

**DEDICATION OF PARTY WALL  
AND SUPPLEMENTAL DECLARATION OF  
COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR THE ENCLAVE  
DUPLEXES, A PART OF PRAIRIE VILLAGE**

THIS DECLARATION OF PARTY WALLS AND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ENCLAVE DUPLEXES, A PART OF PRAIRIE VILLAGE is made and entered into this 15th day of March, 2004 by and between, HB DEVELOPMENT, Corp., a Colorado Corporation, (hereinafter, "Declarant").

**RECITALS**

**WHEREAS** the Declarant is the owner of FOURTEEN (14) parcels of real property within the Prairie Village Subdivision, Longmont, Boulder County, Colorado; the legal descriptions of which are attached hereto as Exhibit "A"; and,

**WHEREAS**, the Declarant shall build upon each such lot SEVEN (7) single family attached residential buildings, each building containing two (2) attached residential Duplex Units, which shall include a two (2) stall automobile garage, in each of the residential Duplex Unit and each residential Duplex Unit sharing a Common Party Wall on the property line separating the two parcels; and,

**WHEREAS**, the Declarant desires to subject its above described parcels of real property to the covenants, restrictions, easements, charges, and liens hereinafter set forth, relating to the existence, ownership, maintenance, extension, modification and alteration of the Common Party Wall and the exteriors of each of the Duplexes, yards, landscaping and fences; and,

**WHEREAS**, the Declarant wishes to set forth the rights and duties of each of the owners in respect to their Common Party Walls, and further to add to and supplement certain covenants, conditions and restrictions in regard to the owners' rights and duties within the Duplex Community (hereinafter, "Supplemental Declaration") being a part of the Prairie Village Community as defined and set forth in the Master Declaration of Covenants, Conditions and Restrictions of Prairie Village recorded with the Clerk and Recorder of Boulder County, Colorado on October 18, 2002 as Reception No. 2345858; and,

**WHEREAS**, a common interest community may be created pursuant to the Act (as hereinafter defined) upon the recordation of this Supplemental Declaration and upon recording amendments to this Supplemental Declaration, which documents must be executed in the same manner as a deed; and,

**WHEREAS**, the land and the improvements to be located thereon, which are to be subjected to this Supplemental Declaration, have been limited by a certain recorded *Master Community*

*Covenants, Conditions and Restrictions for Prairie Village*, (hereinafter, "Master Declaration") which is hereinabove and hereinafter defined; and,

**WHEREAS**, this Supplemental Declaration is made in addition and supplemental to all of the covenants, conditions and restrictions of the Master Declaration and in the event of conflict or ambiguity the Master Declaration shall control and not an amendment thereto;

**NOW THEREFORE**, the Declarant hereby subjects the real property described on Exhibit "A" to this *Party Wall Declaration and Supplemental Declaration of Covenants, Conditions and Restrictions for Prairie Village Duplexes*, a part of Prairie Village said described real property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easement, charges and liens, (sometimes hereinafter referred to as "Covenants and Restrictions") as set forth herein.

## **ARTICLE ONE DEFINITIONS**

1. "Architectural Review Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for improvements, as more fully provided in this Declaration.
2. "Association" means The Enclave Duplexes Homeowners' Association, Inc., a Colorado not for profit corporation, a Duplex Unit Owners' Association organized under Section 38-33.3-301 of the Act.
3. "Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.
4. "Common Maintenance Elements" means the totality of:
  - (a) The exteriors of each of the Enclave Duplexes, including all exterior walls, exterior architectural elements, all driveways, windows, roofs, exterior chimneys, exterior vents and piping; and
  - (b) Any amenities and amenity areas, if any, sidewalks, walkways, paths, fences, grass, shrubbery, trees, driveways, parking areas, landscaping, irrigation systems and gardens, and fences if any, now or hereafter located in the Community;
5. "Common Maintenance Expense Liability" means the liability for each Duplex Unit for the expenses of Common Maintenance Elements.
6. "Common Expense" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

7. "Community" means the property described on attached Exhibit "A", with respect to which a Person, by virtue of such Person's ownership of a Duplex Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration.

8. "Control Period" means the time in which the Declarant shall control the actions of the Association, which shall be for a period of time commencing on the date that the first Duplex Unit is sold to an Owner until the twelfth (12<sup>th</sup>) Duplex Unit is sold to an Owner or the expiration of seven (7) years from date of the first deed to a Duplex Unit is given to an Owner, whichever occurs first.

