 The Project is terminated in the manner provided in paragraph 18 of this Declaration.

33.1.2 The repair or replacement of the damaged or destroyed portions of the Project would be illegal under any state or local statute or ordinance governing health or safety.

33.1.3 All of the Unit Owners, being one vote for each Unit and including the Unit Owners of every Unit for which a Limited Common Element is allocated that will be affected by such action, vote not to rebuild, repair or replace the Project.

33.2 Rebuild and Replace. Except only as otherwise provided in paragraph 33.1 above, the Association shall promptly repair and replace any damaged or destroyed portions of the Project.

33.3 Insurance Proceeds. The Association shall utilize all insurance proceeds payable as a result of such damage or destruction to the repair and replacement of such damaged portions of the Project.

33.4 Insurance Proceeds Insufficient. In the event that the cost of repair or replacement is in excess of the insurance proceeds and reserves payable as a result of such damage or destruction then any additional costs of such repair or replacement shall be a Common Expense of the Association and assessed in the manner provided by paragraph 23 of this Declaration. The Association shall levy and assess a special assessment for such repairs and replacement as provided in paragraph 23.6 of this Declaration. In the event that the Unit Owner refuses to pay such special assessment in the time and in the manner provided by the Association, the Association shall foreclose the lien of its special assessment as to such Unit in the manner provided in paragraph 25.4 and 29.89 of this Declaration and the proceeds derived from the foreclosure of such Unit shall be used and disbursed by the Association in the following order:

33.4.1 For the payment of any taxes and assessments to any governmental authority.

33.4.2 To the costs and expenses to foreclose the lien of the Association, including reasonable attorney fees.

33.4.3 The unpaid balance due to the holder of a First Security Interest, which First Security Interest was recorded in the records of Gunnison County, Colorado prior to the date of the special assessment of the Association.

33.4.4 The payment of the special assessment due to the Association under this paragraph, and the payment of any unpaid assessments or costs, expenses and fees due the Association.

33.4.5 The payment of any Security Interest in the order of and to the extent of their priority.

33.4.6 The balance remaining, if any, shall be paid to the Unit Owner.

33.5 Assessments Not Abated. The assessments of the Association shall not be abated during the period of repair and replacement unless otherwise provided by the Association.

33.6 Election Not to Repair. In the event that an election is made not to repair or replace any portions of the Project which have been damaged or destroyed and for which insurance proceeds are available, then the insurance proceeds attributable to such damage or destruction shall

be distributed and paid in the same order as set forth in paragraph 33.4 of this Declaration.

All such proceeds shall be payable and distributed in accordance with the Allocated Interests of each Unit in the Association.

34. OWNER'S MAINTENANCE RESPONSIBILITY OF UNIT.

34.1 The Unit Owner shall at all times keep and maintain his or her Unit, and the interior thereof in a good and proper state of repair and in a clean, sanitary and attractive condition.

34.2 The Unit Owner shall not be deemed to own any utilities running through his or her Unit that serve other Units except as tenants in common with the other Owners. No utilities shall be altered, changed, relocated or disturbed without the prior written consent of the Association.

34.3 The Unit Owner's right to repair, alter, and remodel his or her Unit shall carry the obligation to replace any exterior materials removed or repaired with similar or other types of materials, unless the prior written approval of the Association is obtained.

34.4 In the event the Unit Owner fails or refuses to maintain his or her Unit as required by paragraph 34.1 above, the Association shall give immediate written notice to the Unit Owner as to such failure to maintain and set forth the repairs and maintenance required by the Unit Owner. If the Unit Owner fails to comply with such notice within 30 days of such notice, the Association may make and accomplish such repair and maintenance and levy a special assessment against the Unit as provided in paragraph 22.3.2.

35. OBSOLESCENCE OF BLUE MESA TOWNHOMES.

35.1 **Obsolescence.** In the event of the obsolescence of the Project, the Project may be terminated in the manner provided by paragraph 18 of this Declaration.

