

TOWNHOME  
DECLARATION  
FOR  
CLUB COTTAGES

DECLARANT:

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TOWNHOME DECLARATION  
FOR  
CLUB COTTAGES

THIS TOWNHOME DECLARATION FOR CLUB COTTAGES is executed with an effective date of \_\_\_\_\_, 2004 by N D Enterprises, L.L.C., a Colorado limited liability company.

Section 1.6 Colorado Common Interest Ownership Act. Declarant declares the Property to be a Common Interest Community in accordance with the Colorado Common Interest Ownership Act.

ARTICLE 1  
STATEMENT OF PURPOSE OF DECLARATION

ARTICLE 2  
DEFINITIONS

Section 1.1 Ownership of Property. Declarant is the Owner of the following described real property ("Property") situate in Gunnison County, Colorado and described as follows:

The following definitions shall apply to this Declaration and the Exhibits attached hereto unless the context shall expressly provide otherwise:

**Multi-Family Tract 6, Skyland Third Filing, according to the official plat thereof recorded bearing Reception No. 500522,**

Section 2.1 "Townhome Assessments" shall mean any townhome assessments, whether regular, special or otherwise, levied pursuant to this Townhome Declaration or the Association Documents to provide the necessary funds for all requirements of this Townhome Declaration and the obligations of the Association as to the Club Cottages.

**County of Gunnison,  
State of Colorado.**

Section 1.2 Intention. Declarant, as the Owner of the Property, intends to provide for single family townhome dwellings consisting of twelve Duplex Lots and one individual townhome Lot.

Section 2.2 "Association" shall mean the Club Cottages at Skyland Association, a Colorado non-profit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 1.3 Statement of Purpose. To accomplish such intention, this Declaration is executed to define the character, duration, rights, duties, obligations and limitations for the use and ownership of the Property as a Townhome Project and to provide for the benefit of all Owners of Lots located within the Property.

Section 2.3 "Association Documents" shall mean:

2.3.1 This Townhome Declaration of Club Cottages;

2.3.2 The Articles of Incorporation and Bylaws of the Association;

Section 1.4 Declaration of Protective Covenants. Declarant hereby declares and establishes the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations which shall be deemed to run with the Property and shall be binding upon all Persons and entities having any right, title or interest in and to the Property, or any part thereof, and their heirs, successors and assigns and to inure to and be for the benefit of each Owner within Club Cottages.

2.3.3 The Declaration of Protective Covenants of Skyland, Initial Filing as recorded November 17, 1981 in Book 574 at page 141, and in Notice of Amendment of Declaration of Protective Covenants recorded August 29, 1996 in Book 789 at page 710;

2.3.4 The Special Covenants of Skyland - Third Filing recorded March 24, 2000 at Reception No. 500523;

Section 1.5 Subdivision of Property. The Property is platted as Club Cottages, according to the recorded plat thereof filed 3-22, 2004 and bearing Reception No. 551948 of the records of Gunnison County, Colorado.

2.3.5 The Design Guidelines for Skyland, as amended;

2.3.6 The Articles of Incorporation and Bylaws of the Skyland Community Association;



Section 2.4 "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Association Documents.

Section 2.5 "Building" shall mean any building constructed or erected on a Lot.

Section 2.6 "Club Cottages" shall mean all of the Property including the Duplex Buildings and Individual Buildings constructed thereon.

Section 2.7 "Common Area" shall mean any area or tract or parcel of land shown on the Plat as "Common Area."

Section 2.8 "Common Wall" shall mean any common wall or party wall situate between the Individual Residences within a Duplex Building.

Section 2.9 "Declarant" shall mean ND Enterprises, L.L.C., a Colorado limited liability company, its successors and assigns.

Section 2.10 "Declaration" or "Townhome Declaration" shall mean this Townhome Declaration for Club Cottages.

Section 2.11 "Duplex Building" shall mean a Building on two Lots containing two (2) Individual Residences, each being a separate Individual Residence separated by a Common Wall.

Section 2.12 "Improvements" shall mean all Buildings, structures, parking areas, fences, walls, driveways, signs, changes in exterior or roof color or shape, excavation, site work, grading, road construction, utilities, Landscaping, lawns, trees, shrubbery, grass, flowers, decorative devices and any exterior construction or exterior improvement constructed, completed or maintained on any Lot or Common Area within the Property.

Section 2.13 "Individual Residence" shall mean the Individual Residences within a Duplex Building or separated by a Common Wall.

Section 2.14 "Landscaping" shall mean all planted areas and plant materials, including lawns, trees, shrubbery, flowers, ground cover, all underground lawn watering systems, all driveways, parking areas and sidewalks of any Lot or Common Area and any other decorative materials or decorative devices forming a part of any landscaping area.

Section 2.15 "Lot" shall mean a Lot, as shown on the Plat of Club Cottages, according to the official plat thereof filed 3-22-05 and bearing Reception No. 551948 of the records of Gunnison County, Colorado.