8. "Declarant" means HB DEVELOPMENT, Corp., a Colorado Corporation, (hereinafter, "Declarant") and any other Person or group of Persons acting in concert to whom the Declarant, by recorded documents, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

(a) as part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Duplex Unit not previously disposed of to a purchaser; or

(b) reserves or succeeds to any Special Declarant Right.

9. "Duplex Unit" means each of the fourteen (14) attached residential housings Duplex Units, located on each of the fourteen (14) duplex lots located in the Prairie Ridge Subdivision, as legally described on Exhibit "A".

10. "Master Declaration" means the *Master Declaration of Covenants, Conditions and Restrictions of Prairie Village* recorded with the Clerk and Recorder of Boulder County, Colorado on October 18, 2002 as Reception No. 2345858 and all definitions, reservations, restrictions, covenants, easements, assessments, terms and conditions thereof are made a part of this Declaration by reference as if set out herein *verbatim*.

11. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Duplex Unit.

12. "Owner" means the Declarant or other Person who owns a Duplex Unit, but does not include a Person having an interest in a Duplex Unit solely as security for an obligation. The Declarant is the owner of any Duplex Unit until that Duplex Unit is conveyed to another Person who may or may not be a Declarant under this Article.

13. "Parcel" means each of the several Duplex Unit subdivided Lots as described on Exhibit "A" attached hereto and incorporated herein by reference.

14. "Party Wall" ("Common Party Wall") means the devising wall erected upon the property boundary (property) line as a common support to structures on both sides thereof, which are under different ownership.

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

16. "Supplemental Declaration" means this *Dedication of Party Wall and Supplemental Declaration of Covenants, Conditions and Restrictions for the Enclave Duplexes, a Part of Prairie Village*, and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments.  
by the Association as a result of the application shall be the sole obligation of the applicants.

## ARTICLE TWO DECLARATION AND DEDICATION OF PARTY WALL

2.1. It is hereby declared and dedicated that each Party Wall set upon the property-line which generally runs north/south separating each of the several Duplex Units built on each of the common property lines dividing the two (2) parcels shall be legally deemed for all purposes to be a Common Party Wall in all respects and shall be subject to the covenants and restrictions set forth in this Supplemental Declaration.

## ARTICLE THREE DAMAGE AND REPAIR

3.1 Damage and Repair: In the event of damage or destruction of the Party Wall from any causes, other than the negligence of the Owners of either Parcel and except as hereinafter provided, then the Owners of the respective Parcels shall at joint and equal expense, repair or rebuild the Common Party Wall on the same spot and on the same line, and be of the same size, and of the same or similar material and of like quality with the present Common Party Wall, and each Owner, his respective heirs, personal representatives, successors and assigns shall have the right to the use of the Common Party Wall so rebuilt or repaired.

3.2 Requirement for Repair: The Owners of either Parcel agree that repairs and reconstruction of the Common Party Wall shall be undertaken whenever a condition exists which may reasonably result in damage or injury to person or property if repair or reconstruction work is not undertaken. Either Owner upon discovering the possibility of damage or destruction, shall notify the other Owner of the nature of the damage, the work required to remedy the situation and the estimated cost of the repair or reconstruction. The other Owner shall then have twenty (20) calendar days from the receipt of the Notice either to object to the repairs and reconstruction or to pay his share of the cost of such work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property, the Owner shall then have three (3)

calendar days from the receipt of the notice, which notice shall state in detail that an emergency exists, either to object to the repairs or reconstruction or to pay his share of the cost of the work.

3.3 Negligence of an Owner: If either Owner, his family members, guests and/or invitees shall cause the damage to or the destruction of the Party Wall, the negligent Owner shall bear the entire cost of repair or reconstruction.