35.2 **Plan of Renewal.** In the event such obsolescence, the Association may adopt a plan for the renewal and reconstruction of the Project and submit the same to the Unit Owners for approval. If all of the Unit Owners, being one vote for each Unit, vote to approve and adopt the plan of renewal, then such plan of renewal shall be binding upon the Association and all Unit Owners, whether or not the Unit Owners have previously consented to the plan of renewal. The cost of the plan of renewal shall be a Common Expense of the Association and the Association shall levy a special assessment for the payment of all costs of such plan of renewal. In the event that any Unit Owner fails or refuses to pay such special assessment in the time and in the manner provided by the Association, the Association shall foreclose the lien of its special assessment as to such Unit in the manner provided in paragraphs 25.4 and 29.8 of this Declaration and the proceeds derived from the foreclosure of such Unit shall be distributed and paid by the Association in the same order as set forth in paragraph 33.4 of this Declaration.

36. **CONDEMNATION.** If all or any part of a Unit or the Common Elements is acquired by eminent domain or sold or otherwise disposed of in lieu of or avoidance of condemnation or eminent domain then the following conditions shall apply:

36.1 **Unit.** If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration or by the laws, ordinances, rules or

regulations or any governmental entity having jurisdiction over the Unit, the eminent domain award must include compensation to the Unit Owner for that Unit and its Allocated Interests in the Association or any Limited Common Elements whether or not the same are acquired by eminent domain. Unless the eminent domain decree specifically otherwise provides, the Allocated Interests in the Association and Limited Common Elements of the Unit acquired by eminent domain are automatically reallocated to the Unit in the Project in proportion to the respective Allocated Interests of those Units in the Association before the eminent domain taking. Any remnant of a Unit remaining after a part of the Unit is taken in eminent domain under this paragraph is thereafter a Common Element.

36.2 **Part of a Unit.** If a part of a Unit is acquired by eminent domain the award must compensate the Unit Owner for the reduction in value of the Unit and that Unit's interest in the Association and any Limited Common Elements, whether or not any Common Elements or Limited Common Elements are acquired. Upon acquisition by eminent domain, unless the decree specifically otherwise provides, (1) the Allocated Interests of the Unit taken by eminent domain are reduced in proportion to the reduction in size of the Unit and (2) the portion of Allocated Interests divested from the partially acquired Unit in eminent domain is automatically reallocated to the Unit and to the remaining Units in proportion to the respective interests of those Units before the taking by eminent domain, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

36.3 **Common Elements.** If any part of the Common Elements are acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the Association. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Unit Owners to which that Limited Common Element was allocated at the time of acquisition by eminent domain. For the purposes of acquisition of a part of the Common Elements, other than the Limited Common Elements, service of process on the Association shall constitute sufficient notice to all Unit Owners and service of process on each individual Unit Owner shall not be necessary or required.

The reallocations of the Allocated Interests in the Association pursuant to this paragraph 36 shall be confirmed by an Amendment to the Declaration prepared, executed and recorded by the Association.

36.4 **Entire Project.** If all of the Units and all of the Common Elements are acquired by eminent domain then the Project shall terminate in the manner provided in paragraph 18 of this Declaration.

37. **PROPERTY FOR COMMON USE.** The Association may acquire and hold for the use and benefit of all of the Unit Owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the Unit Owners in the same proportion as their Allocated Interests in the Association and shall not be transferable except with a transfer or a Unit. A conveyance of a Unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property acquired and held by the Association.

38. REGISTRATION BY UNIT OWNER OF MAILING ADDRESS.

38.1 **Register Mailing Address.** Each Unit Owner shall register his mailing address with the Association, and except for assessments statements and other routine notices, all other notices or demands intended to be served upon a Unit Owner shall be sent by certified mail return receipt requested, postage prepaid, addressed in the name of the Unit Owner at such registered mailing address or personally delivered. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail return receipt requested, postage prepaid, to the address of the Association.



38.2 Single Address for Mailing. In the event any Unit is owned by more than one person, or by a partnership, joint venture, corporation, or other such entity, the Unit Owners thereof shall designate to the Association in writing the name and address of the agent of the Unit Owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed and upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Unit Owners.

39. ADDITIONAL RIGHTS OF HOLDERS OF FIRST SECURITY INTEREST.

39.1 Annual Financial Statement. To be furnished a copy of the annual financial statement of the Association, and to be further furnished an audit of the Association, if the same is performed, such documents to be furnished at the same time that they are furnished to the Unit Owners.

39.2 Notice of Amendment. To be given written notice by the Association of any meeting of the Association called for the purpose of considering any Amendment, change, revision or termination of the Declaration. Such notice shall state the nature of any such change being proposed.