Section 2.16 "Member" shall mean any Person who is a Lot Owner holding membership in the Association.

Section 2.17 "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Unit, or interest therein, as security for the payment of any indebtedness.

Section 2.18 "First Mortgage" shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

Section 2.19 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot after the recording of this Declaration, the Owner shall mean the Declarant unless the Declarant has designated a successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.20 "Person" shall mean a person, corporation, partnership, joint venture, Association, fiduciary or any other type of entity or designation by which title to any Lot is held.

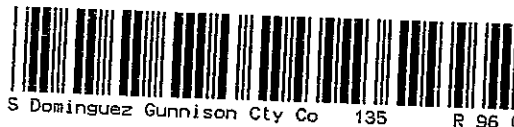
Section 2.21 "Plat" or "Subdivision Plat" shall mean the Plat of Club Cottages, according to the official plat thereof filed 3-22-05 and bearing Reception No. 551948 of the records of Gunnison County, Colorado.

Section 2.22 "Property" shall mean and include all property subject to this Declaration.

Section 2.23 "Townhome Common Expenses" or "Common Expenses" shall mean the following expenses pertaining to Club Cottages:

2.23.1 All expenses declared to be Townhome Common Expenses by this Townhome Declaration or the Association Documents.

2.23.2 The expenses of administration, operation, management and maintenance of the Club Cottages.



2.23.3 The maintenance, repair or replacement of the exterior of any Duplex Building or Individual Building, including any Common Wall and exterior surfaces of such Building.

2.23.4 The maintenance, repair or replacement of the roofs and roof structures of any Duplex Building or Individual Building.

2.23.5 The maintenance, care, upkeep and replacement of all Landscaping, including driveways, parking areas and sidewalks within Club Cottages.

2.23.6 All sums determined to be Townhome Common Expenses by the Association in accordance with the Association Documents.

2.23.7 All sums properly assessed against any Lot by the Association.

ARTICLE 3  
DESCRIPTION OF LOT

Section 3.1 Description of Lot. Every instrument affecting title to a Lot in Club Cottages may describe that Lot as follows:

3.1.1 Lot \_\_\_\_\_, Club Cottages, according to the official plat thereof filed 3-22-05 and bearing Reception No. 551948 of the records of Gunnison County, Colorado and the and the Townhome Declaration for Club Cottages recorded \_\_\_\_\_, 2004 at Reception No. \_\_\_\_\_ of the records of Gunnison County, Colorado.

Section 3.2 Sufficient Description. Such method of description shall be sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect the title of a Lot, and all appurtenant property rights pertaining thereto, and shall incorporate all of the rights, duties, limitations and burdens incident to ownership of a Lot as described in this Declaration.

ARTICLE 4  
USE OF LOTS

Section 4.1 Use of Lot. All Lots within the Property shall be used exclusively for one single-family residence with one attached garage together with any appurtenant decks, patios, fences and landscaping appurtenant thereto.

Section 4.2 Enjoyment of Lot. Each Lot shall be for the exclusive use and enjoyment thereof by the Owner, members of his family and his guests. The leasing of a Townhome for residential purposes shall be allowed.

Section 4.3 Partition of Lots. No Lot may be partitioned, subdivided nor in any manner divided into two or more Lots.

Section 4.4 Approval of Use. No Improvement shall be constructed on any Lot without the approval of the Skyland Design Review Committee as approved by the Skyland Community Association in accordance with the Association Documents.

Section 4.5 Utility Easements. The Utility Easements and rights of way shown on the Plat shall be for ingress and egress, installation, replacing, repairing and maintaining all shared utilities and utility lines, including, but not limited to, water, sewer, gas, telephone, cable television and electricity by the utility providers. It shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Individual Residences and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association.

Section 4.6 No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Lot; provided, however, that the Owner of a Lot may be permitted to conduct an in-home executive office or an in-home occupation, artistic or literary activity on a Lot upon the prior approval by the Board of Directors as to such occupation or activity. No such occupation or activity shall be approved by the Board of Directors which would create a visual, sound or traffic nuisance. Any such occupation or activity shall be subject to a reasonable limitation as to the number of persons and the number and type of motor vehicles involved in such occupation or activity. Certain in-home activities may require approvals from Gunnison County.

Section 4.7 Model Home and Sales Office. Notwithstanding the provisions of Section 4.6 above, during the period of the development of the Property and the sale of the Lots, the Declarant, or its successor in interest, shall have the right to construct a model Duplex on any Lots with a sales office located therein to advertise, show and sell Lots and





Individual Residences to prospective purchasers. Declarant may also erect and maintain one sign on such Lot, advertising the model Individual Residence and sales office.

necessary maintenance, repairs, restoration and replacement to the Common Wall.