3.4 Refusal to Make Payment: If either Owner shall neglect or refuse to pay his respective share, or all of the cost in the event of his respective negligence, the other Owner may have the Party Wall repaired, restored or reconstructed and shall be entitled to have a mechanics' lien placed upon the that Owner's property who failed to make payment for the amount of his share of the repair, restoration or replacement cost. The Owner may foreclose the mechanics' lien according to the Statutes of the State of Colorado pertaining to the foreclosure of such mechanics' liens. It is understood and agreed by both Owners of the adjoining Parcels, that each of them by accepting a deed for his/her respective single family residential unit, hereby waives any statute of limitations set by said appertaining statute, or by common law on the perfection of such a mechanic's lien attached to his/her property, and that any foreclosure may be done anytime within six (6) years of the date of the filing of said lien against the title to his or her property with the Clerk and Recorder of Boulder County, Colorado.

3.5 Substantial Loss: In the event of a substantial destruction of the Party Wall, which shall be defined for the purposes of this Declaration and Dedication to be eighty percent (80%) of the value of the Party Wall, this Declaration and Dedication of a Party Wall may be terminated upon the mutual agreement of both Owners; however, if one Owner disagrees that this Agreement should be terminated then the matter of termination shall be submitted to arbitration as is set out hereinafter.

#### ARTICLE FOUR EASEMENTS

4.1. Right of Easement: The respective Owners, his personal representatives, heirs, successors and assigns shall have any easement in that part of the land of the other upon which the Party Wall is located, as may be necessary or desirable to carry out the terms and conditions of this Party Wall Declaration and Dedication.

4.2 Easement for Repair: The respective Owners, his personal representatives, heirs, successors, assigns, contractors, licensees, agents and employees shall have an easement in that part of the land of the other Owner that is necessary or desirable to repair, restore or replace the Party Wall.

4.3 Right of Entry: The respective Owners shall permit the other Owner and the other Owner's contractors, licensees, agents, and employees to enter his property for the purpose of

repairing, restoring or reconstructing the Party Wall and shall secure permission from any party having a tenancy from such Owner prior to commencement of such work.

#### **ARTICLE FIVE DURATION AND AMENDMENT**

5.1 Intent to Run with the Land: The covenants and restrictions contained the Supplemental Declaration, including the Dedication of a Party Wall shall run with and bind the land, and shall inure to the benefit of and be enforceable by an Owner having an interest therein and subject to this supplemental Declaration such power shall be binding upon the Owners respective personal representatives, heirs, successors and assigns unless an instrument agreeing to change such covenants and restrictions in whole or in part is signed by all of the Parties having such interests and shall have been recorded with the Clerk and Recorder of Boulder County, Colorado. Provided however, that no such agreement to change shall be effective unless made and recorded in advance of the effective date of any such change. Unless the change is specifically prohibited by this Declaration and Dedication, it may be amended by an instrument signed by all Parties having an interest in the Property which shall be recorded and well supersede any and all other agreements relating to the Party Wall.

#### **ARTICLE SIX NOTICES**

6.1 Notices: Any notice or report required under this Supplemental Declaration shall be sent to the other Owner at the addresses respectively list herein, unless the address is changed by written notice by one Owner sent to the other Owner, which in such case the new address given shall be used for the sending of notices or reports. All notices shall be send by certified or regular mail, postage prepaid.

#### **ARTICLE SEVEN SEVERABILITY**

7.1 Severability: Invalidation of any one of these Covenants and Restrictions by judgment or other court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

#### **ARTICLE EIGHT INSURANCE**

8.1 Insurance: Each respective Owner shall be required to obtain and maintain, "All Risks" insurance for his respective building sharing the common Party Wall, in an amount equal to eighty percent (80%) of the full replacement cost thereof, exclusive or excavation and foundation, without deductions for depreciation. The policies for such physical damage insurance shall, if the same are available without any increases in premium for the insurance coverage, contain waivers of

subrogation and waivers of any defense arising from any acts of the insured. Duplicate copies of an Owner's policy for physical damage insurance and renewal of such insurance, with proof of payment of premiums, shall be delivered to the other Owner ten (10) days prior to the expiration of the then current policies. The respective Owners shall not do or permit any act or thing to be done in or to the Party Wall which is contrary to law or which invalidates or is in conflict with the Owner's policy of physical damage insurance. An Owner who shall not comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties or damage which may be imposed because of the lack of such insurance.

## ARTICLE NINE INDEMNITY

9.1 Indemnity: Each of the Owners agrees to indemnify the other Owner against the Owner's share of the liability for injury or personal or property damage, when such injury or damage shall result from, arise out of, or be attributable to any maintenance or repair undertaken pursuant to this Agreement.