39.3 Notice of Default. To be given written notice of any default by a Unit Owner of a Unit encumbered by a First Security Interest in the performance of any duty or obligation required hereunder or rules and regulations of the Association, which default remains incurred more than 30 days following notice to the defaulting Unit Owner.

39.4 Action by Holder of Security Interests. If this Declaration, any Association documents or agencies require the approval of any agency or holders of Security Interests then, if the holder of a Security Interest or agency fails to respond to any written proposal for such approval within thirty (30) days after such holder of a Security Interest or agency receives proper notice of the proposal (or such longer time as may be set forth in the notice), such holder of a Security Interest or agency shall be deemed to have approved such proposal provided that the notice was delivered to the holder of the Security Interest or agency by certified or registered mail, return receipt requested.

40. GENERAL USE RESTRICTIONS. All of the Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines, rules, regulations, restrictions and policies as the Board deems to be reasonable and necessary to carry out the intent of this Declaration. The Units are intended to be used for the purposes specified in, and use of the Units is limited by, this Declaration. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied so long as such use is consistent with the ordinances, and rules and regulations of the City of Gunnison, Colorado, or other authority having jurisdiction thereof. Each Owner and Owner's Agents may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt rules, regulations, restrictions or policies governing or restricting the use of the Units and the Common Elements. Each Owner and Owner's agents, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such adopted rules, regulations, restrictions or policies.

40.1 Violations Deemed a Nuisance. Every violation of the Association documents shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

40.2 Failure to Comply. The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief, for specific performance, or for any other relief in law or at equity.

40.3 Timesharing Prohibited. A Unit may not be conveyed to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

41. GENERAL.

41.1 Validity. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or work or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or work in any other circumstances shall not be affected thereby.

41.2 Context of Words. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

41.3 Additional Provisions. The provision of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

41.4 Rate of Delinquent Interest. Unless the Board of Directors of the Association determines otherwise, any and all sums, amounts, expenses, assessments or any funds due and payable as provided in this Declaration which are not paid within ten (10) days of the date that the same are due and payable shall bear interest at the rate of one and one-half percent (1½%) per month from the date that the same were first due and payable to the date until paid.

41.5 Enforcement. The Association, on behalf of itself and any aggrieved Unit Owner, shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association documents or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association documents by any proceeding at law or in equity, or as set forth in the Association documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be awarded all costs and expenses including attorney fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association documents shall not be deemed a waiver of the right to enforce any provision thereafter.

41.6 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

42. APPLICABLE LAW. This Declaration is filed in the records of Gunnison County, Colorado and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of Gunnison County, Colorado.

43. ATTORNEY FEES. It is agreed that if any action is brought in a court of law by either party to this Declaration as to the enforcement, interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be

awarded reasonable attorney fees as well as all costs incurred in the prosecution or defense of such action.

44. **BINDING AGREEMENT.** It is understood and agreed that this Declaration shall be binding upon the heirs, personal representatives, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the date first written above.

RUBY CONSTRUCTION, INC. a Colorado corporation

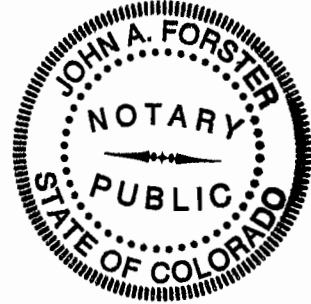
By: *Debra Paparo*
Debra Paparo, President

STATE OF COLORADO)
County of Pitkin)ss.

The foregoing Declaration has been acknowledged before me this 18 day of August, 2006, by Debra Paparo, as President of Ruby Construction, Inc., a Colorado corporation.

Witness my hand and official seal.
My commission expires: 2/25/2007

John A. Forster
Notary Public



S Dominguez Gunnison County, CO 568403
8/25/06 4:25 PM Pg: 12 of 13
133 R: \$66.00 D: \$0.00



EXHIBIT A
Declaration
for
Blue Mesa Townhomes,
a planned community

<u>Unit</u>	<u>Allocated Interest in Blue Mesa Townhomes Association by Percentage</u>	<u>Allocated Vote</u>
1	12.5%	1
2	12.5%	1
3	12.5%	1
4	12.5%	1
5	12.5%	1
6	12.5%	1
7	12.5%	1
8	12.5%	1

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8/25/06 4:25 PM Pg: 13 of 13
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