Section 4.8 Fractional Interests. Fractional interests shall be permitted on all or any part of the Property. This provision cannot be deleted or amended to prohibit or limit fractional ownership without the affirmative vote of 67% of the fractional interest owners in addition to the requirements for amendment under Section 15.2.

5.2.4 In the event any required maintenance, repairs, restoration or replacement of any Common Wall causes any damage, injury or destruction to the interior of an Individual Residence, not caused by the negligence or failure to act of the Association, the Owner of such Individual Residence shall be responsible for the repair or replacement of any damage to the Individual Residence.

ARTICLE 5  
COMMON WALL

Section 5.3 Negligence of Owner. In the event that any damage or destruction is caused to a Common Wall by the negligence of the Owner of an Individual Residence or such Owner's failure to do and perform any obligation or duty imposed by such Owner by this Declaration, then the reasonable cost and expense of any required maintenance, repair, restoration or replacement of the Common Wall shall be the liability of such Owner and if such cost and expense is not paid by such Owner, then the Association shall have the right to levy a special Townhome Assessment against the Lot of such Owner and the right to enforce such Townhome Assessment as provided in this Declaration.

Section 5.1 Common Wall. Any Duplex Building constructed on two Lots shall have Common Walls and such Common Walls shall be subject to the following special terms and conditions:

ARTICLE 6

AUTHORITY OF ASSOCIATION

5.1.1 That portion of the Common Wall situate on a Lot shall be owned by the Owner of such Lot as part of the Owner's fee simple ownership of the Lot. Each Lot Owner shall enjoy a common perpetual easement and right of use of that portion of the Common Wall located upon the adjoining Unit.

Section 6.1 Maintenance and Repair as a Townhome Common Expense. All maintenance, repairs and replacements of the exterior, roof, Landscaping and Common Wall of any Duplex Building shall be the Townhome Common Expense of all Lot Owners of the Association. Specifically, the Association has the responsibility, duty and obligation to:

5.1.2 Each Lot Owner shall have a perpetual right to use and enjoy the entire Common Wall as a Common Wall for the support, construction, maintenance and use of each Individual Residence.

Section 5.2 Rights of Association in Common Wall. The Association is granted, by the Owners of all Lots upon which any Common Wall is situate, the following rights, duties and obligations as the attorney in fact and agent for each Lot Owner:

6.1.1 At all times maintain the exterior of all Duplex Buildings and Individual Buildings in an attractive and quality condition and to at all times keep the exterior of all Duplex Buildings and Individual Buildings in the same condition and repair as when originally constructed.

5.2.1 To at all times perform any necessary and desirable maintenance, repairs, replacement or restoration of the Common Wall as may be required to keep the same structurally sound.

6.1.2 At all times properly maintain and replace the roofs of all Duplex Buildings and Individual Buildings. In addition to all regular repairs and maintenance or replacements by the Association, the Association shall be responsible to replace a roof in its entirety when the Association determines that due to time and deterioration, such roof needs to be replaced in its entirety. The repair or replacement of any roof shall be in a manner preapproved by the Design

5.2.2 To keep in good repair and finish all exterior portions of the Common Wall including any roof or roof covering extending over and above any such Common Wall.

5.2.3 The Association is granted an easement and license sufficient in size and right as may be required by it to do and perform all



Review Committee of the Skyland Community Association.

6.1.3 At all times care for and maintain all Landscaping.

6.1.4 Provided, however, in the event of any care, maintenance, repair and/or replacement is required due to the negligence, misuse or deliberate act of the Owner, the Owner's family, guests and invitees or tenants, then and in that event such expense shall be the liability of the Owner and charged to the Owner by the Association.

Section 6.2 Right of Access. The Association, its officers, agents, employees and contractors shall have the irrevocable right to access each Lot and the Individual Residence constructed on any Lot at all times and during any reasonable hour as may be necessary for the maintenance, repair, or replacement of the exterior, roof, or Common Wall of any Duplex Building, any utilities or any Common Wall for the purpose of making any repair, maintenance, replacement, or inspection thereof, whether regular or emergency, necessary for the preservation and repair of the exterior, roof and party wall of any Lot.

Section 6.3 Damages. Any damage to all or part of a Duplex Building or a Lot resulting from any maintenance, repair, restoration, emergency repair or replacement caused by or at the direction of the Association as a part of the exercise of its rights hereunder, shall be a Townhome Common Expense of the Association; provided, however, that if such damage or destruction is caused by the negligence of the Owner of a Lot, his or her agents, employees, invitees or tenants, then such Owner shall be responsible and liable for all such damage and the cost thereof and the same shall be an obligation of the Owner and shall be payable upon demand to the Association.

Section 6.4 Restoration. Any damage to any Duplex Building or a Lot caused by the Association shall be restored substantially, to the extent reasonably practical, to the same condition in which such Improvements existed prior to such damage.