## ARTICLE TEN TRANSFER OF A PARCEL

9.1 Transfer of Title: Upon the transfer of title to the Properties, the Owner making such transfer (Grantor) and the purchasing party (Grantee) of such property shall be jointly and severally liable for all unpaid amounts pertaining to the Party Wall accrued up to the date of the conveyance of the Property without prejudice to the rights of the Grantee, but the Grantee shall be exclusively liable for those accruing after the conveyance. In the event that an Owner shall place a mortgage (deed of trust) upon the title to the Property to secure an obligation, that lien shall be deemed to attach to that respective Owner's rights privileges and obligations under this Declaration and Dedication so that if the party should be in default of any of the terms of such lien and the default shall result in a foreclosure of such lien, all the rights, privileges, and obligations shall inure to the mortgagee (deed of trust holder) and its assigns. The foreclosing party who obtains title by foreclosure deed shall be responsible for all accrued costs associated with the Party Wall accruing prior to such conveyance.

## ARTICLE ELEVEN DISPUTES

11.1 Disputes: The Owners understand and agree, and further consent that any controversy or difference arising between them with respect to any of the provisions of this Declaration shall be submitted to the decisions of a mutually agreeable arbitrator. If the Owners cannot agree on such an arbitrator, then each shall select person, those chosen person shall then select an arbitrator. Each Owner shall pay the costs of the person selected to chose the arbitrator, and shall pay one-half (1/2) the costs of all costs associated with the selected arbitrator, and the arbitration. The decision of such arbitrator shall be final and binding on the respective Owners. The decision shall not be appealable

to the court. In the event that there is an unresolved dispute between the Owners of a Common Party Wall, such dispute shall be submitted to a three person panel appointed by the Association. The decision of the Association shall be final and unappealable.

## **ARTICLE TWELVE RECORDING**

12.1 Recording: This Supplemental Declaration shall be recorded by the Declarant with the Clerk and Recorder of the County of Boulder, State of Colorado. It is understood and agreed that the Declaration and Dedication is binding on all Parties hereto their respective heirs successors and assigns. If any further recording is done then the costs of recording shall be borne equally by the respective Owners.

## **ARTICLE THIRTEEN USE OF THE PARTY WALL**

13.1 Use of the Property Wall: Either of the Owners shall have the right to use their respective side of the Party Wall in any lawful manner, including attaching structural or finishing materials to it; however, an Owner shall not create windows, doors or place any equipment in the Party Wall without the consent of the other Owner.

## **ARTICLE FOURTEEN TERMINATION OF DECLARATION AND DEDICATION**

14.1 Termination: This Supplemental Declaration shall continue in full force and effect for so long as the Common Party Wall stands, and no longer, and without prejudice to the title of either Owner or his respective parcel or to the land so occupied by the Common Party Wall.

## **ARTICLE FIFTEEN. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

15.1. Membership. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separate from ownership of a residential Duplex Unit within the Community.

15.2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Duplex Unit owned in the Duplex Community, except that no votes allocated to a Duplex Unit owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Duplex Units existing within the Association.

15.3 Membership Votes during Development: The Declarant reserves the right to control the Association until twelve (12) of the Duplex Units are sold to Owners, but no longer than seven (7) years from the date of the conveyance of the first Duplex Unit to its Owner by deed..

**ARTICLE SIXTEEN**  
**MATTERS CONCERNING THE ASSOCIATION**

16.1 Authority of Board of Directors. Except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, the Board of Directors may act in all instances on behalf of the Association.

16.3. Authority of Declarant During Control Period. Except as otherwise provided in this Article, during the Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Board of Directors appointed by it.

16.4. Termination of Control Period. Not later than termination of the Control Period, the Owners shall elect the Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. The Board of Directors members and officers shall take office upon election.

16.5. Delivery of Property by Declarant. After the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by the Act.

16.6. Budget. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the 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 the meeting the budget is rejected by the vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, then 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 Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

16.7. Rules and Regulations. Rules and regulations concerning and governing of the Duplex Units, Common Maintenance Elements, and/or this Community may be adopted, amended or repealed from time-to-time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations.