Section 6.5 Reconstruction of a Residence. In the event that any Residence is destroyed in whole or in part due to fire or any other cause, the Owner shall immediately reconstruct, replace and rebuild such Residence as it existed prior to such damage or destruction and in accordance with the Plans and

Specifications for the original construction of such Residence, subject only to such revisions or modifications as might be approved by the Design Review Committee of the Skyland Community Association.

Section 6.6 Fire and Extended Coverage. The Owner of any Lot shall at all times maintain fire and extended coverage in an amount equal to the full replacement value of his Individual Residence, without deduction for depreciation, to the extent such insurance coverage is available for the Lot. The Association shall be named as an additional insured under such policy of insurance as its interest may appear. The Owner shall furnish to the Association current certificates of insurance verifying that such fire and extended coverage is in full force and effect. In the event that the Owner of any Lot shall fail to keep and maintain in full force and effect such fire and extended coverage, the Association shall have the right to obtain such insurance coverage as to the Lot and assess the Owner for all costs to obtain such insurance.

ARTICLE 7  
INTERIOR OF UNIT AND PERSONAL PROPERTY

The Owner of a Lot shall be solely responsible to at all times properly maintain the interior of a Residence on any Lot in the same condition as when constructed, reasonable wear and tear excepted. The Owner shall at all times be solely responsible for all personal property, furniture, fixtures and appliances within the Unit and the Association shall have no responsibility or liability therefore unless the same is damaged or destroyed due to the negligence of the Association, its agents and employees.

ARTICLE 8  
CLUB COTTAGES AT SKYLAND ASSOCIATION

Section 8.1 Government of Association. Club Cottages at Skyland Association, a Colorado nonprofit corporation, shall exercise all of the rights, duties, privileges powers and obligations as set forth in this Declaration and the Association Documents.

Section 8.2 Members. Each Owner shall be a Member of the Association. No Owner, whether one or more Persons or entities, shall have more than one membership per Lot owned by such Owner, but all Persons owning each Lot shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Lot.

Section 8.3 Termination of Membership. The right of membership in the Association and the status as a



Member shall terminate upon the termination of status as an Owner of a Lot. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for Townhome Assessments levied from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

Section 8.4 Voting Rights. All Owners of a Lot shall be Members of the Association. Each Lot shall be entitled to one vote in the Association. The one vote for each Lot shall be exercised by the Owner and when more than one Person or entity holds an interest in a Lot, the vote for the Unit shall be exercised as the Lot Owners may determine among themselves, but the vote for the Lot shall be cast by only one Person.

Section 8.5 Compliance with Association Documents. Each Owner shall be governed by, shall comply with and shall have the benefit of the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 8.6 Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as "Club Cottages Rules and Regulations" governing, among other things, and without limitation:

8.6.1 Standards for the care, maintenance, and use of all Lots, all Buildings, structures and Landscaping situate within the Property.

8.6.2 The maintenance, repairs and replacement of the exterior of all Duplex Buildings and Individual Buildings, including all walls, doors, windows, and exterior surfaces and roofs, and the Common Walls pertaining thereto.

8.6.3 All matters delegated to the Association by this Declaration.

8.6.4 All Landscaping and the maintenance thereof.

8.6.5 The regulation of noise, activities and usage of any Lot or Property within Club Cottages.

8.6.6 The use of the Common Area and permitted activities within the Common Area.

8.6.7 The conservation, maintenance, repair and use of all buildings, structures, landscaping and uses within the Common Area.

8.6.8 The establishment of easements for recreational use, including walking, hiking, bicycling, and skiing. Provided, that no easement for such purpose shall be created or established upon any Lot without the consent of the Owner of such Lot..

8.6.9 Any exterior decorations, devices or personal property of any Lot or upon any Property within Club Cottages.

ARTICLE 9  
TOWNHOME ASSESSMENTS BY THE  
ASSOCIATION

Section 9.1 Acceptance of Townhome Assessments. Each Owner of a Lot, by acceptance of a Deed therefore, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association: (1) all Townhome Regular Assessments or charges pertaining to Club Cottages; (2) any Townhome Special Assessments or charges pertaining to Club Cottages; and (3) any Townhome Default Assessments or charges pertaining to Club Cottages; all of which shall be fixed, established and collected as determined by the Association. The Townhome Regular, Special and Default Assessments, together with interest, costs and reasonable attorney fees, shall be a charge and continuing lien upon the Lot against which each such Townhome Assessment is made until paid. Each such Townhome Assessment, together with interest, costs and reasonable attorney fees, shall be the personal obligation of the Owner of such Lot at the time when the Townhome Assessment became due.

Section 9.2 Purposes of Townhome Regular Assessments. The Townhome Regular Assessments of Club Cottages levied by the Association shall be limited to and used exclusively for the following:

9.2.1 The maintenance, repair and replacement of all of the exterior portion of any Duplex Building or Individual Building, the structural portions thereof, all Common Walls and including the doors, windows and roofs, water, sewer, or other utility service to any Building, and all exterior surfaces of any such Building.

9.2.2 The maintenance, repair or improvement of all Landscaping and lawns of any Duplex Lot or Individual Lot.



9.2.3 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.

9.2.4 All costs and expenses incurred by the Association in the performance of all of its duties and obligations under the Association Documents.

9.2.5 Any other purpose approved by a majority vote of all of the Lot Owner Members of the Association.

Section 9.3 Townhome Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's Townhome Regular Assessments for the following year in accordance with the Colorado Common Interest Ownership Act as now existing or as the same may be amended, modified or changed.

Section 9.4 Townhome Special Assessments. In addition to the Townhome Regular Assessments set forth in Section 8.3 above, the Board of Directors may levy, in any fiscal year, one or more Townhome Special Assessments of Club Cottages for the purpose of defraying, in whole or in part, the cost, fees and expenses of any maintenance, repairs, or replacements required to be done or performed by the Association or to make up any shortfall in the current year's budget. Such Townhome Special Assessment shall be assessed equally to each Lot Owner and shall be due and payable in the manner set forth in the Notice of such Townhome Special Assessments. Notice of the amount and due dates for such Townhome Special Assessments shall be sent to each Owner at least thirty days prior to the due date thereof.

Section 9.5 Townhome Reserve Funds. As a part of the Townhome Regular Assessments, the Association shall be obligated to establish:

9.5.1 A Townhome Reserve Fund of Club Cottages for the maintenance, repair and replacement of the exterior of the exteriors and roofs of all Duplex Buildings and Individual Residences and Common Walls, water, sewer, or other utility services to any Building.

9.5.2 A Townhome Reserve Fund of Club Cottages for any taxes or insurance required to be paid by the Association.

9.5.3 Such accounts may be interest-bearing accounts and shall be held in trust for the benefit of the Lot Owners for such purposes.

Section 9.6 Apportionment of Townhome Assessments. All Townhome Regular and Special Assessments shall be apportioned and allocated equally among all Lots.

Section 9.7 Townhome Default Assessments. Any expense of the Association as to Club Cottages that is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a Townhome Default Assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Townhome Default Assessment shall be sent to the Owner subject to such Townhome Default Assessment at least thirty days prior to the due date.

Section 9.8 Fiscal Year. The Townhome Assessments of the Association shall be computed and determined on a fiscal year basis.

Section 9.9 Payable Monthly. Townhome Assessments shall be payable monthly in advance on or before the tenth day of each month by the Owners of the Units unless the Association otherwise determines.

Section 9.10 Written Notice. The Association shall give written notice to the Owners of the Lots of the Townhome Regular Assessments, and Townhome Special Assessments if any, and shall deliver to each Owner itemized statements on a periodic basis determined by the Association.

Section 9.11 Late Charges and Interest. If any such monthly payment is not paid within ten days after the date that it becomes due and payable, the Association may assess a "late charge" thereon in an amount not exceeding five percent (5%) of such statement to cover the extra costs and expense involved in handling such delinquent statement. In addition, the Association may provide that any Townhome Assessment shall bear interest at a rate of 1.5% per month from and after the date the statement becomes due and payable.

Section 9.12 Townhome Assessments of Declarant. During the period of development of the



Property and until the construction of a Building and sale of a Lot by the Declarant the Townhome Assessments to be paid by the Declarant on such Lot shall be based upon the actual cost and expense required to maintain that Lot's share of the Common Expenses and shall not include any amounts necessary for contingencies, reserves or other funds not required for the cost of operating and maintaining the project on a day by day basis.

Statement of Lien shall secure all Townhome Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorney fees and costs incurred in the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Townhome Assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorney fees with respect to the action.

**Section 9.13 Nonpayment of Townhome Assessments.** Any Townhome Assessment, whether Regular, Special, or Default Townhome Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Townhome Assessment becomes delinquent, the Association, in its sole discretion, may take any or all the following actions:

9.13.6 The Statement of Lien shall be superior to all other liens and encumbrances on such Lot, except only any tax and assessment liens levied by any government entity and the lien of any First Mortgage. Provided, however, at all times the lien of the Association shall have priority and status over any other lien or Mortgage as provided by the Colorado Common Interest Ownership Act, as it now exists and as it may hereafter be amended.

9.13.1 Assess a late charge of not more than 5% of the amount due and owing per each delinquency.

9.13.2 Assess an interest rate charge from the date of delinquency at the rate 1.5% per month, or such other rate as shall be established by the Board of Directors.

9.13.3 Suspend the voting rights of the Owner during any period of delinquency.

9.13.4 Bring an action against any Owner personally obligated to pay the delinquent Townhome Assessment.

**Section 9.14 Successor's Liability for Townhome Assessment.** In addition to the personal obligation of each Owner of a Lot to pay all Townhome Assessments and the Association's lien on a Lot for such Townhome Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Townhome Assessments, interest, costs, expenses and attorney fees against such Lot.