16.8. Cooperation. The Association, at the discretion of the Board of Directors, shall have the right, at any time, from time-to-time, to cooperate with one or more other owner's associations within any part of the property generally described as Prairie Ridge, located in Longmont, Boulder County, Colorado. The extent, scope, nature and all other aspects of such cooperation may be set by the Board of Directors in its discretion and may include, without limitation, the following: having the same agents, contractors or subcontractors for activities such as maintenance, repair, replacement, management, accounting, legal representation, trash removal, and other matters within the jurisdiction of the Association; schedules; activities; and other matters.

## **ARTICLE SEVENTEEN**

### **COVENANT FOR ASSESSMENTS**

17.1 Creation of the Lien and Personal Obligation for Assessment. Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration, with such assessments and other amounts to be established and collected as hereinafter provided. It is understood and agreed that the Declarant shall not pay any assessments during the period in which it develops the property and sells the lots and the improvement thereon which are part of this Declaration. It is the understanding that the Declarant shall be installing the Common Maintenance items and will be maintaining them as part of the overall development of the Property. The annual and special assessments, and other charges, fees and fines, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Duplex Unit against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time-to-time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Duplex Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Duplex Unit during their ownership of such Duplex Unit. Each assessment, charge, fee and all other amounts under this Declaration, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Duplex Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Duplex Unit for assessments by the laws of the State of Colorado or any exception now or hereafter provided by the laws of the United States. The acceptance of a deed to a Duplex Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said lien.

17.2 Purpose of Assessments. The assessments levied by the Association shall be used for maintenance, repair and replacement of the Common Maintenance Elements, including, without limitation, repairs and renovation, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Supplemental Declaration or the Articles of Incorporation or Bylaws of the Association, or by law;

provided, however, that such assessments levied during the Control Period may not be used for the purpose of constructing capital improvements.

17.3 Initial Annual Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the annual assessment, as provided above, the amount of the annual assessment against each Duplex Unit shall be computed at a rate not in excess of \$40.00 Dollars (\$40.00) per Duplex Unit per month.

17.4 Rate of Annual and Special Assessments. Annual and special assessments shall be fixed at a uniform rate for all Duplex Units sufficient to meet the expected needs of the Association. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. All annual and special assessments shall be assessed against all the Duplex Units in accordance with the Allocated Interests set forth in this Declaration, except as specifically elsewhere provided in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

17.5 Date of Commencement of Annual Assessments. The annual assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual assessment has been made by the Association, annual assessments shall initially not be greater than the amount set forth in 17.3., of this Article, and thereafter shall be based on a budget adopted by the Association as provided above. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine in its discretion from time-to-time; provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Duplex Unit between installment due dates shall pay a pro rata share of the last payment due.

17.6 Special Assessments. In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of the votes of a quorum (as provided below) of the Association votes cast by the Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Common Elements or any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed improvements, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Duplex Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with this Article.

Notwithstanding the foregoing, special assessments levied during the 75% Control Period may not be used for the purpose of constructing capital improvements.

17.7 Notice and Quorum for Any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

17.8 Charges for Services to Less than all of the Duplex Units. The Association may, at any time from time-to-time, provide services to less than all of the Duplex Units, and the Owners of such Duplex Units shall pay the Association for such services as, when and in such manner as may be determined by the Board of Directors in its discretion from time-to-time, which amounts shall be in addition to the annual and special assessments, and which amounts shall include overhead expenses of the Association. Such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Duplex Units for which such service(s) are to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such service(s). Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of improvements or property owned or maintained by such Owner(s); (b) the provision of any services or functions to or for such Duplex Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (3) the procurement of insurance for Owners.

17.9 Lien for Assessments:

17.9.1 The Association has a statutory lien on a Duplex Unit for any assessment levied against that Duplex Unit and for fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

17.9.2 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in Boulder County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the

name of the Owner of the Duplex Unit, and a description of the Duplex Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Duplex Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

17.9.3 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

#### 17.10 Priority of Association Lien.

17.10.1 A lien under this Article is prior to all other liens and encumbrances on a Duplex Unit except:

17.10.1.1 Liens and encumbrances recorded before the recordation of the Declaration;

17.10.1.2 A Security Interest on the Lot which has priority over all other security interests on the Duplex Unit and which was recorded before the date on which the assessment sought to be enforced became delinquent; and

17.10.1.3 Liens for real estate taxes and other governmental assessments or charges against the Duplex Unit.

17.10.2 A lien under this Section is also prior to the Security Interests described in the preceding subsection (a)(2) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