9.13.5 File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent Townhome Assessments then owing, which Statement of Lien shall be signed and acknowledged by the President, Vice President or Secretary of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Lot at the latest address the Association may have in its records as to the Owner. Thirty days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of Mortgages under the statutes of the State of Colorado. Such

**Section 9.15 Owner's Obligation for Payment of Townhome Assessments.** The amount of the Townhome Common Expenses assessed against each Lot shall be the personal and individual debt of the Lot Owner or Lot Owners thereof at the time the Townhome Assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt himself from the liability for his contribution towards the Townhome Common Expenses by waiver of the use or enjoyment of any of the Common Areas or abandonment of his Lot.

**Section 9.16 Skyland Community Association Assessments.** In addition to all of the Townhome Assessments as set forth above pertaining to Club Cottages, each Owner is separately liable and responsible for the payment of all assessments and common expenses levied by the Association and pertaining to the entire Skyland Neighborhood.



ARTICLE 10  
RIGHTS, DUTIES, PRIVILEGES AND  
OBLIGATIONS OF OWNER

Section 10.1 Duties and Limitations of Owner.  
The following limitations shall apply to the rights of  
any Owner:

10.1.1 No exterior addition or alteration to  
any Lot, Duplex Building or Individual Building  
nor any fence, wall, structure, landscaping,  
grading, deck, patio, decorative devices or other  
Improvements shall be constructed, allowed or  
maintained on any Lot without the prior written  
approval of the Association.

10.1.2 No change in any exterior color or  
material shall be made without the prior written  
approval of the Association.

10.1.3 No exterior mounted radio, television  
or other communication antenna or device shall  
be located on the exterior of any Building without  
the prior written approval of the Association.

10.1.4 No clotheslines or incinerators shall  
be permitted on any Lot.

10.1.5 The storage of all equipment,  
furniture, tools and personal property shall be  
appropriately stored indoors or within a  
designated area at the rear of any Lot so that  
they are concealed from view from any other Lot  
or from any street.

10.1.6 No house trailer, travel trailer,  
camping trailer, motor home, camper, boat,  
trailer, recreational vehicle, truck, except pickup  
or van, motorcycle, motorbike or any similar type  
vehicle or device shall be parked, stored or  
maintained on any Lot unless within the Garage  
of the Lot. No street, alley or public access of  
any Lot within Club Cottages shall be used for  
long term parking or storage of any such  
recreational device, vehicle or trailer. The  
driveway or access to the Garage of any  
Building may be used for the temporary parking  
of any motor vehicle of the Owner or the  
Owner's guests and invitees, including  
construction trailers and vehicles during the  
construction or repair of a Building on the Lot.

10.1.7 No signs of any type or kind shall be  
placed or displayed on any Lot without the prior

written approval of the Association, except for the  
rights of the Declarant under Section 12.7.

ARTICLE 11  
PROPERTY FOR COMMON USE

Section 11.1 Property for Common Use. The  
Association may acquire and hold for the use and  
benefit of all of the Lot Owners within Club Cottages,  
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  
Association on behalf of all Lot Owners and shall not  
be transferable except with a transfer of a Lot. A  
conveyance of a Lot shall transfer to the grantee  
ownership of the grantor's beneficial interest in all  
such Property acquired and held by the Association.

ARTICLE 12  
RESERVATION OF DEVELOPMENT RIGHTS  
AND OTHER SPECIAL DECLARANT RIGHTS

Section 12.1 Reservation of Development Rights.  
The Declarant reserves the following Development  
Rights:

12.1.1 The right by amendment to this  
Declaration or the Plat to create Units or Lots,  
Common Elements, and Limited Common  
Elements in the locations identified on the Plat.

12.1.2 The right to construct utility lines,  
pipes, wires, ducts, conduits, and other facilities  
across any portion of the Property for the purpose  
of furnishing utility and other services to Buildings  
and Improvements now located on or to be  
constructed on the Property. The Declarant also  
reserves the right to withdraw and grant  
easements and licenses to public utility  
companies and to convey Improvements within  
those easements anywhere in the Common  
Interest Community not occupied by Buildings, for  
the purposes mentioned above.

12.1.3 The right, by amendment, to  
subdivide Lots in the areas identified on the Plat,  
and the remaining portions of Lots after partial  
subdivision, into Units, Common Elements and  
Limited Common Elements.

12.1.4 The right to amend the Townhome  
Declaration and/or the Plat as provided in 14.3.

12.1.5 To change the design and size of any  
Townhome to be constructed on any Lot by the



Declarant so long as the design and size of the Townhome is compatible with existing Townhomes.