17.10.3 This section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association.

17.11 Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Duplex Unit. The statement shall be furnished when fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally (including delivery by telefax) or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Duplex Unit for unpaid

assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

17.12 Application of Payments to the Association: Effect of Non-Payment and Remedies of the Association.

17.12.1 Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in subsection (b) below, if any,

17.12.2 Any assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time-to-time by the Board of Directors, and the Board of Directors may assess thereon a late charge in an amount per month(s) which may be set by the Board of Directors in its discretion at any time from time-to-time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Duplex Unit. If a judgment or decree shall include a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Maintenance Element or by abandonment of the Duplex Unit against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

17.13. Surplus Funds. Any surplus funds of the Association remaining after payment of a provision for Common Expenses and any prepayment of or provision for reserve shall be retained by the Association as reserves and need be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their first assessments.

17.14. Other Charges. The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time from time-to-time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Duplex Unit, charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

17.15. Working Capital Fund.

17.15.1 The Association or Declarant shall require the first Owner (other than Declarant) of any Duplex Unit who purchases that Duplex Unit from Declarant to make a non-refundable contribution to the Association in the amount of two (2) times the original monthly assessment (regardless of whether or not annual assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Duplex Unit and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due.

17.15.2 Upon the transfer of his Duplex Unit, an Owner shall be entitled to a credit from his transferee (but not from the Association) for the unexpended portion, if any, of his working capital fund contribution. Additionally, such Owner's transferee shall make an additional, non-refundable working capital fund contribution in an amount which is equal to the expended portion of the working capital fund contribution to the Duplex Unit being purchased by such transferee.

17.16. Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, as determined by the Board of Directors, the Association may assess that Common Expense exclusively against such Owner and his Duplex Unit.

17.17. Reimbursement for Utility Cost to Certain Duplex Units. It is understood and agreed by the Association that it will reimburse the cost to certain Duplex Units for utility cost associated with that those Duplex Units supply electrical service to common area services, for example, watering clocks and exterior security lights. It is understood that those services provided to the common areas are a common expense and will be reimbursed to those Duplex Units supplying such services by the Association.

**ARTICLE EIGHTEEN**  
**ARCHITECTURAL REVIEW COMMITTEE**

18.1 Composition of Committee. The Architectural Review Committee shall consist of one (1) to three (3) or more persons appointed by the Board of Directors. Declarant may appoint the Architectural Review Committee during the Control Period. The power to "appoint", as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such

appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time-to-time in the discretion of appointor.

18.2. Prohibitions Against Changes in General Common Elements and Structural Changes. No improvements shall be constructed, erected, placed, altered, planted, applied or installed on any Parcel, nor shall any structural alteration be made to the exterior of any Duplex Unit or commonly maintained elements; provided, however, during the control period, that the Declarant shall be exempt from the prohibitions contained in this Section.

18.3. Review by Committee for Changes in Limited Common Elements. No improvements, except landscaping of flowerbeds in the yards of the Parcels shall be constructed, erected, placed, altered, planted, applied or installed on any Common Maintenance Elements unless complete plans and specifications therefor, including without limitation such information and materials as may be required by the Architectural Review Committee in its discretion from time-to-time, shall have been first submitted to and approved in writing by the Architectural Review Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's development of, construction on, marketing or sale of Duplex Unit. The Architectural Review Committee shall exercise its reasonable judgment to the end that all improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures, and do not affect the structural integrity of any Duplex Unit or other Improvement. In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the assessments against the Duplex Unit for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for assessments and subject to all rights of the Association for the collection of assessments, as more fully provided in this Declaration.

18.4. Procedures. The Architectural Review Committee shall decide all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the Committee may require in conjunction therewith. Any request by the Committee for more information, or disapproval of any part of a submission, shall be deemed to be a disapproval by the Committee of the entire submission; any disapproved submission that is resubmitted without a change that corrects the reason for disapproval shall be deemed to be disapproved without any action or notice by the Committee of such disapproval. However, if the Architectural Review Committee fails to approve or disapprove any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

18.5. Vote and Appeal. A majority vote of the Architectural Review Committee is required to decide a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the

event a representative acting on behalf of the Architectural Review Committee decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee upon a request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative.

18.6. Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

18.7. Variance. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. The Board of Directors shall determine in their sole discretion, from time-to-time, what constitutes a "practical difficulty" or "unnecessary hardship". Such variance or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to any other property or improvements in the Community and shall not militate against the general intent and purpose hereof; and shall not set a precedent for other matters that may come before the Architectural Review Committee.

18.8. Waivers; No Precedent. The approval or consent of the Architectural Review Committee or any representative thereof, or of the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof, or by the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

18.9. Architectural Standard/Design Guidelines; Cost of Corrections. The Committee has the authority to promulgate rules and regulations to interpret and implement the provisions of this Article. The rules and regulations may contain guidelines which will clarify the types of designs and materials that will be considered in design approval. All improvements proposed to be constructed as defined and any design guidelines adopted and also in accordance with the procedures set forth in this Article. Any corrections or changes to Improvement(s) which are reasonably required to render such Improvement(s) in conformance with approved plans therefor shall be done at the sole cost and expense of the Person who requested such approval.

18.10. Other Required Approvals. In addition to obtaining the Architectural Review Committee approval provided for in this Declaration, all improvements must have the approval of the applicable governmental agencies and entities.

**ARTICLE NINETEEN**  
**MAINTENANCE**

19.1. Management and Maintenance Duties. Subject to the rights of Owners as set forth in this Supplemental Declaration:

19.1.1 The Association shall be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Maintenance Elements and of any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. Included in the foregoing, the Association shall maintain, repair and/or replace the roofs and exteriors of the Condominium Buildings, but not including maintenance, repair and/or replacement of window glass, screens, light bulbs, sump pumps located in or servicing Limited Common Elements, or electrical fixtures.

19.1.2 Further, the Association shall be responsible for maintenance, repair and replacement of any landscaping drainage structure or facilities and of any other property or improvements that the Board of Directors may elect on behalf of the Association.

19.1.3 Notwithstanding anything to the contrary contained in this Supplemental Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and improvement of the Common Elements or improvements thereon shall give rise to any interest of the Association in any Duplex Unit or the quality of any improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any partner thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such improvements or the construction thereof.

19.1.4 The Association shall maintain all exterior portions of the various Duplex Units, including the maintenance of all roofs, exterior walls, exterior architectural details, all exterior roof or patio covers, all fences, including all painting thereof, all landscaping materials including grass, trees shrubs, flowers maintained by the Association but not the plantings of the several Owners, all water sprinkler systems, including clocks, sprinkler heads, underground piping and valves, all fences, all exterior patio screening fences or walls. The Owner shall be responsible for all interior maintenance and repair, as well as the repair of all exterior glazing, screens, door knobs and other exterior decoration or architectural features, such as allowed pots, seating or other items.

19.2 Association's Right to Repair, Maintain and Replace. In the event any Owner shall fail to perform his maintenance, repair and replacement obligations with respect to both his Duplex Unit in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board of Directors, enter upon said Duplex Unit subsequent to the expiration of said thirty (30) day time period to perform any or

all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Duplex Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided herein, including, without limitation, interest, late charges and lien rates.

19.3 Easement for Maintenance Access and Entry. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Duplex Unit reasonably necessary for maintenance, repair and replacement of any Common Maintenance Element and any other property or improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Maintenance Elements, any other property, or any Duplex Unit, the Owner responsible for the damage, or if the Association is responsible, is liable for the cost of prompt repair or avoidance. Further, each Duplex Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Duplex Unit, except that in emergency situations entry upon a Duplex Unit may be made at any time provided that the Owner or occupants of each affected Duplex Unit shall be warned of impending emergency entry as early as is reasonably possible.

19.4. Owner's Negligence or Wilful Act. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Maintenance Elements, any other property, a Duplex Unit, or any improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Duplex Unit is subject and shall be subject to all of the terms and provisions of this Supplemental Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## **ARTICLE TWENTY RESTRICTIONS**

20.1. General Plan. It is the intention of the Supplemental Declarant to provide for the complete exterior maintenance of each of the several Duplex Units, including their environs, such as yards, landscaping, plantings and fences and to establish and impose a general plan such exterior maintenance for the overall enjoyment and use and occupancy of the Duplex Units.