12.1.6 To change the location of the individual Lots, Common Area, streets and parking areas to be platted as part of any subsequent phase of Club Cottages including the right to change the type, size, location and number of Lots or structures to be constructed therein, and the number of Townhomes whether detached or with party walls, that may be constructed upon any Lot.

Section 12.2 Limitations on Development Rights. The Development Rights reserved in Section 11.1 are limited as follows:

12.2.1 The Development Rights may be exercised at any time, but not more than twenty-five (25) years after the recording of the initial Declaration;

12.2.2 Not more than twenty five (25) Lots may be created under the Development Rights;

12.2.3 All Lots and Common Elements created pursuant to the Development Rights will be restricted to the same uses and to the same extent as the Units created under this Declaration as initially recorded; and

Section 12.3 Phasing of Development Rights. No assurances are made by the Declarant as to whether the Declarant will exercise its Development Rights or the order in which such Development Rights will be developed. The exercise of Development Rights as to some portions of the Property will not obligate the Declarant to exercise them as to other portions.

Section 12.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

12.4.1 to complete any Improvements indicated on the Plat;

12.4.2 to exercise a Development Right reserved in the Declaration;

12.4.3 to maintain sales offices, management offices, signs advertising the Common Interest Community, and models;

12.4.4 to use easements through the Common Elements and Lots for the purpose of making Improvements within the Common Interest Community; and

12.4.5 to appoint or remove an officer of the Association or an Executive Board member during the maximum period of Declarant control subject to the provisions of Section 11.9 of this Declaration and the Colorado Common Interest Ownership Act, as now in effect and as same may be amended or revised.

Section 12.5 Models, Sales Offices and Management Offices. As long as the Declarant is a Unit or Lot Owner, the Declarant, its duly authorized agents, representatives, and employees may maintain any Lot owned by the Declarant or any portion of the Common Elements as a model Unit, sales office, or management office. In addition, during periods of construction, Declarant may maintain a construction trailer on the Common Elements.

Section 12.6 Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs, and construction work on Lots and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to utility providers, the County of Gunnison, and/or the State of Colorado.

Section 12.7 Signs and Marketing. The Declarant reserves the right to post and maintain signs and displays on Lots owned by Declarant and in the Common Elements in order to promote sales of Lots. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Lot Owners.

Section 12.8 Declarant's Property. The Declarant reserves the right to remove and retain all its property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures.

Section 12.9 Declarant Control of the Association.



12.9.1 Subject to Subsection 11.9.1.2, there shall be a period of Declarant control of the Association, during which a Declarant, or Persons designated by the Declarant, may appoint and remove the officers of the Association and Members of the Executive Board. The period of Declarant control shall terminate no later than the earlier of:

12.9.1.1 60 days after conveyance of 75 percent of the Lots that may be created in the Common Interest Community to Lot Owners other than a Declarant; or

12.9.1.2 two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or

12.9.1.3 two years after any right to add new Lots was last exercised.

Section 12.10 Voluntary Surrender. A Declarant may voluntarily surrender the right to appoint and remove officers of the Association and Members of the Executive Board before termination of the period described above. In that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

12.10.1 Not later than 60 days after conveyance of 25 percent of the Lots that may be created to Lot Owners other than a Declarant, at least one Member and not less than 25 percent of the Members of the Executive Board shall be elected by Lot Owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the Lots that may be created to Lot Owners other than a Declarant, not less than 33-1/3 percent of the Members of the Executive Board must be elected by Lot Owners other than the Declarant.

12.10.2 Not later than the termination of any period of Declarant control, the Lot Owners shall elect an Executive Board of at least three Members, at least a majority of whom shall be Lot Owners. If any Lot is owned by a partnership, limited liability company, corporation, or similar entity, any officer, partner, manager, member, or employee of that Lot Owner shall be eligible to serve as a Member of the Executive Board and shall be deemed to be a Lot Owner for the purposes of the preceding

sentence. The Executive Board shall elect the officers. The Executive Board Members and officers shall take office upon election.

12.10.3 Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under C.R.S., §38-33.3-308, the Lot Owners, by a vote of 67 percent of all Lot Owners present and entitled to vote at a meeting of the Lot Owners at which a quorum is present, may remove a Member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 12.11 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Lots or Common Elements; (c) owns any Lot; (d) owns any Security Interest in any Lots; or (e) twenty-five (25) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 12.12 Interference with Special Declarant Rights. Neither the Association nor any Lot Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

### ARTICLE 13 REGISTRATION BY OWNER OF MAILING ADDRESS

Section 13.1 Registration of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, to the address of the Association.

Section 13.2 Certified or Registered Mail. All notices or demands intended to be served shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.





Section 13.3 Single Address for Mailing. In the event any Lot is owned by more than one Person, or by a partnership, joint venture, corporation, or other such entity, the Lot Owners thereof shall designate to the Association in writing the name and address of the agent of the 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 Lot Owners.

Section 14.6 Severability. This Townhome Declaration for Club Cottages, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Townhome Declaration for Club Cottages is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or Section hereof and all other provisions and Sections shall remain in full force and effect.

ARTICLE 14  
PRINCIPLES OF INTERPRETATION

Section 14.7 Attorney Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Townhome Declaration for Club Cottages or any provision of the Association Documents provided herein, the prevailing party in any such action shall be awarded its reasonable attorney fees together with all reasonable costs and expenses incurred in such action.

Section 14.1 Validity. This Declaration, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or Section hereof and all other provisions and Sections shall remain in full force and effect.

Section 14.8 Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the District Court of Gunnison County, Colorado, unless otherwise chosen by the Association and shall be interpreted, construed and governed by the laws of the State of Colorado.

Section 14.2 Context of Words. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 14.9 Interest. Unless otherwise provided in this Townhome Declaration for Club Cottages, any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 18% per year from the date due until paid.

Section 14.3 Headings. The headings on any Section or Article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration.

Section 14.10 Skyland Community Association. Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed that:

Section 14.4 Written Notice. All notices required under this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of the Association at the time of such mailing.

14.10.1 The Property is at all times subject to the terms and conditions of the Declaration of Protective Covenants, and any amendments thereto, the Design Guidelines, the Rules and Regulations and the Articles of Incorporation and Bylaws of the Skyland Community Association.

Section 14.5 Limitation of Liability. Neither the Association nor any officer or director, shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Townhome Declaration for Club Cottages if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

14.10.2 In the event of any conflict between the terms and conditions of this Townhome Declaration for Club Cottages and the documents referenced in subsection 1 above, then and in that event the documents referenced in subsections 1 shall prevail, except for any necessary consents required under this



Townhome Declaration, specifically including the consent required under Section 4.8.

ARTICLE 15  
ENFORCEMENT OF COVENANTS

Section 15.1 Violations Deemed a Nuisance. Every violation of this Townhome Declaration for Club Cottages, the Articles and Bylaws of the Association, or any Rules and Regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 15.2 Failure to Comply. The failure to comply with this Declaration or any Rules and Regulations adopted by the Board of Directors shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

15.2.1 Written notice of any violation or failure to comply with this Declaration or any Rules and Regulations adopted by the Board of Directors shall first be given to any Member or Person as to such violation or failure to comply.

15.2.2 Such Member or Person shall be given 10 days from the date of such notice to correct such violation or failure to comply.

15.2.3 In the event that any Member or Person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board of Directors prior to the Association taking further action or commencing any legal proceeding against such Member or Person.

15.2.4 Any action by the Association as against any such Member or Person shall be by resolution of the Board of Directors following notice as above provided and granting to such Member or Person an opportunity to be heard before the Board of Directors.

Section 15.3 Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

15.3.1 By the Association in name of the Association and on behalf of the Owners.

15.3.2 By the Owner of any Lot.

15.3.3 By Skyland Community Association.

Section 15.4 No Waiver. The failure of the Board, the Association or an Owner to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

ARTICLE 16  
DURATION OF COVENANTS

Section 16.1 Term. The term of this Townhome Declaration for Club Cottages, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2054. Thereafter, this Townhome Declaration for Club Cottages shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 16.2 Amendment. This Townhome Declaration for Club Cottages, or any provision thereof, may only be terminated, extended, modified or amended as to the Property subject to this Declaration or any portion thereof, upon the written consent by the Owners of 67% or more of the Lots in the Property and upon the written consent of the Board of Directors of the Club Cottages at Skyland Association and the Board of Directors of the Skyland Community Association. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Units within the Property.

Section 16.3 Amendment by Declarant. Notwithstanding the provisions of Section 15.2, the Declarant reserves the sole right and power to modify and amend this Townhome Declaration for Club Cottages, and all Plats subject to this Townhome Declaration for Club Cottages, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in this Townhome Declaration for Club Cottages, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a Unit upon any Lot, which are not contrary to the terms



of the agreement. This right and power of the Declarant to modify or amend this Townhome Declaration for Club Cottages and the Plats, in whole or in part, as set forth in this Section 16.3, shall be effective only until (1) five years after the date of construction of the first Improvements on the Property or (2) the date that 75% of all Lots within the Property have been sold or conveyed to third person owners by the Declarant, whichever occurs first. Provided, however, the Declarant may not amend or revise the location and dimensions of any Lot which has been conveyed by Declarant to another Owner, without the consent of such Owner.

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

N D ENTERPRISES, L.L.C., a Colorado limited liability company

By: [Signature]  
Richard D. Divine, General Manager

STATE OF COLORADO            )  
  ) ss.  
County of Gunnison            )

The foregoing Townhome Declaration for Club Cottages has been acknowledged before me this 26th day of October, 2004, Richard D. Divine as General Manager of N D Enterprises, L.L.C., a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: August 29, 2007

Colette A. Perusek  
Notary Public