20.2. Restrictions Imposed. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit B attached hereto and incorporated herein by this reference. In addition, this Supplemental Declarant declares that all of the Duplex Units shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and pledged, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Supplemental Declaration. However, as provided in this Supplemental Declaration, the Association and each Owner have the right, but not the obligation, to enforce any of the restrictions or provisions of this Supplemental Declaration, including without limitation those contained in this Article, the Owner(s) who are aware of such violation are encouraged first to discuss and attempt to resolve the same with the Person causing the violation, second to seek recourse with the City of Longmont for enforcement of their ordinances, and finally, if neither of those succeeds, only then to go to the Directors to request the Association to exercise their option to take action to enforce the appropriate restrictions.

20.3. Restrictions on Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Maintenance Elements, nor shall anything be kept or stored on any part of the Common Maintenance Elements except as provided in this Supplemental Declaration with respect to such Common Maintenance Elements. Other than those improvements erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed in or removed from the Common Maintenance Elements except as permitted in this Supplemental Declaration.

20.4. Exterior Changes. Except for those improvements erected, constructed or installed by Declarant in its completion of the Community, no exterior additions to, alterations or decoration of any Duplex Units shall be commenced, erected, placed or maintained, except as provided in this Supplemental Declaration with respect to the Common Maintenance Elements. No fences shall be permitted except with the prior, written approval of the Architectural Review Committee. Notwithstanding the foregoing, those fences which may be constructed, installed or located by the Declarant in its development of, or construction of improvements in, the Community shall be permitted without the approval of the Committee. None of the fences which were installed by the Declarant and are to be maintained by the Association shall be modified in any way without the prior approval of the Committee.

20.5. Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant, sponsor or builder, shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice. Notwithstanding the foregoing, however, any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Control Period shall be subject to the Master Declaration.

20.6. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Community such facilities, as Declarant deems reasonably necessary or incidental to the construction and sale of Duplex Units, and development and construction of improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations as Declarant may determine from time-to-time in its reasonable discretion. Further, nothing contained in the Declaration shall limit the right of the Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any improvements; (b) to use any structure on any property as a construction or management office, model, or sales or leasing office, in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain the approval of the Architectural Review Committee or of the Association for any activity or Improvement by Declarant on any Property owned by Declarant. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Community in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees, of and to his Duplex Unit and to a public right-of-way. Any real estate used as a sales office, management office, construction office or a model shall be a Duplex Unit.

20.7. Use of Common Elements. An easement is hereby granted to the Declarant through the Common Maintenance Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations.

20.8. Garage Doors. Garage doors shall be kept closed at all times, except when entering, exiting, loading or unloading.

20.9 Landscaping. All landscaping within the Parcels shall be done by the Declarant. The owner may plant flowerbeds, or carry on other gardening activities as long as such activities do not interfere with the installed landscaping. Anything other than flower gardens must be approved by the Declarant during the Control Period and the Association thereafter, including but not limited expanding patio areas, patio covers, lawn tents and interior fencing.

## ARTICLE TWENTY-ONE NUMBER AND GENDER

21.1 Number and Gender: Number and gender as used in this Declaration and Dedication shall extend to and include both a singular and plural and all genders as the context and construction shall require.



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**LOTS 1 THROUGH 14, INCLUSIVE, BLOCK 6, PRAIRIE VILLAGE, FILING NO. 1,  
COUNTY OF BOULDER, STATE OF COLORADO**

**EXHIBIT "B"**  
**LIST OF COVENANTS, RESTRICTIONS, EASEMENTS**

1. The right of the proprietor of a vein or lode to extract or remove his ore therefrom, as reserved in Patent recorded October 30, 1878, Book 57, Page 101.
2. An Oil and Gas Lease and assignment thereof dated April 25, 1977 by Vernon E. Pepler and Carol J. Pepler et.al. Recorded June 17, 1977 in Book 966 as Reception No. 228087.
3. An Oil and Gas Lease and assignment thereof dated February 18, 1982, executed by Vernon E. Pepler and Carol J. Pepler, et. al. Recorded March 12, 1982 on Film 1200 as Reception No. 486660.
4. Annexation Agreement recorded March 19, 1988 as Reception No. 906889 and amended February 8, 1994 as Reception No. 1393155.
5. Notice of Preliminary Plat and Preliminary Development Plan approval recorded April 30, 2001 as Reception No. 2142982.
6. Covenants, Conditions and Restrictions in an instrument recorded October 18, 2002 as Reception No. 2345858.